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# Presidential Documents

**Title 3—**

## The President

**Presidential Determination No. 2009–17 of April 9, 2009**

## Waiver and Certification of Statutory Provisions Regarding the Palestine Liberation Organization Office

**Memorandum for the Secretary of State**

Pursuant to the authority and conditions contained in Section 7034(b) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2009 (Div. H, Public Law 111 8), I hereby determine and certify that it is important to the national security interests of the United States to waive the provisions of Section 1003 of the Anti-Terrorism Act of 1987, Public Law 100–204.

This waiver shall be effective for a period of 6 months. You are hereby authorized and directed to transmit this determination to the Congress and to publish it in the *Federal Register*.

THE WHITE HOUSE,
*Washington, April 9, 2009*

[FR Doc. E9–8866
Filed 4–15–09; 8:45 am]
Billing code 4710–10–P

# Rules and Regulations

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

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 948

**[Doc. No. AMS–FV–08–0094; FV09–948–1 IFR]**

## Irish Potatoes Grown in Colorado; Modification of the Handling Regulation for Area No. 2

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule modifies the minimum size requirement under the Colorado potato marketing order, Area No. 2. The marketing order regulates the handling of Irish potatoes grown in Colorado, and is administered locally by the Colorado Potato Administrative Committee, Area No. 2 (Committee). Currently, Colorado Area No. 2 potatoes must be U.S. No. 2 or better grade and most varieties must be at least 2 inches in diameter or 4 ounces in weight, except that round potatoes may be of any weight. For most long potato varieties, this rule changes the minimum size requirement from 2 inches in diameter to 1⅞ inches in diameter and removes the minimum weight requirement. This change is intended to improve the marketing of Colorado Area No. 2 potatoes and increase returns to producers as well as provide consumers with increased supplies of potatoes.

**DATES:** Effective April 17, 2009; comments received by June 15, 2009 will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or Internet: *http://www.regulations.gov*. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov*. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Teresa Hutchinson or Gary Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Telephone: (503) 326–2724, Fax: (503) 326–7440, or e-mail: *Teresa.Hutchinson@ams.usda.gov* or *GaryD.Olson@ams.usda.gov*.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@ams.usda.gov*.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule modifies the minimum size requirement for most potatoes handled under the order. The exceptions to these requirements are for potatoes handled under the size designations referred to in the U.S. Standards as ''Size B'' and ''creamers.'' The revisions described in this rule are made to the handling regulations for all regulated potatoes except those potatoes considered ''Size B'' or ''creamers.'' The current size requirements for ''Size B'' and ''creamers'' remain unchanged. The discussion hereafter is intended to reflect the same.

Except as explained above, the minimum size requirement for Colorado Area No. 2 potatoes currently allows the handling of potatoes that are at least 2 inches in diameter or 4 ounces in weight (round potatoes may be of any weight). For long potato varieties, this rule changes the minimum size requirement from 2 inches in diameter to 1⅞ inches in diameter and removes the minimum weight requirement. This rule was recommended by the Committee at a meeting on August 21, 2008.

Section 948.22 authorizes the issuance of grade, size, quality, maturity, pack, and container regulations for potatoes grown in the production area. Section 948.21 further authorizes the modification, suspension, or termination of requirements issued pursuant to § 948.22.

Section 948.40 provides that whenever the handling of potatoes is regulated pursuant to §§ 948.20 through

948.24, such potatoes must be inspected by the Federal-State Inspection Service, and certified as meeting the applicable requirements of such regulations.

For marketing order purposes, the State of Colorado is divided into three areas. Area No. 1, commonly known as the Western Slope, includes and consists of the counties of Routt, Eagle, Pitkin, Gunnison, Hinsdale, La Plata, and all counties west thereof. Area No. 2, commonly known as the San Luis Valley, includes and consists of the counties of Sanguache, Huerfano, Las Animas, Mineral, Archuleta, and all counties south thereof. Area No. 3 includes and consists of all the remaining counties in the State of Colorado which are not included in Area No. 1 or Area No. 2. The order currently regulates the handling of potatoes grown in Areas No. 2 and No. 3 only; regulation for Area No. 1 is currently not active.

Grade, size, and maturity regulations specific to the handling of Colorado potatoes grown in Area No. 2 are contained in § 948.386 of the order's rules and regulations.

According to the Committee, quality assurance is very important to the industry and its customers. Providing the public with acceptable quality potatoes that are appealing to the consumer on a consistent basis is necessary to maintain buyer confidence in the marketplace.

The growing season for Colorado Area No. 2 is normally very short because potatoes are grown in the San Luis Valley at an altitude of 7,600 feet. Adverse weather has a large impact on yield and potato size at high altitudes. In spring 2008, wet weather delayed planting and emergence of the crop. An early June frost, when potato plants were just emerging, further damaged the crop. Numerous hail storms, including a severe storm in mid-August, caused significant damage to nearly 20 percent of the Area No. 2 potato acreage. In all, adverse weather conditions were responsible for significantly lower crop yields in the 2008 season.

U.S. potato acreage in 2008 is estimated to be 8 percent lower than in 2007, resulting in limited supplies of potatoes nationwide. The production of alternate rotation crops, such as wheat and corn, has become more profitable than the production of potatoes, causing producers to reduce potato acreage. These conditions have resulted in the smallest supply of potatoes in nearly 20 years.

In 2007, the Committee recommended tightening the minimum size requirements from 1⅞ inches to 2 inches in diameter or 4 ounces minimum weight for all non-excepted varieties potatoes, except that round varieties could be handled without weight limitations. This action was based in part on the higher yield and sales of the 2006 season. This change was effective on January 31, 2008 (73 FR 5422).

Taking into account lower estimated 2008 U.S. potato acreage and poor weather conditions in Area No. 2, the Committee recommended relaxing the minimum size regulation. The Committee believes that the size relaxation should increase the volume of potatoes meeting the order's handling requirements, thus fulfilling market demands.

Twelve members voted in favor of the modification and one member voted in opposition. The dissenting member was concerned that, even though his crop would be small, the shipper who packs his potatoes would want larger potatoes. However, the majority of the Committee believes that this change will provide potato handlers with more marketing flexibility, producers with increased returns, and consumers with a greater supply of Colorado Area No. 2 potatoes.

This rule will not impact imported potatoes covered by section 608(e) of the Act.

**Initial Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 73 handlers of Colorado Area No. 2 potatoes subject to regulation under the order and approximately 180 producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

During the 2007–2008 marketing year, approximately 14,225,568 hundredweight of Colorado Area No. 2 potatoes were inspected under the order and sold into the fresh market. Based on an estimated average f.o.b. price of $12.05 per hundredweight, the Committee estimates that 62 Area No. 2 handlers, or about 85 percent, had annual receipts of less than $7,000,000. In view of the foregoing, the majority of Colorado Area No. 2 potato handlers may be classified as small entities.

In addition, based on information provided by the National Agricultural Statistics Service (NASS), the average producer price for Colorado potatoes for 2007 was $9.85 per hundredweight. The average annual fresh potato revenue for the Colorado Area No. 2 potato producers is therefore calculated to be approximately $778,455. Consequently, on average, the majority of the Area No. 2 Colorado potato producers may not be classified as small entities.

For long potatoes that are considered neither ''Size B'' nor ''creamer'' size potatoes, this rule changes the minimum size requirement from 2 inches in diameter to 1 7/8 inches in diameter and removes the minimum weight requirement. Authority for this action is contained in §§ 948.21 and 948.22.

In 2007, handlers were unable to adequately supply the fresh market because of low yields due to poor weather conditions and because of more restrictive regulations. Adverse weather conditions have contributed to lower yields and short supplies of potatoes for the market again in the 2008–2009 season. The Committee believes that relaxing the minimum size and weight requirements on long potato varieties will allow handlers to market a larger portion of the crop in fresh market outlets, and thus better meet demand. This change is expected to foster increased consumption and have a positive impact on the Colorado potato industry.

This change is expected to improve returns to producers. This rule is a relaxation of the current size regulation and, as such, should have a positive impact on industry participants. The Committee believes that this change would not negatively impact either handlers or producers.

The Committee discussed alternatives to this rule. One alternative included making no change at all to the current regulation. The Committee did not believe this alternative would meet the needs of buyers or benefit the industry.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large Colorado Area No. 2 potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce

information requirements and duplication by industry and public sector agencies. Furthermore, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

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

In addition, the Committee's meeting was widely publicized throughout the Colorado Area No. 2 potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the August 21, 2008, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this interim final rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on a modification of the handling regulation currently prescribed under the Colorado Area No. 2 potato marketing order. Any comments timely received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule relaxes the minimum size and weight requirements for most long potatoes; (2) handlers are already shipping potatoes from the 2008–2009 crop; (3) the Committee recommended this change at a public meeting and all interested parties had an opportunity to express their views and provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

**List of Subjects in 7 CFR Part 948**

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 948 is amended as follows:

## PART 948—IRISH POTATOES GROWN IN COLORADO

■ 1. The authority citation for 7 CFR part 948 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Amend § 948.386 by revising paragraph (a)(2) to read as follows:

**§ 948.386 Handling Regulation.**

* * * * *

(a) * * *

(2) *All other varieties*. U.S. No. 2, or better grade, 1⅞ inches minimum diameter.

* * * * *

Dated: April 9, 2009.

**Robert C. Keeney,**

*Acting Associate Administrator, Agricultural Marketing Service.*

[FR Doc. E9–8685 Filed 4–15–09; 8:45 am]

**BILLING CODE**

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 966

**[Doc. No. AMS FV–08–0090; FVO9–966–1 FIR]**

### Tomatoes Grown in Florida; Partial Exemption to the Minimum Grade Requirements

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule providing a partial exemption to the minimum grade requirements under the marketing order for tomatoes grown in Florida (order). The order regulates the handling of tomatoes grown in Florida and is administered locally by the Florida Tomato Committee (Committee). Absent an exemption, Florida tomatoes covered by the order must meet at least a U.S. No. 2 grade before they can be shipped and sold outside the regulated area. This rule continues in effect the action that exempted Vintage Ripes™ tomatoes (Vintage Ripes™) from the shape requirements associated with the U.S. No. 2 grade. This change increases the volume of Vintage Ripes™ that meets the order requirements, and helps increase shipments and availability of these tomatoes.

**DATES:** *Effective Date:* May 18, 2009.

**FOR FURTHER INFORMATION CONTACT:** Doris Jamieson, Marketing Specialist, or Christian Nissen, Regional Manager, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 325–8793, or e-mail: *Doris.Jamieson@usda.gov* or *Christian.Nissen@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov.*

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 125 and Marketing Order No. 966, both as amended (7 CFR part 966), regulating the handling of tomatoes grown in certain designated counties in Florida, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing

on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect the action that added a partial exemption to the minimum grade requirements prescribed under the order. Absent an exemption, Florida tomatoes covered by the order must meet at least a U.S. No. 2 grade before they can be shipped and sold outside the regulated area. This rule continues to exempt Vintage Ripes™ from the shape requirements associated with the U.S. No. 2 grade. This change increases the volume of Vintage Ripes™ that meets the order requirements, and helps increase shipments and availability of these tomatoes.

Section 966.52 of the order provides the authority for the establishment of grade and size requirements for Florida tomatoes. Form and shape represent part of the elements of grade. Section 966.323 of the order's rules and regulations specifies, in part, the minimum grade requirements for Florida tomatoes. The current minimum grade requirement for Florida tomatoes is a U.S. No. 2. The specifics of this grade requirement are listed under the U.S. Standards for Grades of Fresh Tomatoes (7 CFR 51.1855–51.1877).

The U.S. Standards for Grades of Fresh Tomatoes (Standards) specify the criteria tomatoes must meet to grade a U.S. No. 2, including that they must be reasonably well formed, and not more than slightly rough. These two elements relate specifically to the shape of the tomato. The definitions section of the Standards defines reasonably well formed as not decidedly kidney shaped, lopsided, elongated, angular, or otherwise decidedly deformed. The term slightly rough means that the tomato is not decidedly ridged or grooved. This rule amends § 966.323 to exempt Vintage Ripes™ from these shape requirements as specified under the grade for a U.S. No. 2.

Vintage Ripes™ are a trademarked tomato variety bred to look and taste like an heirloom-type tomato. One of the characteristics of this variety is its appearance. Vintage Ripes™ are often shaped differently from other round tomatoes. Depending on the time of year and the weather, Vintage Ripes™ are concave on the stem end with deep, ridged shoulders. They can also be very misshapen, appearing kidney shaped or lopsided. Because of this variance in shape and appearance, Vintage Ripes™ have difficulty meeting the shape requirements of the U.S. No. 2 grade.

In addition, the cost of production and handling for these tomatoes tends to be higher when compared to standard commercial varieties. The shoulders on Vintage Ripes™ are easily damaged, requiring additional care during picking and handling. These tomatoes are also more susceptible to disease. Consequently, Vintage Ripes™ require greater care in production to keep injuries and blemishes to a minimum. Still, when compared to standard commercial varieties, even with taking special precautions, larger quantities of these tomatoes are left in the field or need to be eliminated in the packinghouse to ensure a quality product. Losses can approach 50 percent or higher for Vintage Ripes™. With the higher production costs and the reduced packout, these tomatoes tend to sell at a higher price point than standard round tomatoes.

Heirloom-type tomatoes have been gaining favor with consumers. Vintage Ripes™ were bred specifically to address this demand. However, with its difficulty in meeting established shape requirements, and its increased cost of production, producing these tomatoes for market may not be financially viable without an exemption. In order to make more of these specialty tomatoes available for consumers, the Committee agreed to exempt Vintage Ripes™ from the shape requirements of the U.S. No. 2 grade. This exemption is the same as previously provided for a similar type tomato (72 FR 1919, January 17, 2007).

This rule only provides Vintage Ripes™ with a partial exemption from the grade requirements under the order. Consequently, Vintage Ripes™ are exempt from the shape requirements of the grade but are still required to meet all other aspects of the U.S. No. 2 grade. Vintage Ripes™ also continue to be required to meet all other requirements under the order, such as size, pack and container, and inspection.

Prior to the 1998–99 season, the Committee recommended that the minimum grade be increased from a U.S. No. 3 to a U.S. No. 2. Committee members agree that increasing the grade requirement has been very beneficial to the industry and in the marketing of Florida tomatoes. It is important to the Committee that these benefits be maintained. There was some industry concern that providing a partial exemption for shape for an heirloom-type tomato could result in the shipment of U.S. No. 3 grade tomatoes of standard commercial varieties, contrary to the objectives of the exemption and the order.

To ensure this exemption does not result in the shipment of U.S. No. 3 grade tomatoes of other varieties, this exemption only applies to Vintage Ripes™ covered under the Agricultural Marketing Service's Identity Preservation (IP) program. The IP program was developed by the Agricultural Marketing Service to assist companies in marketing products having unique traits. The program provides independent, third-party verification of the segregation of a company's unique product at every stage, from seed, production and processing, to distribution. This exemption is contingent upon the Vintage Ripes™ gaining and maintaining positive program status under the IP program and continuing to meet program requirements. As such, this should help ensure that only Vintage Ripes™ are shipped under this exemption.

Therefore, this rule continues in effect the action that exempted Vintage Ripes™ from the shape requirements associated with the U.S. No. 2 grade. This change increases the volume of Vintage Ripes™ tomatoes that meets order requirements, and helps increase shipments and availability of these tomatoes.

Section 8e of the Act provides that when certain domestically produced commodities, including tomatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule provides a partial exemption from the minimum grade requirements under the domestic handling regulations, a corresponding change to the import regulations is also needed. A final rule providing a similar partial exemption to the minimum grade requirements under the import regulations will be issued as a separate action.

**Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are

unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 100 producers of tomatoes in the production area and approximately 70 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,000,000 (13 CFR 121.201).

Based on industry and Committee data, the average annual price for fresh Florida tomatoes during the 2007–08 season was approximately $13.71 per 25-pound container, and total fresh shipments for the 2007–08 season were 45,177,457 25-pound cartons of tomatoes. Committee data indicates that around 25 percent of the handlers handle 94 percent of the total volume shipped outside the regulated area. Based on the average price, about 75 percent of handlers could be considered small businesses under SBA's definition. In addition, based on production data, grower prices as reported by the National Agricultural Statistics Service, and the total number of Florida tomato growers, the average annual grower revenue is below $750,000. Thus, the majority of handlers and producers of Florida tomatoes may be classified as small entities.

This rule continues in effect the action that provided a partial exemption to the minimum grade requirements for tomatoes grown in Florida. Absent an exemption, Florida tomatoes covered by the order must meet at least a U.S. No. 2 grade before they can be shipped and sold outside the regulated area. This rule continues to exempt Vintage Ripes™ from the shape requirements associated with the U.S. No. 2 grade. This change increases the volume of Vintage Ripes™ that meets the order requirements, and helps increase shipments and availability of these tomatoes. This rule amends the provisions of § 966.323. Authority for this action is provided in § 966.52 of the order.

This change represents a small increase in costs for producers and handlers of Vintage Ripes™, primarily from costs associated with developing and maintaining the IP program. However, this rule makes additional volumes of Vintage Ripes™ available for shipment. This should result in increased sales of Vintage Ripes™. Consequently, the benefits of this action are expected to more than offset the associated costs.

One alternative to this action that was considered was to not provide an exemption from shape requirements for Vintage Ripes™. However, providing the exemption increases the volume of Vintage Ripes™ that meets the order requirements, and helps increase shipments and availability of these tomatoes for consumers. Further, the same exemption had been provided previously for a similar tomato. Therefore, this alternative was rejected.

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

This rule will not impose any additional reporting or recordkeeping requirements beyond the IP program on either small or large tomato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the Florida tomato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the September 4, 2008, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on December 16, 2008 (73 FR 75537). Copies of the rule were mailed by the Committee's staff to all Committee members and Florida tomato handlers. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. That rule provided for a 60-day comment period which ended February 17, 2009. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (73 FR 76191, December 16, 2008) will tend to effectuate the declared policy of the Act.

**List of Subjects in 7 CFR Part 966**

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

## PART 966—TOMATOES GROWN IN FLORIDA

■ Accordingly, the interim final rule amending 7 CFR part 966 which was published at 73 FR 76191 on December 16, 2008, is adopted as a final rule without change.

Dated: April 9, 2009.

**Robert C. Keeney,**

*Acting Associate Administrator, Agricultural Marketing Service.*

[FR Doc. E9–8684 Filed 4–15–09; 8:45 am]

BILLING CODE 3410–02–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2009–0350; Directorate Identifier 2009–SW–07–AD; Amendment 39–15885; AD 2009–07–52]**

**RIN 2120–AA64**

## Airworthiness Directives; Bell Helicopter Textron Canada Limited Model 206A Series, 206B Series, 206L Series, 407, and 427 Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 2009–07–52 and supersedes Emergency AD 2009–07–51, issued March 17, 2009, which was sent previously to all known U.S. owners and operators of Bell Helicopter Textron Canada Limited (Bell) Model 206A series, 206B series, 206L series, 407, and 427 helicopters by individual letters. This AD requires, before further flight, inspecting each cyclic control lever assembly (lever assembly) that has less than 50 hours time-in-service (TIS) to determine if it is correctly installed and properly staked in the lever assembly. This amendment is prompted by a Transport Canada AD

report of a bearing incorrectly installed in the copilot lever assembly. The actions specified by this AD are intended to prevent failure of a bearing, failure of the lever assembly, and subsequent loss of control of the helicopter.

**DATES:** Effective May 1, 2009, to all persons except those persons to whom it was made immediately effective by Emergency AD 2009–07–52, issued on March 19, 2009, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before June 15, 2009.

**ADDRESSES:** Use one of the following addresses to submit comments on this AD:

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

You may get the service information identified in this AD from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, TX 76101, telephone (817) 280–3391, fax (817) 280–6466, or at *http://www.bellcustomer.com/files/*.

*Examining the Docket:* You may examine the docket that contains the AD, any comments, and other information on the Internet at *http://www.regulations.gov*, or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located in Room W12–140 on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

**SUPPLEMENTARY INFORMATION:** On March 17, 2009, we issued Emergency AD 2009–07–51. The Emergency AD required, before further flight, inspecting each lever assembly to determine if it was correctly installed and properly staked in the lever assembly. Replacing any bearing that was incorrectly installed or improperly staked in the lever assembly was also required before further flight. Emergency AD 2009–07–51 was prompted by a Transport Canada AD report of a bearing incorrectly installed in the copilot lever assembly. Investigation revealed that, although the inspection witness marks were applied on the bearing, it had not been properly staked during manufacture of the lever assembly. That condition, if not detected, could result in failure of a bearing, failure of a lever assembly, and subsequent loss of control of the helicopter.

Emergency AD 2009–07–51 applied to all Bell Model 206A series, 206B series, 206L series, 407, and 427 helicopters with a lever assembly, part number (P/N) 206–001–401–111, 206–001–400–115, 206–001–400–111, 407–001–320–105 or 407–001–320–109, installed. After we issued Emergency AD 2009–07–51, we determined that we should have limited the applicability of Emergency AD 2009–07–51 to lever assemblies with less than 50 hours. Therefore, we issued superseding Emergency AD 2009–07–52 to retain all of the requirements of Emergency AD 2009–07–51 but to reduce the applicability to only those helicopters with lever assemblies that have less than 50 hours TIS that may be affected by the unsafe condition.

We have reviewed Bell Alert Service Bulletin (ASB) No. 206–09–121, No. 206L–09–155, No. 407–09–85, and No. 427–09–23, all dated March 10, 2009. The ASBs specify that a certain bearing was installed incorrectly on the copilot lever assembly. The ASBs specify, before further flight, inspecting certain serial-numbered Bell helicopters for correct installation of the bearing.

Transport Canada, the airworthiness authority for Canada, notified us that an unsafe condition may exist on certain helicopters with less than 50 flight hours or with a lever assembly installed within the last 50 flight hours. Transport Canada advises that ''it is possible that an incorrectly installed bearing could be found in any helicopter with a cyclic control lever assembly recently installed.'' Failure of the lever assembly could lead to loss of control of the helicopter. Transport Canada classified the ASBs as mandatory and issued AD No. CF–2009–10, dated March 12, 2009, to ensure the continued airworthiness of these helicopters in Canada.

These helicopter models are manufactured in Canada and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, Transport Canada has kept us informed of the situation described above. We have examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other Bell Model 206A series, 206B series, 206L series, 407, and 427 helicopters of the same type design, we issued Emergency AD 2009–07–52 to prevent failure of a bearing, failure of the lever assembly, and subsequent loss of control of the helicopter. The Emergency AD requires, for those helicopters with lever assemblies that have less than 50 hours TIS, before further flight, inspecting each lever assembly, P/N 206–001–401–111, 206–001–400–115, 206–001–400–111, 407–001–320–105 or 407–001–320–109, to determine if the bearing, P/N 206–301–051–101, is correctly installed and properly staked in the lever assembly. Replacing any bearing that is incorrectly installed or improperly staked in the lever assembly is also required before further flight. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity of the helicopter. Therefore, the actions previously described are required before further flight, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on March 19, 2009 to all known U.S. owners and operators of Bell Model 206A series, 206B series, 206L series, 407, and 427 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to 14 CFR 39.13 to make it effective to all persons.

We estimate that this AD will affect 2,715 helicopters of U.S. registry. The required actions will take approximately 3 work hours per helicopter to accomplish at an average labor rate of $80 per work hour. Required parts will cost approximately $413 per helicopter. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $1,772,895, assuming that each helicopter has a bearing that needs to be replaced.

**Comments Invited**

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2009–0350; Directorate Identifier 2009–SW–07–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of our docket web site, you can find and read the comments to any of our dockets, including the name of the individual who sent the comment. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

**Regulatory Findings**

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

For the reasons discussed above, I certify that the regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared an economic evaluation of the estimated costs to comply with this AD. See the AD docket to examine the economic evaluation.

**Authority for This Rulemaking**

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

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

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

**2009–07–52 Bell Helicopter Textron Canada Limited:** Amendment 39–15885. Docket No. FAA–2009–0350, Directorate Identifier 2009–SW–07–AD. Supersedes AD 2009–07–51, Directorate Identifier 2009–SW–06–AD.

*Applicability:* Bell Model 206A series, 206B series, and 206L series helicopters with a cyclic control lever assembly (lever assembly), part number (P/N) 206–001–401–111, 206–001–400–115, or 206–001–400–111, with less than 50 hours time-in-service (TIS) and Model 407 and 427 helicopters with a lever assembly, P/N 407–001–320–105 or 407–001–320–109, with less than 50 hours TIS, certificated in any category.

*Compliance:* Required before further flight, unless accomplished previously.

To prevent failure of a bearing, failure of the lever assembly, and subsequent loss of control of the helicopter, do the following:

(a) Inspect the lever assembly and determine if the bearing, P/N 206–301–051–101, is correctly installed and properly staked in the lever assembly.

(b) Replace any bearing that is incorrectly installed or improperly staked in the lever assembly.

**Note 1:** Bell Alert Service Bulletin (ASB) No. 206–09–121 for the Model 206A and 206B series, No. 206L–09–155 for the Model 206L series, No. 407–09–85 for the Model 407, and No. 427–09–23, for the Model 427, pertain to the subject of this AD. All of the ASBs are dated March 10, 2009.

(c) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Safety Management Group, FAA, ATTN: Sharon Miles, Aviation Safety Engineer, Rotorcraft Directorate, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961, for information about previously approved alternative methods of compliance.

(d) Special flight permits will not be issued.

(e) This amendment becomes effective on May 1, 2009, to all persons except those persons to whom it was made immediately effective by Emergency AD 2009–07–52, issued March 19, 2009, which contained the requirements of this amendment.

**Note 2:** The subject of this AD is addressed in Transport Canada AD CF–2009–10, dated March 12, 2009.

Issued in Fort Worth, Texas, on April 9, 2009.

**Mark R. Schilling,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. E9–8573 Filed 4–15–09; 8:45 am]

BILLING CODE 4910–13–P

## SECURITIES AND EXCHANGE COMMISSION

## 17 CFR Part 232

**[Release Nos. 33–9022; 34–59728; 39–2464; IC–28691]**

## Adoption of Updated EDGAR Filer Manual

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Securities and Exchange Commission (the Commission) is adopting revisions to the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) Filer Manual to reflect updates to the EDGAR system. The revisions are being made primarily to update EDGAR to support the potential rule where domestic and foreign large accelerated filers that use U.S. Generally Accepted Accounting Principles (GAAP) would provide to the Commission a new exhibit to their filings for their reporting periods that end as per the details specified in the final eXtensible Business Reporting Language (XBRL) rule. The revisions to the Filer Manual reflect changes within Volume II entitled EDGAR Filer Manual, Volume II: ''EDGAR Filing,'' Version 10 (December 2008). The updated manual

will be incorporated by reference into the Code of Federal Regulations.

**DATES:** *Effective Date:* April 16, 2009. The incorporation by reference of the EDGAR Filer Manual is approved by the Director of the Federal Register as of April 16, 2009.

**FOR FURTHER INFORMATION CONTACT:** In the Office of Information Technology, Rick Heroux, at (202) 551–8800; in the Office of Interactive Disclosure for questions concerning the XBRL mandate contact Jeffrey Naumann, Assistant Director of the Office of Interactive Disclosure, at (202) 551–5352; in the Division of Corporation Finance for questions regarding rescinded form types and Form D screen changes contact Gerry Laporte, Chief, Office of Small Business Policy, at (202) 551–3465, the addition of submission form types SH–ER, SH–ER/A, SH–NT, and SH–NT/A, contact Nicholas P. Panos, Office of Mergers and Acquisitions, Senior Special Counsel, at (202) 551–3266, and changes to 8–K item descriptions, contact Cecile Peters, Office of Information Technology, Office Chief, at (202) 551–8135; and in the Division of Trading and Markets for the addition of FINRA and ARCA as new Self-Regulatory Organizations (SRO) and Thrift Supervision (OTS) as a new Appropriate Regulatory Agency (ARA) contact Carol Charnock, Regulation Specialist, at (202) 551–5542.

**SUPPLEMENTARY INFORMATION:** Today we are adopting an updated EDGAR Filer Manual, Volume II. The Filer Manual describes the technical formatting requirements for the preparation and submission of electronic filings through the EDGAR system.[1] It also describes the requirements for filing using EDGARLink[2] and the Online Forms/XML Web site.

The Filer Manual contains all the technical specifications for filers to submit filings using the EDGAR system. Filers must comply with the applicable provisions of the Filer Manual in order to assure the timely acceptance and processing of filings made in electronic format.[3] Filers may consult the Filer Manual in conjunction with our rules governing mandated electronic filing when preparing documents for electronic submission.[4]

In support of the potential rule regarding filing using XBRL and the other revisions being made, the EDGAR system is scheduled to be upgraded to Release 9.14 on December 15, 2008. Specifically for XBRL support, EDGARLink is being updated to allow domestic and foreign large accelerated filers that use U.S. Generally Accepted Accounting Principles (GAAP) to provide to the Commission a new exhibit to their filings for their reporting periods that end as per the details specified in the final eXtensible Business Reporting Language (XBRL) rule. All filings submitted to EDGAR must use the US GAAP 1.0 Final taxonomy. As part of this update, EDGAR will be performing a set of custom XBRL validation rules. Should a filing violate one of these rules, EDGAR will notify the filer. Submissions using the ICI taxonomies[5] and older versions of US GAAP taxonomy will not be validated using these additional rules.

EDGARLink submission templates 1 and 3 are also being updated to remove submission form types 10SB12B, 10SB12B/A, 10SB12G, 10SB12G/A, 10QSB, 10QSB/A, SB–1, SB–1/A, SB–1MEF, SB–2, SB–2/A, and SB–2MEF, implementing the Commission's elimination of Forms SB–1, SB–2, 10–SB, 10–QSB, and 10–KSB in Release No. 33–8876 (Dec. 19, 2007). EDGARLink submission template 3 was previously updated to add submission form types SH–ER, SH–ER/A, SH–NT, and SH–NT/A. It is highly recommended that filers download, install, and use the new EDGARLink software and submission templates to ensure that submissions will be processed successfully. Previous versions of the templates may not work properly. Notice of the update has previously been provided on the EDGAR Filing Web site and on the Commission's public Web site. The discrete updates are reflected on the EDGAR Filing Web site and in the updated Filer Manual, Volume II.

The Commission will change the 8–K item 2.04 and 5.02 descriptions for submission form types 8–K, 8–K/A, 8–K12B, 8–K12B/A, 8–K12G3, 8–K12G3/A, 8–K15D5, and 8–K15D5/A. Item 2.04 will be called ''Triggering Events That Accelerate or Increase a Direct Financial Obligation or an Obligation-under an Off-Balance Sheet Arrangement.'' Item 5.02 will be called ''Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.''

Some Form D screen elements and Form D functionality will be updated. The Form D online application can be accessed from the EDGAR OnlineForms/XML Web site (*https://www.onlineforms.edgarfiling.sec.gov*) by logging in and selecting the ''File Form D'' link. Filers can also log in by clicking the ''Would you like to File a Form D?'' link from the EDGAR Portal Web site (*http://www.portal.edgarfiling.sec.gov*). The changes will be as follows:

The Form D–OMB Approval information will be corrected to reflect the estimated average burden hours per response to be 4.0.

- The ''Accept'' and ''Decline'' buttons on the signature page will be removed. When a filer clicks the Submit button, each issuer identified is acknowledging that the contents of the filing are true.
- The menu on the left side of the Form D screen will be updated from ''FORM D SECTIONS'' to ''FORM D ITEMS.''
- Item 7—''Type of Filing'' will be updated so that the ''Date of First Sale'' will be enabled when the filing is an amendment of a previous filing.
- Item 6 and Item 9: A warning message will appear when a filer un-checks ''Pooled Investment Fund.'' Pooled Investment Fund will be automatically checked by the system in Item 9 when the filer selects Investment Company Act Section 3(c) in Item 6.
- The Print screen, Form Description box will be updated to reflect that Form D is entitled ''Notice of Exempt Offering of Securities.''

The SRO options list in EDGARLink submission template 1, 2, and 3 will be updated to include FINRA and ARCA.

The EDGARLite Form TA–2 (Annual Report of Transfer Agent activities filed pursuant to the Securities Exchange Act of 1934) is being updated to add the ''Office of Thrift Supervision'' to the option list of Appropriate Regulatory Agency (ARA). Validations associated with ARA value and the registrants file number will be added for the ''Office of Thrift Supervision'' such that the file number prefix must be ''085–'' and file number sequence number must be

[1] We originally adopted the Filer Manual on April 1, 1993, with an effective date of April 26, 1993. Release No. 33–6986 (April 1, 1993) [58 FR 18638]. We implemented the most recent update to the Filer Manual on September 24, 2008. *See* Release No. 33–8956 (September 18, 2008) [73 FR 54943].

[2] This is the filer assistance software we provide filers filing on the EDGAR system.

[3] *See* Rule 301 of Regulation S–T (17 CFR 232.301).

[4] *See* Release No. 33–8956 (September 18, 2008) [73 FR 54943] in which we implemented EDGAR Release 9.13. For a complete history of Filer Manual rules, please see the cites therein.

[5] The Commission also proposed to tag mutual fund risk/return summaries using XBRL. *See* Interactive Data for Mutual Fund Risk/Return Summary (Proposing Release No. 33–8929). We are not proposing changes to the EDGAR Filer Manual for the mutual fund XBRL rule at this time, because it is anticipated that compliance with the rules will not be required until 2010. The EDGAR Filer Manual will be updated, to the extent necessary, before the compliance date for the mutual fund XBRL rule.

between 10000 and 14999. In addition, the validation for the ''Comptroller of the Currency'' will be modified such that the file number prefix must begin with ''085'' and have a sequence number between 10000 and 14999.

The EDGARLite Form TA–W (Notice of Withdrawal from Registration as Transfer Agent) OMB expiration date displayed will be corrected to be ''July 30, 2011.''

Along with adoption of the Filer Manual, we are amending Rule 301 of Regulation S–T to provide for the incorporation by reference into the Code of Federal Regulations of today's revisions. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51.

You may obtain paper copies of the updated Filer Manual at the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street, NE., Room 1520, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. We will post electronic format copies on the Commission's Web site; the address for the Filer Manual is *http://www.sec.gov/info/edgar.shtml*. You may also obtain copies from Thomson Financial, the paper document contractor for the Commission, at (800) 638–8241.

Since the Filer Manual relates solely to agency procedures or practice, publication for notice and comment is not required under the Administrative Procedure Act (APA).[6] It follows that the requirements of the Regulatory Flexibility Act[7] do not apply.

The effective date for the updated Filer Manual and the rule amendments is April 16, 2009. In accordance with the APA,[8] we find that there is good cause to establish an effective date less than 30 days after publication of these rules. The EDGAR system upgrade to Release 9.14 is scheduled to become available on December 15, 2008. The Commission believes that establishing an effective date less than 30 days after publication of these rules is necessary to coordinate the effectiveness of the updated Filer Manual with the system upgrade.

**Statutory Basis**

We are adopting the amendments to Regulation S–T under Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,[9] Sections 3, 12, 13, 14, 15, 23, and 35A of the Securities Exchange Act of 1934,[10] Section 319 of the Trust Indenture Act of 1939,[11] and Sections 8, 30, 31, and 38 of the Investment Company Act of 1940.[12]

**List of Subjects in 17 CFR Part 232**

Incorporation by reference, Reporting and recordkeeping requirements, Securities.

**Text of the Amendment**

■ In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

## PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The authority citation for Part 232 continues to read in part as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*, 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 *et seq.*; and 18 U.S.C. 1350

* * * * *

■ 2. Section 232.301 is revised to read as follows:

**§ 232.301 EDGAR Filer Manual.**

Filers must prepare electronic filings in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets out the technical formatting requirements for electronic submissions. The requirements for becoming an EDGAR Filer and updating company data are set forth in the updated EDGAR Filer Manual, Volume I: ''General Information,'' Version 5 (September 2008). The requirements for filing on EDGAR are set forth in the updated EDGAR Filer Manual, Volume II: ''EDGAR Filing,'' Version 10 (December 2008). Additional provisions applicable to Form N–SAR filers are set forth in the EDGAR Filer Manual, Volume III: ''N–SAR Supplement,'' Version 1 (September 2005). All of these provisions have been incorporated by reference into the Code of Federal Regulations, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. You must comply with these requirements in order for documents to be timely received and accepted. You can obtain paper copies of the EDGAR Filer Manual from the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street, NE., Room 1520, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Electronic copies are available on the Commission's Web site. The address for the Filer Manual is *http://www.sec.gov/info/edgar.shtml*. You can also inspect the document at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Dated: April 8, 2009.

By the Commission.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. E9–8589 Filed 4–15–09; 8:45 am]

BILLING CODE 8010–02–P

[6] 5 U.S.C. 553(b).

[7] 5 U.S.C. 601–612.

[8] 5 U.S.C. 553(d)(3).

[9] 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

[10] 15 U.S.C. 78c, 78*l*, 78m, 78n, 78o, 78w, and 78*ll*.

[11] 15 U.S.C. 77sss.

[12] 15 U.S.C. 80a–8, 80a–29, 80a–30, and 80a–37.

## DEPARTMENT OF LABOR

### Employment and Training Administration

### 20 CFR Part 655

**RIN 1205–AB55**

### Temporary Agricultural Employment of H–2A Aliens in the United States

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Interim Final Rule.

**SUMMARY:** The Department of Labor (''Department'' or ''DOL'') is amending its regulations to extend the transition period of the application filing procedures currently in effect for all H–2A employers with a date of need on or before July 1, 2009, as established in the H–2A Final Rule published on December 18, 2008 and in effect as of January 17, 2009. The transition period is extended to include all employers with a date of need on or before January 1, 2010.

**DATES:** This Interim Final Rule is effective April 16, 2009. The grounds for making the rule effective upon publication in the **Federal Register** are set forth in **SUPPLEMENTARY INFORMATION** below. Interested persons are invited to submit written comments on the Interim Final Rule on or before May 18, 2009.

**ADDRESSES:** You may submit comments, identified by Regulatory Information Number (RIN) 1205–AB55, by any one of the following methods:

*Federal e-Rulemaking Portal: http://www.regulations.gov:* Follow the Web site instructions for submitting comments.

*Mail:* Please submit all written comments (including disk and CD–ROM submissions) to Thomas Dowd, Administrator, Office of Policy Development and Research, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5641, Washington, DC 20210.

*Hand Delivery/Courier:* Please submit all comments to Thomas Dowd, Administrator, Office of Policy Development and Research, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5641, Washington, DC 20210.

Please submit your comments by only one method. The Department will post all comments received on *http://www.regulations.gov* without making any change to the comments, including any personal information provided. The *http://www.regulations.gov* Web site is the Federal e-Rulemaking portal and all comments posted there are available and accessible to the public. The Department cautions commenters not to include their personal information such as Social Security numbers, personal addresses, telephone numbers, and e-mail addresses in their comments as such submitted information will become viewable by the public via the *http://www.regulations.gov* Web site. It is the responsibility of the commenter to safeguard his or her information. Comments submitted through *http://www.regulations.gov* will not include the commenter's e-mail address unless the commenter chooses to include that information as part of his or her comment. Postal delivery in Washington, DC, may be delayed due to security concerns. Therefore, the Department encourages the public to submit comments via the Web site indicated above.

*Docket:* For access to the docket to read background documents or comments received, go to the Federal eRulemaking portal at *http://www.regulations.gov.* The Department will also make all the comments it receives available for public inspection during normal business hours at the ETA Office of Policy Development and Research at the above address. If you need assistance to review the comments, the Department will provide you with appropriate aids such as readers or print magnifiers. The Department will make copies of the rule available, upon request, in large print and as an electronic file on a computer disk. The Department will consider providing the proposed rule in other formats upon request. To schedule an appointment to review the comments and/or obtain the rule in an alternate format, contact the Office of Policy Development and Research at (202) 693–3700 (VOICE) (this is not a toll-free number) or 1–877–889–5627 (TTY/TDD).

**FOR FURTHER INFORMATION CONTACT:** William L. Carlson, PhD, Administrator, Office of Foreign Labor Certification, Employment and Training Administration (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4312, Washington, DC 20210; Telephone (202) 693–3010 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

## I. The Need for Extending H–2A Transition Procedures

On December 18, 2008, the Department published final regulations revising title 20 of the Code of Federal Regulations (20 CFR), part 655, and title 29 of the Code of Federal Regulations (29 CFR), parts 501, 780, and 788 (the ''H–2A Final Rule''). See 73 FR 77110, Dec. 18, 2008. The H–2A Final Rule replaced the previous versions of 20 CFR part 655 subparts B and C (2008), and amended parts of 29 CFR part 501 (2008) that, in large part, were published at 52 FR 20507, June 1, 1987. The H–2A Final Rule became effective on January 17, 2009.

The H–2A Final Rule significantly changes the H–2A labor certification process. The Final Rule provides for a transition period to enable employers to gradually change their process for recruitment and solicitation of workers, both foreign and domestic, and become accustomed to the filing procedures delineated in the new regulations. The transition procedures set out an application process enabling employers to file applications with the Department and then to initiate recruitment following the new procedures. Currently, the transition period procedures apply to employers with a date of need for workers prior to July 1, 2009. The Department estimates that on or about April 17, 2009 employers with a date of need of July 1, 2009 or later will begin to use the regular filing procedures and thus commence the process of recruiting prior to filing as outlined in the December 18 Final Regulations.

On March 17, 2009, the Department published a Notice of Proposed Suspension of the Final Rule to provide the Department with an opportunity to review and reconsider the new requirements, while minimizing the disruption to the Department, State Workforce Agencies, employers, and workers. The Department further proposed to reinstate the rules that were in place on January 16, 2009, on an interim basis. The period for submitting comments on the Department's proposal closed on March 27, 2009. The Department received over 800 unique, substantive comments on its proposal and is currently in the process of considering those comments. Because of the time required to carefully consider all the comments on the proposed suspension, the Department will not be able to complete its analysis of the comments before employers with dates of need beginning July 2, 2009 are expected to commence the process of pre-filing recruitment on April 17, 2009, in accordance with the Final Rule. The full implementation schedule of the regulation requires employers with a date of need for workers on or after July 1, 2009, to engage in full recruitment prior to filing an application for H–2A certification. The regulation calls for such pre-filing recruitment to take place at least 75 days prior to the date of need for workers. Seventy-five days from a date of need of July 1, 2009—the first date anyone with a date of need of July 1, 2009, would actually need to begin pre-filing recruitment—is April 17, 2009.

Accordingly, the Department has determined that an extension of the period in which the transition procedures are available is necessary. This is required for the following reasons. First, absent an extension of the transition procedures, the Department will be unable to designate traditional and expected labor supply States in which positive recruitment must take place, as required by statute. Under the Final Rule, employers must engage in positive recruitment consistent with Section 218(b)(4) of the Immigration and Nationality Act (INA). In particular, the regulation at 655.102(i) requires employers to engage in positive recruitment in traditional or expected labor supply States in which there are a significant number of qualified domestic workers who would be willing and available for work in those States. Under the transition procedures, employers are provided that information as part of their post-filing recruitment instructions. However, employers with dates of need after July 1, 2009 would be subject to the pre-filing recruitment model of the Final Rule and would no longer have access to that information when conducting recruitment. Rather, the Final Rule requires the Department

to first solicit information from a broad range of sources and then publish an annual determination for each State, of the States where the sources of traditional or expected labor supply would be (the ''Secretary's Annual Determination''). 20 CFR 655.102(i), 73 FR 77215, Dec. 18, 2008. However, that information would have to be solicited through a notice in the **Federal Register** at least 120 days before the announcement of the Secretary's Annual Determination, allowing the public to provide the Department with information to assist the Secretary in making her determination. Id. In order for the first Annual Determination to have been timely, the Department would have had to publish the solicitation before the Final Rule's effective date, effectively implementing a provision of the Final Rule before the rule itself. Accordingly, the Department is evaluating how best to implement this provision.

Second, without an extension of the transition period, the Department would not be able to meet its statutory obligation under Section 218(b)(4) of the INA to designate traditional or expected labor supply States in which there are a significant number of qualified domestic workers who would be willing and available for work in those States. The absence of such a designation would create a gap in the recruitment process since employers would effectively be excused from engaging in recruitment in such States. The nation's current unemployment rate of 8.5%—the worst that it has been in nearly 25 years—makes it even more compelling for the Department to designate, and employers to conduct recruitment in, traditional or expected labor supply States. Given the current economic conditions, it would be contrary to the public interest and detrimental to the nation's economic well-being to deprive U.S. workers of the opportunity to apply for jobs that they would be willing and available to perform. Additionally, extending the transition period merely continues the longstanding practice of positive multi-state recruitment by employers. Accordingly, an extension of the transition period, with direct notice to employers of their expected recruitment in States of traditional or expected labor supply (and a suitable time frame for its execution), is necessary.

Because it would be impossible to solicit such information and issue the Determination in time for employers with start dates of July 1, 2009, the Department believes it is appropriate to extend the transition period procedures in 20 CFR 655.100(b)(2) to all employers filing H–2A applications with the Department that have a date of need prior to January 1, 2010. This will extend the transition procedures fully until mid-October, 2009, at which time employers will begin to initiate recruitment under the full final regulatory procedures, absent any further Department action. Employers requiring H–2A temporary agricultural workers to start work before January 1, 2010, will file Applications for Temporary Employment Certification in accordance with the transition period procedures in 20 CFR 655.100(b)(2).

## II. Administrative Information

### *A. Executive Order 12866—Regulatory Planning and Review*

Under Executive Order (E.O.) 12866, the Department must determine whether a regulatory action is ''significant'' and therefore subject to the requirements of the E.O. and subject to review by the Office of Management and Budget (OMB). Section 3(f) of the E.O. defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O.

The Department has determined that this Interim Final Rule is not an ''economically significant regulatory action'' under Section 3(f)(1) of E.O.12866. The procedures for extending the time during which employers seeking H–2A workers will file pursuant to the transition procedures will not have an economic impact of $100 million or more. The regulation will not adversely affect the economy or any sector thereof, productivity, competition, jobs, the environment, nor public health or safety in a material way. The Department has also determined that this Interim Final Rule is a ''significant regulatory action'' under Section 3(f)(4) of the E.O., and accordingly OMB has reviewed this Interim Final Rule.

Summary of Impacts

The change in this Interim Final Rule is expected to have little net direct cost impact on employers, above and beyond the baseline of the current costs required by the program as it is currently implemented. Employer costs for newspaper advertising for the conduct of positive recruitment in traditional or expected labor supply states will not increase as a result of this Interim Final Rule.

### *B. Regulatory Flexibility Analysis*

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires that a regulatory flexibility analysis be prepared and made available for public comment. The RFA must describe the impact of the rule on small entities. See 5 U.S.C. 603(a). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have significant economic impact on a substantial number of small entities. The Deputy Assistant Secretary of ETA has notified the Chief Counsel for Advocacy, Small Business Administration (SBA), and certifies under the RFA at 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities. The rule does not substantively change existing obligations for employers who choose to participate in the H–2A temporary agricultural worker program.

The factual basis for such a certification is that even though this rule can and does affect small entities, there are not a substantial number of small entities that will be affected, nor is there a significant economic impact upon those small entities that are affected. Of the total 2,089,790 farms in the United States, 98 percent have sales of less than $750,000 per year and fall within SBA's definition of small entities. In FY 2007, however, only 7,725 employers filed requests for only 80,294 workers. That represents fewer than 1 percent of all farms in the United States. Even if all of the 7,725 employers who filed applications under H–2A in FY2007 were small entities, that is still a relatively small number of employers affected, and this is expected to have little net direct cost impact on employers, above and beyond the baseline of the current costs required by the program as it is currently implemented.

### *C. Unfunded Mandates Reform Act of 1995*

Section 202 of the Unfunded Mandates Reform Act (UMRA) of 1995

(2 U.S.C. 1501 *et seq.*) directs agencies to assess the effects of a Federal regulatory action on State, local, and tribal governments, and the private sector to determine whether the regulatory action imposes a Federal mandate. A Federal mandate is defined in the Act at 2 U.S.C. 658(5)–(7) to include any provision in a regulation that imposes an enforceable duty upon State, local, or tribal governments, or imposes a duty upon the private sector which is not voluntary. Further, each agency is required to provide a process where State, local, and tribal governments may comment on the regulation as it develops, which further promotes coordination between the Federal and the State, local, and tribal governments.

This Interim Final Rule imposes no enforceable duty upon State, local or tribal governments, nor does it impose a duty upon the private sector that is not voluntary. In fact, the Interim Final Rule imposes no duties whatsoever upon State, local or tribal governments. The duties imposed are completely upon the Federal government—the Chicago National Processing Center of the Office of Foreign Labor Certification—and on the employers who will continue to recruit, but by personalized instruction rather than through compliance with a Notice in the **Federal Register**.

*D. Executive Order 13132—Federalism*

Executive Order 13132 addresses the Federalism impact of an agency's regulations on the States' authority. Under E.O. 13132, Federal agencies are required to consult with States prior to and during the implementation of national policies that have a direct effect on the States, the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Further, an agency is permitted to limit a State's discretion when it has statutory authority and the regulation is a national activity that addresses a problem of national significance.

This Interim Final Rule has no direct effect on the States, the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. The continuation of a procedure by which employers comply with a statutory recruitment requirement has no direct impact on the States.

*E. Executive Order 13175—Indian Tribal Governments*

Executive Order 13175 requires Federal agencies to develop policies in consultation with tribal officials when those policies have tribal implications. This Interim Final Rule regulates the H–2A visa program and does not have tribal implications. Therefore, the Department has determined that this E.O. does not apply to this rulemaking.

*F. Assessment of Federal Regulations and Policies on Families*

Section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note) requires agencies to assess the impact of Federal regulations and policies on families. The assessment must address whether the regulation strengthens or erodes the stability, integrity, autonomy, or safety of the family.

This Interim Final Rule does not have an impact on the autonomy or integrity of the family as an institution, as it is described under this provision. The Department has determined that there are no costs associated with the Interim Final Rule; even if there were, however, they are not of a magnitude to adversely affect family well-being.

*G. Executive Order 12630—Protected Property Rights*

Executive Order 12630, Governmental Actions and the Interference with Constitutionally Protected Property Rights, prevents the Federal government from taking private property for public use without compensation. It further institutes an affirmative obligation that agencies evaluate all policies and regulations to ensure there is no impact on constitutionally protected property rights. Such policies include rules and regulations that propose or implement licensing, permitting, or other condition requirements or limitations on private property use, or that require dedications or exactions from owners of private property. The Department has determined this rule does not have takings implications.

*H. Executive Order 12988—Civil Justice Reform*

Section 3 of E.O. 12988, Civil Justice Reform, requires Federal agencies to draft regulations in a manner that will reduce needless litigation and will not unduly burden the Federal court system. Therefore, agencies are required to review regulations for drafting errors and ambiguity; to minimize litigation; ensure that it provides a clear legal standard for affected conduct rather than a general standard; and promote simplification and burden reduction.

This Interim Final Rule has been drafted in clear language and with detailed provisions that aim to minimize litigation. The purpose of this rule is to continue the transition procedures to enable employers to continue to comply with their statutory recruitment requirements. Therefore, the Department has determined that the regulation meets the applicable standards set forth in Section 3 of E.O. 12988.

Plain Language

Every Federal agency is required to draft regulations that are written in plain language to better inform the public about policies. The Department has assessed this Interim Final Rule under the plain language requirements and determined that it follows the government's standards requiring documents to be accessible and understandable to the public.

*I. Executive Order 13211—Energy Supply*

This Interim Final Rule is not subject to E.O. 13211, which assesses whether a regulation is likely to have a significant adverse effect on the supply, distribution, or use of energy. Accordingly, the Department has determined that this rule does not represent a significant energy action and does not warrant a Statement of Energy Effects.

*J. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR part 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. Information collections in this Interim Final Rule have been previously approved under OMB No. 1205–0466. No change in that collection is proposed by this Interim Final Rule.

*K. Good Cause Exception*

For reasons identified in the preamble, the Department finds good cause to adopt this Interim Final Rule, effective immediately, and without prior notice and comment. See 5 U.S.C. 553(b)(3) and 553(d)(3). DOL has determined that it would be impracticable, unnecessary, and contrary to the public interest to delay the effective date of this rule. The reasons for extending the transition period, discussed above, lead the Department to believe that immediate action must be taken to ensure that the Department and employers are able to meet their statutory obligations and to prevent confusion, ensure program

integrity, and maximize the availability of job opportunities for the U.S. workforce during a time of economic crisis. As such, a delay in promulgation of this rule past the date of publication would confuse and potentially disrupt the program to the detriment of the public interest.

**List of Subjects in 20 CFR Part 655**

Administrative practice and procedure, Foreign workers, Employment, Employment and training, Enforcement, Forest and forest products, Fraud, Health professions, Immigration, Labor, Passports and visas, Penalties, Reporting and recordkeeping requirements, Unemployment, Wages, Working conditions.

■ For the reasons stated in the preamble, the Department amends 20 CFR part 655 as follows:

## PART 655—TEMPORARY EMPLOYMENT OF FOREIGN WORKERS IN THE UNITED STATES

■ 1. The authority citation for part 655 continues to read as follows:

**Authority:** Section 655.0 issued under 8 U.S.C. 1101(a)(15)(E)(iii), 1101(a)(15)(H)(i) and (ii), 1182(m), (n) and (t), 1184(c), (g), and (j), 1188, and 1288(c) and (d); sec. 3(c)(1), Public Law 101–238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Public Law 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 303(a)(8), Public Law 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 323(c), Public Law 103–206, 107 Stat. 2428; sec. 412(e), Public Law 105–277, 112 Stat. 2681 (8 U.S.C. 1182 note); sec. 2(d), Public Law 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); Public Law 109–423, 120 Stat. 2900; and 8 CFR 214.2(h)(4)(i).

Section 655.00 issued under 8 U.S.C. 1101(a)(15)(H)(ii), 1184(c), and 1188; and 8 CFR 214.2(h).

Subparts A and C issued under 8 CFR 214.2(h).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; and 8 CFR 214.2(h).

Subparts D and E authority repealed.

Subparts F and G issued under 8 U.S.C. 1288(c) and (d); and sec. 323(c), Public Law 103–206, 107 Stat. 2428.

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b) and (b)(1), 1182(n) and (t), and 1184(g) and (j); sec. 303(a)(8), Public Law 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 412(e), Public Law 105–277, 112 Stat. 2681; and 8 CFR 214.2(h).

Subparts J and K authority repealed.

Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(i)(c) and 1182(m); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); Pub. L. 109–423, 120 Stat. 2900; and 8 CFR 214.2(h).

■ 2. Amend § 655.100 by revising paragraph (b)(1) and the introductory text of paragraph (b)(2) to read as follows:

**§ 655.100 Overview of subpart B and definition of terms.**

* * * * *

(b) * * *

(1) *Compliance with these regulations.* Employers with a date of need for H–2A workers for temporary or seasonal agricultural services on or after January 1, 2010 must comply with all of the obligations and assurances required in this subpart.

(2) *Transition from former regulations.* Employers with a date of need for H–2A workers for temporary or seasonal agricultural services prior to January 1, 2010 will file applications in the following manner:

* * * * *

Signed in Washington, DC, this 14th day of April 2009.

**Douglas F. Small,**

*Deputy Assistant Secretary, Employment and Training Administration.*

[FR Doc. E9–8815 Filed 4–15–09; 8:45 am]

BILLING CODE 4510–FP–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2009–0154]**

**RIN 1625–AA00**

## Safety Zone; Sea World Spring Nights; Mission Bay, San Diego, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone, on the navigable waters of Mission Bay in support of the Sea World Spring Nights. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

**DATES:** This rule is effective from 8:30 p.m. on April 4, 2009 through 9:30 p.m. on April 19, 2009.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0154 and are available online by going to *http://www.regulations.gov*, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0154 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the Coast Guard Sector San Diego, 2710 N. Harbor Drive, San Diego, CA 92101–1064 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call Petty Officer Shane Jackson, Waterways Management, U.S. Coast Guard Sector San Diego, CA at telephone (619) 278–7262. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is necessary to ensure the safety of commercial and recreational vessels in the vicinity of the fireworks display on the dates and times this rule will be in effect and delay would be contrary to the public interests since immediate action is needed to ensure the public's safety.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay in the effective date of this rule would expose mariners to the dangers posed by the pyrotechnics used in the fireworks display.

### Background and Purpose

Sea World is sponsoring the Sea World Spring Nights, which will include a fireworks presentation from a barge in Mission Bay. The safety zone will be a 600 foot radius around the

barge in approximate position 32°46′03″ N, 117°13′11″ W. This temporary safety zone is necessary to provide for the safety of the crew, spectators, participants, and other vessels and users of the waterway.

**Discussion of Rule**

The Coast Guard is establishing a safety zone that will be enforced from 8:30 p.m. to 9:30 p.m. on April 4, 2009 through April 19, 2009. The limits of the safety zone will be a 600 foot radius around the barge in approximate position 32°46′03″ N, 117°13′11″ W. The safety zone is necessary to provide for the safety of the crew, spectators, participants, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

**Regulatory Analyses**

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

**Regulatory Planning and Review**

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. This determination is based on the size and location of the safety zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels will not be allowed to transit through the designated safety zone during the specified times.

**Small Entities**

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic can pass safely around the safety zone. Before the effective period, the coast Guard will publish a local notice to mariners (LNM) and will issue broadcast notice to mariners (BNM) alerts via marine channel 16 VHF before the safety zone is enforced.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

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

**Technical Standards**

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of

Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

**Environment**

We have analyzed this rule under Department of Homeland Security Management Directive 0023.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34) (g), of the Instruction. This rule involves the establishment of a safety zone around a pyrotechnics display barge. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add new temporary zone § 165.T11–175 to read as follows:

**§ 165.T11–175 Safety zone; Sea World Spring Nights; Mission Bay, San Diego, California.**

(a) *Location*. The limits of the safety zone will include a 600 foot radius around the barge in approximate position 32°46'03''N, 117°13'11''W.

(b) *Enforcement Period*. This section will be enforced from 8:30 p.m. to 9:30 p.m. on April 4, 2009 through April 19, 2009. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions*. The following definition applies to this section: *designated representative*, means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations*. (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Sector San Diego Command Center. The Command Center may be contacted on VHF–FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

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

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: April 2, 2009.

**T.H. Farris,**

*Captain, U.S. Coast Guard, Captain of the Port San Diego.*

[FR Doc. E9–8760 Filed 4–15–09; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 622

**[Docket No. 070719384–9260–05]**

**RIN 0648–AV80**

### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 30B

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement Amendment 30B to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) prepared by the Gulf of Mexico Fishery Management Council (Council). This final rule establishes annual catch limits (ACLs) and accountability measures (AMs) for commercial and recreational gag, red grouper, and shallow-water grouper (SWG); establishes a commercial quota for gag; adjusts the commercial quotas for red grouper and SWG; removes the commercial closed season for SWG; establishes an incidental bycatch allowance trip limit for commercial gag and red grouper; reduces the commercial minimum size limit for red grouper; reduces the gag bag limit and the aggregate grouper bag limit; increases the red grouper bag limit; extends the closed season for recreational SWG; eliminates the end date for the Madison-Swanson and Steamboat Lumps marine reserves; and requires that federally permitted reef fish vessels comply with the more restrictive of Federal or state reef fish regulations when fishing in state waters. In addition, Amendment 30B establishes management targets and thresholds for gag consistent with the requirements of the Sustainable Fisheries Act (SFA); sets the gag and red grouper total allowable catch (TAC); and establishes interim allocations for the commercial and recreational gag and red grouper fisheries. This final rule is intended to end overfishing of gag and maintain catch levels of red grouper consistent with achieving optimum yield.

**DATES:** This rule is effective May 18, 2009.

**ADDRESSES:** Copies of the final regulatory flexibility analysis (FRFA) may be obtained from Peter Hood, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

**FOR FURTHER INFORMATION CONTACT:** Peter Hood, 727–824–5305.

**SUPPLEMENTARY INFORMATION:** The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On October 28, 2008, NMFS published a notice of availability of Amendment 30B and requested public comments (73 FR 63932). On November

18, 2008, NMFS published the proposed rule to implement Amendment 30B and requested public comments (73 FR 68390). NMFS approved Amendment 30B on January 23, 2009. The rationale for the measures contained in Amendment 30B is provided in the amendment and in the preamble to the proposed rule and is not repeated here.

**Comments and Responses**

NMFS received 30 public comments on Amendment 30B and the proposed rule, including 27 comments from individuals, 2 from government agencies, and 1 from a non-governmental entity. The following is a summary of the comments and NMFS' respective responses.

*Comment 1:* The science used to assess gag and red grouper stocks is questionable. Specifically, the process is not transparent, large swings in biomass are not plausible for long-lived species such as groupers, and there is no link between inshore nursery grounds for gag and offshore spawning of gag.

*Response:* Stock assessments are currently conducted under the Southeast Data, Assessment, and Review (SEDAR) process. This process was initiated in 2002 to improve the quality and reliability of fishery stock assessments in the South Atlantic, Gulf of Mexico, and U.S. Caribbean. The intent of the SEDAR process is to improve the scientific quality of stock assessments, and places greater relevance on historical and current information to address existing and emerging fishery management issues. This process emphasizes constituent and stakeholder participation in assessment development, transparency in the assessment process, and a rigorous and independent scientific review of completed stock assessments. Each SEDAR assessment is organized into three workshops. The data workshop documents, analyzes, and reviews datasets to be used for assessment analyses. The assessment workshop develops and refines quantitative population analyses and estimates population parameters. The review workshop is conducted by a panel of independent experts who review the data and the assessment and recommend the most appropriate management measures for the assessed stocks. Both gag and red grouper assessments were conducted using this process. All workshops and Council meetings held to review these assessments were open to the public and included industry participants, non-governmental organizations, scientists and other constituents on the various SEDAR panels.

In exploited long-lived populations, such as groupers, recruits from strong year classes supplement the adult spawning biomass until the strong year classes have been reduced through fishing pressure and natural mortality. This can cause fluctuations in the spawning stock if subsequent year classes are not as strong. For gag and red grouper, year class trends have been readily documented through a continuous series of age structure sampling. These data indicate strong recruitment years for gag in 1985, 1989, 1993, 1996, 1999, and possibly 2000. Strong year classes for red grouper occurred in 1991, 1996, and 1999. As an example of how these strong year classes can affect fisheries, the last stock assessment for red grouper showed the red grouper component of the Gulf reef fish fishery has been supported by the 1999 year-class. Red grouper abundance peaked in 2004, as the 1999 year-class fully recruited to the fishery. Since then, updated red grouper abundance indices have shown a declining trend, suggesting red grouper stock biomass may be declining.

Linkages between inshore juvenile and offshore adult populations of gag have been well documented. The linkages have been shown through tagging studies, correlations between year-class population strength, and otolith microchemistry. These studies all demonstrate a movement from inshore nursery areas such as seagrass beds to adult spawning and foraging habitats in offshore waters.

*Comment 2:* The total allowable catch (TAC) proposed for red grouper should be maintained at the current 6.56 million lb (2.97 million kg).

*Response:* Projections from the most recent stock assessment indicate red grouper stock biomass will continue to increase with a 7.57 million lb (3.43 million kg) TAC, although more slowly than if the 6.56 million-lb (2.97 million-kg) TAC was selected. The 7.57 million-lb (3.43 million-kg) TAC represents a harvest at equilibrium optimum yield (OY). This alternative, consistent with national standard 1 of the Magnuson-Stevens Act, also accomplishes the Council's intent to manage all reef fish species at OY levels once a stock is rebuilt. After completion of the next red grouper stock assessment, red grouper TAC would be set equal to equilibrium OY, or to the yield at FOY (fishing mortality at OY), whichever is less.

As noted in the previous response, the red grouper component of the Gulf reef fish fishery is supported by a strong 1999 year-class. In part, this strong recruitment affects the assessment projections, which indicate an increase in TAC allows the fishery to achieve OY, and these projections were certified as best available science by the NMFS Southeast Fishery Science Center (SEFSC). However, if the population is declining, as updated indices of abundance suggest (see previous response), then the assessment projections may be overly optimistic. However, the final rule sets ACLs and AMs for red grouper, which will minimize the chance of overfishing.

*Comment 3:* Red grouper allocation should be shifted in favor of the recreational sector of the fishery because it has greater economic value.

*Response:* NMFS and the Council recognize that determining allocations between the fishing sectors is a complex endeavor. Therefore, the Council established an Ad Hoc Allocation Committee (Committee) composed of Council members to examine fair and equitable ways to allocate Gulf resources between these sectors. The interim allocations contained in Amendment 30B will be in place until NMFS, through the recommendations of the Committee, can implement a separate amendment to allocate grouper resources between recreational and commercial sectors.

*Comment 4:* Commercial grouper quotas fail to ensure other SWG species will be protected from over harvest. To be risk averse, a more conservative quota should be implemented.

*Response:* The commercial SWG quotas contained in this final rule adjust the commercial red grouper quota, set a new commercial gag quota, and set an allowance for other SWGs (including black grouper, scamp, yellowfin grouper, rock hind, red hind, and yellowmouth grouper). The other SWG allowance of 0.41 million lb (0.19 million kg) contained in this rule uses the baseline years 2001–2004, which is the original baseline used in the gag stock assessment. Based on landings in recent years and regulatory changes with this final rule, NMFS anticipates the gag or red grouper quota will be met and the SWG component of the fishery closed prior to the other SWG allowance being met.

*Comment 5:* Longline gear should not be allowed in the commercial reef fish fishery, or at least should be further restricted, either by restricting longlining to deeper depths or by restricting the use of bycatch as bait.

*Response:* The intent of this final rule is to end overfishing of gag, revise red grouper management measures as a result of changes in the stock condition, establish ACLs and AMs for gag and red grouper, co-manage SWGs, and improve the effectiveness of Federal management

measures. Additional measures intended to constrain commercial harvest, including the restriction or elimination of certain gear types, may be considered in future actions. With regard to using bycatch as bait, current regulations prohibit the use of reef fish as bait with the exception of dwarf sand perch and sand perch.

*Comment 6:* Different size limits, bag limits, and seasonal closures should be implemented in the recreational sector of the fishery. A higher bag limit is favored at the cost of an increased size limit, along with a longer seasonal closure, to achieve the required reductions in harvest.

*Response:* NMFS agrees that there are numerous additional management options available to effectively manage the grouper resources of the Gulf of Mexico. However, NMFS cannot substitute or add to the measures proposed by the Council. The selected combination of harvesting restrictions for the recreational sector of the fishery is intended to provide fishing opportunities while minimizing the economic impacts of the fishery closure. The Council can always reconsider its management strategy, and NMFS encourages the public to be actively involved in the Council process and provide suggestions to the Council for their deliberation.

*Comment 7:* The recreational and commercial closed seasons and size limits should be the same.

*Response:* Although both the commercial and recreational seasonal closures were implemented to protect grouper, particularly gag, the rationale for continuing the closures and the effectiveness of these closures are different. The existing February 15 to March 15 commercial closed season for gag, black grouper, and red grouper was implemented in 2001 to protect spawning aggregations of gag during a portion of their peak spawning season, and to reduce fishing mortality of gag and red grouper. It was projected that the closed season would reduce commercial gag/black grouper harvest by 10 percent and red grouper harvest by 8 percent. However, a comparison of 1999–2000 data (when there was no closed season) with 2001 data (closed season in effect) showed the February through March contribution to the annual gag/black grouper and red grouper harvest reductions was only 2 percent when the closed season was in effect. This was likely a result of effort shifting to the weeks that were open at the beginning of February and the end of March. The recreational grouper closure from February 15 to March 15 was developed to reduce red grouper fishing mortality and prevent or minimize bycatch of gag and black grouper. The closure presently occurs simultaneously with the commercial grouper closure and includes important spawning seasons for gag, red grouper, and black grouper. The closure is estimated to reduce gag harvest by approximately 7.8 percent unless there is effort shifting to the open season by trips that would have occurred during the closed season. To achieve greater reductions in SWG fishing effort while allowing for an increase in the red grouper bag limit, the final rule extends the closed season from February 1 through March 31. In extending this closure, several factors were considered, such as required reductions in gag harvest levels, associated socio-economic effects on the recreational sector, possible increases in red grouper harvests, expected recreational season length, and the length and timing of the recreational SWG closure. The extended closure, in conjunction with other management measures, will reduce recreational gag landings by 26 percent, and increase red grouper landings by 17 percent, while yielding a 306–day recreational season.

*Comment 8:* Closing the recreational grouper component of the Gulf reef fish fishery from February 1 through March 31 will cause significant economic harm to southwestern Florida for-hire fisheries. The recreational grouper closure period should be changed to April 1 through June 30 to protect spawning black grouper.

*Response:* Several alternative SWG closed seasons were considered during the spring, summer, and fall, in conjunction with a 2–fish gag bag limit, 2–fish red grouper bag limit, and a 4–fish grouper aggregate bag limit. Each closure associated with the bag limits would achieve the needed reductions in gag harvest while allowing the harvest of red grouper to increase. The combination of a closed season with bag limits also reduces the adverse economic effects on the fishery, more so than if either a closed season or bag limit was used to control harvest exclusively. The spring seasonal closure was selected because it provided biological protections to SWG stocks while minimizing the time needed for the closure to be effective. This time period includes important spawning seasons for both gag and red grouper, as well as other SWGs such as scamp and black grouper. Prohibiting fishing during the spawning season will allow more fish to successfully spawn and reproduce before being harvested. Because landings of red grouper are highest during the summer in both the Florida Panhandle and along the West Florida Peninsula, more anglers would be affected by a summer closure than a closure during other times of the year. Fall and winter closures would need to be longer to be effective.

With respect to black grouper, the best available science indicates this species is a winter and spring spawner. Therefore, a closure of February 1 through March 31 provides more protection of spawning black grouper than an April 1 through June 30 season.

*Comment 9:* Bycatch is too high with current size and bag limits. New methods should be put into place to minimize bycatch.

*Response:* Bycatch and bycatch mortality can negatively affect a stock by reducing the number of fish that survive to harvestable sizes. Fishery management regulations are intended to constrain effort and control fishing mortality, but in some cases increase bycatch or bycatch mortality. When proposing fishing regulations, managers must balance the competing objectives of maximizing yield, ending overfishing, and reducing bycatch to the extent practicable. Currently, for red grouper, dead discards account for 12 percent of the commercial sector's biomass removals and up to 14 percent of the recreational sector's removals. In the gag component of the fishery, dead discards account for an even greater percentage of the total biomass removed, including 10 percent for the commercial sector and as much as 23 percent for the recreational sector, and the proportion of dead discards to landings has increased greatly in recent years.

Measures to reduce bycatch were evaluated in a bycatch practicability analysis for Amendment 30B. This analysis concluded reducing the red grouper minimum size limit, especially in the commercial longline component of the fishery, is a practical option for reducing discards as long as landings are constrained by a quota or other management measures. For gag, lowering the minimum size limit in the recreational sector of the fishery would reduce bycatch, but this decrease would increase angler catch rates and require a longer closed season. The longer closed season would partially offset benefits resulting from the lower minimum size limit.

*Comment 10:* The Federal consistency requirement for federally permitted vessels should not apply to species other than SWG species. This regulation preempts and interferes with a state's regulatory authority to manage its waters, discriminates against charter fishermen with Federal permits, and is unnecessary if more resources could be

dedicated to enforce permit requirements for those fishing in Federal waters.

*Response:* Federal regulations assume that Gulf States will implement compatible Federal regulations. If states do not comply, then projected reductions in harvest and fishing mortality may not occur, compromising NMFS' ability to end overfishing and rebuild overfished stocks, which is required by the Magnuson-Stevens Act. Additionally, inconsistent regulations in state waters complicate law enforcement and may provide fishermen an incentive to harvest greater amounts of fish, regardless of where the fish are caught, which could result in harvest overages. If such overages were not prevented, more stringent Federal regulations would result in much larger adverse economic effects on federally permitted for-hire vessels, whether or not they also fish in state waters.

Measures developed under an FMP amendment may apply to all species listed in the fishery management unit for that FMP as allowed by the Magnuson-Stevens Act. For example, a recent regulation intended to end red snapper overfishing and rebuild the red snapper stock also contained a gear requirement that applied to all reef fish fishing in Federal waters.

There are several examples of regulations that apply to federally permitted reef fish vessels regardless of whether they fish in state or Federal waters. These include: Requiring a red snapper IFQ endorsement for a federally permitted commercial reef fish vessel to have red snapper onboard, regardless of where the fish were caught; prohibition of gag, red grouper, black grouper, and greater amberjack on board federally permitted commercial reef fish vessels during these species' respective closed seasons, regardless of where caught; and the requirement of an operating vessel monitoring system onboard federally permitted commercial reef fish vessels at all times.

This measure may give rise to certain complications regarding the ability of some vessels to compete with other vessels when fishing in state waters if state and Federal regulations are not compatible. Federally permitted vessels would likely have a competitive advantage over vessels with state permits because they can fish in both Federal and state waters. Conversely, operators of permitted for-hire vessels may be disadvantaged against private vessels and non-federally permitted for-hire vessels when fishing for grouper species in state waters. This measure does not preclude the operator from fishing in state waters under state regulations if different from Federal regulations. To do so, the vessel owner would have the choice of no longer maintaining his or her permit. Under these scenarios, the vessel owner would no longer have a Federal permit, and he or she could abide by state regulations in state waters. However, the vessel owner also would not be able to conduct activities in Federal waters allowed by his or her Federal reef fish permit.

When there are less restrictive regulations in state waters, the effectiveness of the Federal regulations is diminished and the ability to enforce regulations is more difficult. The purpose of this measure is to improve compliance with Federal management regulations for federally permitted commercial and for-hire reef fish vessels, particularly for stocks that are undergoing overfishing or are being rebuilt. When regulations differ between jurisdictions, it is more difficult to coordinate enforcement activities. Regulations are enforced through actions of NMFS Office for Law Enforcement, the United States Coast Guard, and various state authorities. To maximize the use of assets to enforce state and Federal management measures Federal and state enforcement agencies have developed cooperative agreements to enforce the Magnuson-Stevens Act.

## Changes from the Proposed Rule

This final rule does not include the measures to implement a new seasonal/area closure called the Edges, as contained in the proposed rule published on November 18, 2008 (73 FR 68390). The proposed rule inadvertently included a provision regarding the Edges seasonal/area closure that was not contained in Amendment 30B. The Edges seasonal/area closure will be implemented through separate additional rulemaking.

## Classification

The Administrator, Southeast Region, NMFS, determined that Amendment 30B is necessary for the conservation and management of gag and red grouper in the Gulf of Mexico and that it is consistent with the Magnuson-Stevens Act, and other applicable laws.

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

NMFS prepared an FEIS for this amendment. A notice of availability for the FEIS was published on October 24, 2008 (73 FR 63470).

An FRFA was prepared. The FRFA incorporates the initial regulatory flexibility analysis, a summary of the significant economic issues raised by public comments, NMFS responses to those comments, and a summary of the analyses completed to support the action. A copy of the full analysis is available from NMFS (see **ADDRESSES**). A summary of the FRFA follows.

Several comments opposed requiring vessels with Federal permits to follow the more restrictive of Federal or state regulations when fishing in state waters. The comments stated that this regulation would discriminate against federally permitted for-hire vessels and would place these vessels at a competitive disadvantage against vessels that possessed only state permits. While this rule would require adherence to the more restrictive measures by federally permitted vessels, this measure is expected to help prevent harvest overages, particularly for species that are overfished or undergoing overfishing. If such overages were not prevented, more stringent Federal regulations would subsequently be required, resulting in much larger adverse economic effects for all federally permitted for-hire vessels, regardless of where they fish. It should also be noted that, even under the final rule, federally permitted vessels may be able to maintain a competitive advantage over vessels that only possess state permits because of the flexibility to fish in both Federal and state waters.

Several comments opposed the February 1 through March 31 closure of the recreational grouper component of the Gulf reef fish fishery closure because it would cause significant economic harm to southwestern Florida for-hire fisheries. The commenters proposed other closure periods would be more appropriate. Different combinations of bag limits and seasonal closures were considered to control the recreational harvests to the target levels because bag limits alone or seasonal closures alone were projected to either fail to achieve the target recreational harvests or result in larger adverse economic effects than the measures contained in the final rule. NMFS concurs with the Council's choice of bag limits and the February 1 through March 31 seasonal closure as the appropriate combination of measures to achieve the target recreational harvest while limiting the adverse economic effects.

One comment indicated the red grouper allocation should be shifted in favor of the recreational sector of the fishery because that sector has greater economic value. An allocation change can benefit one sector, however, it is generally at the expense of the other sector. The underlying economic principle when changing allocations is not whether one sector has greater economic value than the other sector,

but whether the increase in value to one sector as a result of a re-allocation is sufficient to compensate for the reduction in value to the other sector. An analysis of this type requires determining the value for red grouper to both the commercial and recreational sectors. The SEFSC has begun conducting this type of study for red grouper and other species. However, this work has not been completed. When the final results of this work are available, the information will be provided to the Council for consideration in addressing allocation issues for red grouper and other Gulf species.

No changes in the final rule were made in response to public comments on the proposed rule.

The final rule is expected to directly affect vessels that operate in the Gulf of Mexico commercial reef fish fishery and for-hire reef fish fisheries. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the U.S. including fish harvesters, for-hire operations, fish processors, and fish dealers. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $4.0 million (NAICS code 114111, finfish fishing) for all affiliated operations worldwide. For for-hire operations, the other qualifiers apply and the annual receipts threshold is $7 million (NAICS code 713990, recreational industries).

A Federal commercial reef fish permit is required to operate in the Gulf of Mexico commercial reef fish fishery, and a moratorium on the issuance of new permits has been in effect since 1992. A total of 1,209 vessels with commercial reef fish permits is estimated to comprise the universe of commercial harvest operations in the fishery. For the period 2001–2006, an average of 631 vessels harvested varying amounts of gag, 732 vessels harvested varying amounts of red grouper, and 888 vessels harvested varying amounts of SWG. These numbers are not additive because some of these vessels harvested a combination of grouper species. The SWG complex includes red grouper and gag, therefore there is substantial overlap in harvest of grouper species among these vessels.

The annual average gross revenue and net income per vessel for vessels in the SWG fishery is unknown. For all vessels in the commercial reef fish fishery, the average annual gross revenue, respectively, for vertical line vessels is estimated to range from approximately $24,100 (2005 dollars; $6,800 net income) to $110,100 ($28,500 net income), while the values for bottom longline vessels are approximately $87,600 (2005 dollars; $15,000 net income) to $117,000 ($25,500 net income). Some fleet behavior is known to exist in the commercial reef fish fishery, but the extent of such is unknown, though the maximum number of permits reported to be owned by the same entity is six. Additional permits in this and other fisheries (and associated revenues) may be linked through affiliation rules but these links cannot be made using existing data. Nevertheless, based on the average annual gross revenue information for all commercial reef fish vessels, NMFS determines, for the purpose of this analysis, that all commercial reef fish entities potentially affected by this final rule are small business entities.

An estimated 1,692 vessels are permitted to operate in the Gulf of Mexico reef fish for-hire fishery. It is unknown how many of these vessels operate as headboats or charterboats, a distinction which is based on pricing behavior, and individual vessels may operate as both types of operations at different times. However, 76 vessels participate in the Federal headboat logbook program. Several entities own multiple for-hire permits, and at least one entity is believed to own as many as 12 permits.

The average charterboat is estimated to generate approximately $77,000 (2005 dollars) in annual revenues, while the comparable figure for an average headboat is approximately $404,000 (2005 dollars). Based on the average annual gross revenue information for these vessels, NMFS determines, for the purpose of this analysis, that all for-hire entities potentially affected by this final rule are small business entities.

Relative to the baseline consisting of all no action alternatives, the final action would reduce the net operating revenues of commercial vessels by $5.3 million (in 2005 dollars) over the period 2008–2013. It would be equivalent to an annual loss of $0.88 million. If this loss were equally shared by all 888 vessels landing any species of SWG, the loss per vessel would be $991 annually. Of the 888 vessels landing any grouper species during the period 2001–2006, 114 vessels landed less than 100 lb (45.4 kg), 232 vessels landed between 100 and 1,000 lb (454 kg), 229 vessels landed between 1,000 lb and 5,000 lb (2,270 kg), 271 vessels landed between 5,000 lb and 50,000 lb (22,700 kg), and 42 vessels landed more than 50,000 lb. Although the estimated reduction in net operating income could be accommodated by the 42 highest and even 271 next highest volume vessels, it could be quite burdensome to others, particularly the 114 lowest volume vessels.

Although for-hire vessels do not derive revenues from grouper sales, most vessels target these species at some time during the year. Assuming angler demand declines in response to the restrictions for these species, revenue and profit reductions can be projected. As a result of the final action on grouper, the for-hire sector is projected to experience a loss in net income of approximately $405,000 to $794,000 per year. If these losses were distributed equally across all the 1,692 for-hire vessels in the fishery, the resulting loss per vessel would be between $239 and $469 per vessel. Some for-hire vessels, such as those in Florida, are likely more dependent on grouper than other vessels due to where they fish and client preferences and thus may be more severely affected by the final action.

Three alternatives, including no action, were considered for the action in Amendment 30 to set thresholds and benchmarks for gag. The first alternative (no action) to the final action would not comply with the Sustainable Fisheries Act requirement to establish more scientifically-based thresholds and benchmarks. The other alternative to the final action would provide a less conservative proxy for maximum sustainable yield (MSY), and would likely result in catch levels in excess of the true MSY. Each of the alternatives, including the final action, would not have direct impacts on small entities, but would serve as a platform for the development of specific management measures.

Five alternatives, including no action, were considered for the action in Amendment 30 to set gag TACs. The first alternative (no action) to the final action would not provide for a gag TAC, and thus would allow continued overfishing of the stock. The second alternative to the final action uses a stepped approach to managing TAC levels by setting TAC at 3–year intervals. This alternative, however, is likely to result in management measures that could create overages in years 2 and 3 of the interval. It could thus trigger AMs that would have potentially larger adverse impacts on small entities. The third alternative to the final action is similar to the final action, but it would set fishing mortality rate right at the threshold. This is more likely to generate overfishing situations that would only require more stringent regulations. The fourth alternative to the final action is similar to the second

alternative and thus would be saddled with similar problems. In addition, it is also susceptible to providing management measures that would result in overages in years 2 and 3 of each interval, setting the stage for application of AMs.

Three alternatives, including no action, were considered for the action in Amendment 30 to set a red grouper TAC. The first alternative (no action) to the final action would retain the red grouper TAC at 6.56 million lb (2.98 million kg). The final red grouper TAC of 7.57 million lb (3.43 million kg) would provide more benefits to small entities than the no action alternative. The second alternative to the final action would set a higher TAC of 7.72 million lb (3.50 million kg) corresponding to fishing at equilibrium FMSY (the fishing mortality rate that produces MSY) as opposed to equilibrium FOY (the fishing mortality that produces OY) in the final action. Although this higher TAC would be more beneficial to small entities, it is right at the threshold when AMs would set in. This higher TAC, then, would place at higher probability the imposition of stringent management measures that would essentially undo the initial benefits received by small entities.

Three alternatives, including no action, were considered for the action to set gag and red grouper allocations. The first alternative (no action) to the final action would revert the recreational:commercial allocation to that of Amendment 1 65:35 for gag and 23:77 for red grouper. The second alternative to the final action would set the recreational:commercial allocation at 59:41 for gag and 24:76 for red grouper. It should be noted that under the final action, the recreational:commercial allocation would be 61:39 for gag and 24:76 for red grouper. The general nature of any allocation is that it would favor one group of small entities at the expense of another group of small entities. The Council's choice for the final action considered the longest and most robust time series of data compared to the other alternatives.

Five alternatives, including no action, were considered to set SWG ACLs and AMs. The first alternative (no action) to the final action would not provide for ACLs and AMs. By not specifying AMs, harvests could likely exceed target catch levels and would thereby reduce the likelihood overfishing would be ended or prevented. The second alternative to the final action would have identical target catches as the final action but would set the ACLs lower than those of the final action. It would then likely result in potentially more adverse impacts on small entities. The third alternative to the final action would set the same commercial target catches as, but some higher ACLs than, the final action. This alternative would set higher recreational target catches and ACLs for gag than the final action, but would set the same target catches and ACLs for red grouper. On average, this alternative would result in lower adverse impacts on small entities than the final action. The fourth alternative to the final action would set the same target catches as, but lower ACLs than, the final action. It may then be expected to result in higher adverse impacts on small entities than the final action.

Four alternatives, including no action, were considered for the action to set gag, red grouper, and SWG quotas. The first alternative (no action) to the final action would maintain the red grouper and SWG quotas. Although this alternative would potentially allow the largest SWG quota, it would not provide specific protection to gag so that overfishing of this stock would continue. In addition, it would not provide flexibility to increase the red grouper quota due to stock improvements. The second alternative to the final action would be similar to the final action, except that the final action would provide for a higher quota for other SWG. Hence, small entities would operate in a better economic environment under the final action.

Four alternatives, including no action, were considered for the action on commercial quota closures. The first alternative (no action) to the final action would maintain the red grouper or SWG quota, whichever comes first, as a trigger to close the SWG fishery. Given all preferred alternatives for all other actions, this alternative would provide the largest benefits to small entities. However, it would not provide sufficient protection to gag so that overfishing of the stock could continue. The second alternative to the final action would add the gag quota as a closure trigger. With the gag quota most likely to be met first, the entire SWG fishery would close early in the year. This alternative would yield the largest negative effects on small entities. The third alternative to the final action is similar to the second, except that it would impose gag trip limits at the start of the fishing year. This alternative would allow the SWG fishery to remain open much longer than the second alternative so that it would result in less adverse impact on small entities. The third alternative differs from the final action, which would impose the incidental harvest trip limit only when 80 percent of the gag or red grouper quota is reached. Due to the generally longer closure under the final action, the third alternative would turn out to result in less adverse economic impact on small entities. The third alternative, however, would impose more adverse effects on the gag component of the fishery so that in general it would adversely affect hook-and-line vessel trips more than longline trips. The opposite would generally occur under the final action.

Seven alternatives, including no action, were considered for the action on measures to control the recreational harvests of gag and red grouper. The first alternative (no action) to the final action would maintain current recreational regulations so that it would likely allow overfishing of gag to continue. All other alternatives to the final action would eliminate the recreational red grouper bag limit, establish a gag grouper bag limit (except one alternative), establish a recreational closure, and reduce the aggregate grouper bag limit to 3 fish. These other alternatives would reduce gag harvest by a greater amount than the final action and either increase red grouper harvest (three alternatives) or reduce red grouper harvest (two alternatives), relative to the final action. These alternatives would be expected to, therefore, result in greater adverse economic impacts than the final action.

Three alternatives, including no action, were considered for the action on reducing the discard mortality of groupers. The first alternative (no action) to the final action would not require any new equipment or implement new measures to reduce bycatch, and would retain the size limit for grouper species subject to size limits. This would not address the bycatch problem in the grouper component of the fishery. The second alternative would require pamphlets or placards providing instructions on venting, proper handling, and release methods. The presence of these pamphlets or placards on board would provide convenient resource materials for reducing bycatch mortality, but the extent of their effects cannot be determined. The final action, on the other hand, would reduce the size limit for red grouper, reduce bycatch mortality, and contribute to further stock rebuilding and thus may be expected to result in positive effects on small entities.

Four alternatives were considered for the action pertaining to the duration of time/area closures and marine reserves. As noted in the Changes from the

Proposed Rule section of this rule, the Edges seasonal-area closure is not included in this final rule and will be implemented via separate rulemaking. Three of these alternatives, including no action, were specific to time/area closures. The fourth alternative, with three sub-options inclusive of no action, directly addressed the two existing marine reserves. With respect to time/area closures, two alternatives to the final action would set specific expiration dates. These alternatives would have about similar effects as the final action, particularly considering the ability and history of the Council in changing time/area closure regulations. With respect to the duration of the two existing marine reserves, two alternatives to the final action would allow the reserves to expire within a certain number of years. These two alternatives would provide relatively inadequate time for full evaluation of the effectiveness of the existing marine reserves, as compared to the final action.

Two alternatives, including no action, were considered for the action on Federal regulatory compliance. The first alternative (no action) to the final action would retain any existing inconsistencies between state and Federal regulations in state waters for operators of vessels with Federal reef fish permits. This would be particularly problematic for species considered overfished or undergoing overfishing, that have relatively substantial presence in state waters. Although in this case, the no action alternative would provide better economic prospects for small entities in the short run, the long-run sustainability of the fishery and economic benefits derivable from the fishery would be jeopardized.

**List of Subjects in 50 CFR Part 622**

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: April 13, 2009.

**Samuel D. Rauch III,**

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

■ For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

## PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.2, the definitions of ''Deep-water grouper (DWG)'' and ''Shallow-water grouper (SWG)'' are added in alphabetical order to read as follows:

**§ 622.2 Definitions and acronyms.**

* * * * *

*Deep-water grouper (DWG)* means yellowedge grouper, misty grouper, warsaw grouper, snowy grouper, and speckled hind. After the shallow-water grouper (SWG) commercial quota is reached, as specified in § 622.42(a)(1)(iii), scamp is also considered a DWG for purposes of the commercial fishery.

* * * * *

*Shallow-water grouper (SWG)* means gag, red grouper, black grouper, scamp, yellowfin grouper, rock hind, red hind, and yellowmouth grouper. However, after the SWG commercial quota is reached, as specified in § 622.42(a)(1)(iii), scamp is considered a DWG for the commercial fishery only.

* * * * *

■ 3. In § 622.4, the suspension of paragraph (a)(2)(v) is lifted; paragraph (a)(2)(xiv) is removed, and paragraphs (a)(1)(iv) and (a)(2)(v) are revised to read as follows:

**§ 622.4 Permits and fees.**

(a) * * *

(1) * * *

(iv) If Federal regulations for Gulf reef fish in subparts A, B, or C of this part are more restrictive than state regulations, a person aboard a charter vessel or headboat for which a charter vessel/headboat permit for Gulf reef fish has been issued must comply with such Federal regulations regardless of where the fish are harvested.

(2) * * *

(v) *Gulf reef fish.* For a person aboard a vessel to be eligible for exemption from the bag limits, to fish under a quota, as specified in § 622.42(a)(1), or to sell Gulf reef fish in or from the Gulf EEZ, a commercial vessel permit for Gulf reef fish must have been issued to the vessel and must be on board. If Federal regulations for Gulf reef fish in subparts A, B, or C of this part are more restrictive than state regulations, a person aboard a vessel for which a commercial vessel permit for Gulf reef fish has been issued must comply with such Federal regulations regardless of where the fish are harvested. See paragraph (a)(2)(ix) of this section regarding an additional IFQ vessel endorsement required to fish for, possess, or land Gulf red snapper. To obtain or renew a commercial vessel permit for Gulf reef fish, more than 50 percent of the applicant's earned income must have been derived from commercial fishing (i.e., harvest and first sale of fish) or from charter fishing during either of the 2 calendar years preceding the application. See paragraph (m) of this section regarding a limited access system for commercial vessel permits for Gulf reef fish and limited exceptions to the earned income requirement for a permit.

* * * * *

■ 4. In § 622.34, paragraph (k)(1)(iii) is removed and reserved; paragraph (o) is removed and reserved; the suspension of paragraph (u) is lifted; paragraphs (v) and (w) are removed; and paragraph (u) is revised to read as follows:

* * * * *

**§ 622.34 Gulf EEZ seasonal and/or area closures.**

* * * * *

(u) *Seasonal closure of the recreational fishery for shallow-water grouper (SWG).* The recreational fishery for SWG, in or from the Gulf EEZ, is closed from February 1 through March 31, each year. During the closure, the bag and possession limit for SWG in or from the Gulf EEZ is zero.

■ 5. In § 622.37, paragraph (d)(2)(ii) is revised and paragraph (d)(2)(iv) is added to read as follows:

**§ 622.37 Size limits.**

* * * * *

(d) * * *

(2) * * *

(ii) Yellowfin grouper—20 inches (50.8 cm), TL.

* * * * *

(iv) Red grouper—(A) For a person not subject to the bag limit specified in § 622.39 (b)(1)(ii)—18 inches (45.7 cm), TL.

(B) For a person subject to the bag limit specified in § 622.39(b)(1)(ii)—20 inches (50.8 cm), TL.

* * * * *

■ 6. In § 622.39, the suspension of paragraphs (b)(1)(ii) and (v) is lifted; paragraphs (b)(1)(viii) and (b)(1)(ix) are removed, and the first sentence of paragraph (b)(1)(ii) is revised to read as follows:

**§ 622.39 Bag and possession limits.**

* * * * *

(b) * * *

(1) * * *

(ii) Groupers, combined, excluding goliath grouper and Nassau grouper—4 per person per day, but not to exceed 1 speckled hind or 1 warsaw grouper per vessel per day, or 2 gag or 2 red grouper per person per day. * * *

* * * * *

■ 7. In § 622.42, paragraph (a)(1)(vii) is removed, and paragraphs (a)(1)(ii) and (iii) are revised to read as follows:

**§ 622.42 Quotas.**

* * * * *

(a) * * *

(1) * * *

(ii) Deep-water groupers (DWG) and, after the quota for SWG is reached, scamp, combined—1.02 million lb (0.46 million kg), gutted weight, that is, eviscerated but otherwise whole.

(iii) Shallow-water groupers (SWG), including scamp before the quota for SWG is reached, have a combined quota as specified in paragraph (a)(1)(iii)(A) of this section. Within the SWG quota there are separate quotas for gag and red grouper as specified in paragraphs (a)(1)(iii)(B) and (C) of this section, respectively. The quotas specified in paragraphs (a)(1)(iii)(A) through (C) of this section are all in gutted weight, that is eviscerated but otherwise whole.

(A) *SWG combined.* (*1*) For fishing year 2009—7.48 million lb (3.39 million kg).

(*2*) For fishing year 2010—7.57 million lb (3.43 million kg).

(*3*) For fishing year 2011 and subsequent fishing years—7.65 million lb (3.47 million kg).

(B) *Gag.* (*1*) For fishing year 2009—1.32 million lb (0.60 million kg).

(*2*) For fishing year 2010—1.41 million lb (0.64 million kg).

(*3*) For fishing year 2011 and subsequent fishing years—1.49 million lb (0.68 million kg).

(C) *Red grouper*—5.75 million lb (2.61 million kg).

* * * * *

■ 8. In § 622.44, paragraph (g) is revised and paragraph (h) is added to read as follows:

**§ 622.44 Commercial trip limits.**

* * * * *

(g) *Gulf deep-water grouper (DWG) and shallow-water grouper (SWG), combined.* For vessels operating under the quotas specified in § 622.42(a)(1)(ii) or (a)(1)(iii), the trip limit for DWG and SWG combined is 6,000 lb (2,722 kg), gutted weight. However, when the quotas specified in § 622.42(a)(1)(ii) or (a)(1)(iii) are reached and the respective fishery is closed, the commercial trip limit for the species subject to the closure is zero.

(h) *Gulf gag and red grouper.* For vessels operating under the quota specifications in § 622.42(a)(1)(iii)(B) or (a)(1)(iii)(C), once 80 percent of either the gag or red grouper quota is reached, or projected to be reached, and the quota for the applicable species is projected to be reached prior to the end of the fishing year, the AA will file a notification with the Office of the Federal Register to implement a trip limit for the applicable species of 200 lb (90.7 kg), gutted weight. However, when the SWG, gag, or red grouper quota as specified in § 622.42(a)(1)(iii)(A), (B), or (C), respectively, is reached, or projected to be reached, the commercial trip limit for the species subject to the closure is zero.

■ 9. In § 622.49, paragraphs (a)(3) through (a)(5) are added to read as follows:

**§ 622.49 Accountability measures.**

(a) * * *

(3) *Shallow-water grouper (SWG) combined.* (i) *Commercial fishery.* If either gag, red grouper, or SWG commercial landings, as estimated by the SRD, reach or are projected to reach the applicable quota specified in § 622.42(a)(1)(iii), the AA will file a notification with the Office of the Federal Register to close the entire SWG commercial fishery for the remainder of the fishing year. In addition, if despite such closure, SWG commercial landings exceed the applicable ACL as specified in this paragraph (a)(3)(i), the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to maintain the SWG commercial quota for that following year at the level of the prior year's quota. The applicable commercial ACLs for SWG, in gutted weight, are 7.94 million lb (3.60 million kg) for 2009, 7.99 million lb (3.62 million kg) for 2010, and 8.04 million lb (3.65 million kg) for 2011 and subsequent fishing years.

(ii) [Reserved]

(4) *Gag.* (i) *Commercial fishery.* If gag commercial landings, as estimated by the SRD, reach or are projected to reach the applicable quota specified in § 622.42(a)(1)(iii)(B), the AA will file a notification with the Office of the Federal Register to close the SWG commercial fishery for the remainder of the fishing year. In addition, if despite such closure, gag commercial landings exceed the applicable ACL as specified in this paragraph (a)(4)(i), the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to maintain the gag commercial quota for that following year at the level of the prior year's quota. The applicable commercial ACLs for gag, in gutted weight, are 1.66 million lb (0.75 million kg) for 2009, 1.71 million lb (0.78 million kg) for 2010, and 1.76 million lb (0.80 million kg) for 2011 and subsequent fishing years.

(ii) *Recreational fishery.* If gag recreational landings, as estimated by the SRD, exceed the applicable ACL specified in this paragraph (a)(4)(ii), the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to maintain the gag target catch level for that following year at the level of the prior year's target catch. In addition, the notification will reduce the length of the recreational SWG fishing season the following fishing year by the amount necessary to ensure gag recreational landings do not exceed the recreational target catch level in that following fishing year. The applicable recreational ACLs for gag, in gutted weight, are 2.59 million lb (1.17 million kg) for 2009, 2.64 million lb (1.20 million kg) for 2010, and 2.67 million lb (1.21 million kg) for 2011 and subsequent fishing years. The recreational target catch levels for gag, in gutted weight, are 2.06 million lb (0.93 million kg) for 2009, 2.14 million lb (0.97 million kg) for 2010, and 2.20 million lb (1.00 million kg) for 2011 and subsequent fishing years. Recreational landings will be evaluated relative to the applicable ACL as follows. For 2009, only 2009 recreational landings will be compared to the ACL; in 2010, the average of 2009 and 2010 recreational landings will be compared to the ACL; and in 2011 and subsequent fishing years, the 3–year running average recreational landings will be compared to the ACL.

(5) *Red grouper.* (i) *Commercial fishery.* If red grouper commercial landings, as estimated by the SRD, reach or are projected to reach the applicable quota specified in § 622.42(a)(1)(iii)(C), the AA will file a notification with the Office of the Federal Register to close the SWG commercial fishery for the remainder of the fishing year. In addition, if despite such closure, red grouper commercial landings exceed the ACL, 5.87 million lb (2.66 million kg) gutted weight, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to maintain the red grouper commercial quota for that following year at the level of the prior year's quota.

(ii) *Recreational fishery.* If red grouper recreational landings, as estimated by the SRD, exceed the applicable ACL specified in this paragraph (a)(5)(ii), the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year, to maintain the red grouper target catch level for that following year at the level of the prior year's target catch. In addition, the notification will reduce

the length of the recreational SWG fishing season the following fishing year by the amount necessary to ensure red grouper recreational landings do not exceed the recreational target catch level the following fishing year. The recreational ACL for red grouper, in gutted weight, is 1.85 million lb (0.84 million kg). The recreational target catch level for red grouper, in gutted weight, is 1.82 million lb (0.82 million kg). Recreational landings will be evaluated relative to the applicable ACL as follows. For 2009, only 2009 recreational landings will be compared to the ACL; in 2010, the average of 2009 and 2010 recreational landings will be compared to the ACL; and in 2011 and subsequent fishing years, the 3–year running average recreational landings will be compared to the ACL.

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[FR Doc. E9–8764 Filed 4–15–09; 8:45 am]

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# Proposed Rules

Federal Register
Vol. 74, No. 72
Thursday, April 16, 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.

## FARM CREDIT ADMINISTRATION

### 12 CFR Parts 611, 613, 615, 619, and 620

**RIN 3052–AC43**

### Organization; Eligibility and Scope of Financing; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Definitions; and Disclosure to Shareholders; Director Elections

**AGENCY:** Farm Credit Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The Farm Credit Administration (FCA, we, or our) is proposing to amend its rules on Farm Credit System (System) bank and association director elections and other voting procedures to clarify director election processes and update its rules to incorporate interpretations made through several recent bookletters to System institutions. We propose consolidating general election procedures, clarifying the role of nominating committees, enhancing eligibility and disclosure requirements for director-candidates, and improving annual meeting information statement instructions. We also propose new regulations on floor nominations and meetings of stockholders. We expect this proposed rule will increase stockholder participation in the director election process and enhance impartiality and disclosure in director elections.

**DATES:** You may send comments on or before June 15, 2009.

**ADDRESSES:** We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by e-mail or through the FCA's Web site. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *E-mail:* Send us an e-mail at *reg-comm@fca.gov*.
- *FCA Web site: http://www.fca.gov*. Select ''Public Commenters,'' then ''Public Comments,'' and follow the directions for ''Submitting a Comment.''
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Gary K. Van Meter, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

You may review copies of all comments we receive at our office in McLean, Virginia, or from our Web site at *http://www.fca.gov*. Once you are in the Web site, select ''Public Commenters,'' then ''Public Comments,'' and follow the directions for ''Reading Submitted Public Comments.'' We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove e-mail addresses to help reduce Internet spam.

**FOR FURTHER INFORMATION CONTACT:**

Elna Luopa, Senior Corporate Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434; or
Laura D. McFarland, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

**SUPPLEMENTARY INFORMATION:**

## I. Objectives

The objectives of this proposed rule are to:

- Strengthen the independence of nominating committees;
- Encourage greater stockholder participation in the director election process;
- Ensure procedures on nominations from the floor are equitable and known to stockholders;
- Clarify director election procedures;
- Enhance impartiality and disclosure in the election of directors; and
- Incorporate FCA interpretations and responses to questions raised by System institutions and FCA examiners in our rules.

## II. Background

The Farm Credit Act of 1971, as amended (Act),[1] establishes the System as a farmer-owned cooperative system that provides credit to farmers, ranchers, producers or harvesters of aquatic products, and rural home owners. The cooperative structure of the System relies on the owner control and participation of its stockholders and is supported by the accurate and timely information provided by the directors of System institutions. The majority of all Farm Credit bank and association directors are elected by voting stockholders.[2]

One of the main objectives of cooperatives today, as in the past, is to promote the participation of members in the management, ownership, and control of the cooperative, which includes electing directors to represent the interests and concerns of all the institution's owner-borrowers. Boards of directors in a cooperative system have the responsibility of encouraging stockholder participation in the management and control of the cooperative. The capacity of the board of directors to view borrowers as owners as well as customers is key to a successful cooperative enterprise. Respecting borrowers as owners is indispensable to creating stockholder interest and activity in the institution's existence as a cooperative. Providing stockholders the opportunity to give voice to their concerns through various forums, such as an annual stockholders' meeting, gives the board of directors the feedback they need to measure how well they are serving all their stockholders' interests. It is from this pool of interested, active, and informed stockholders that the cooperative draws its next generation of directors.

For these reasons, we are strengthening certain provisions on election of directors and adding other provisions to ensure that stockholders' voices continue to resound in the boardroom through their elected representatives. We are further proposing to consolidate our general director election rules, currently located throughout our rules, into subpart C of part 611, ''Election of Directors and Other Voting Procedures.'' Our rules at

[1] Public Law 92–181, 85 Stat. 583.

[2] *See* sections 1.4, 2.1, 2.11, 3.2, 3.21, 7.1, 7.12 of the Act.

part 611 were intended to address election procedures, and we believe consolidating our election rules into this section is appropriate. We believe the proposed reorganization will add clarity to our rules by keeping subject matters together, thereby facilitating System compliance. In the proposed process of consolidating provisions, some regulatory language is proposed to be changed to remove redundancy and enhance clarity.

## III. Comments Received

We received two comments on our existing election regulations prior to developing these proposed rules. The comments were in response to a June 23, 2008, regulatory burden solicitation (73 FR 35361). We evaluated the comments in recognition of existing law and policy considerations and the cooperative nature of the System.

One commenter asked us to consider overall revisions to our election rules, but made no suggestions on what changes should be made. The second commenter requested we modify our rules at § 611.325 and § 615.5230 to allow stockholders to nominate and elect directors in any manner they consider appropriate, as long as the process is fair and equitable. Our existing rules do not prevent voting stockholders from using various means to nominate directors as long as the right to make floor nominations and use a nominating committee remains available. The Act, at section 4.15, requires associations to use nominating committees and permit floor nominations in director elections. Institutions wishing to use additional methods, such as nominations by petition, may do so. Further, our rules do not prevent stockholders from using multiple methods, such as mail ballots and regional elections, in electing directors. We propose expanding the options in this proposed rule by introducing online meetings. Our rules, however, provide protections for the cooperative structure of the System by limiting each association stockholder to one vote and providing weighted voting for Farm Credit Banks. This proposed rule carries forward that concept in our impartiality in elections rules at § 611.310, while also increasing the flexibility of institutions by proposing to treat the associations who are stockholders in a Farm Credit bank in the same manner that a stockholder is treated at the association level when campaigning for director-candidates. We believe we have balanced the rights of stockholders with legitimate safety and soundness concerns in our regulations and continue that balance in this proposed rule.

## IV. Section-by-Section Analysis

### *A. Meetings of Stockholders [New §§ 611.100, 611.110, and 611.120]*

We propose adding a new subpart A to part 611 that would address meetings of stockholders and consist of three sections. The three sections we are proposing are § 611.100 for definitions, § 611.110 to address the basic aspects of meetings of stockholders, and § 611.120 on establishing a quorum for stockholders' meetings.

#### 1. Stockholders' Meetings [New § 611.110]

The proposed § 611.110 would capture the existing practices of System institutions in holding annual director elections. It would also incorporate and cross-reference the notice of meeting requirements currently found in § 620.21 and allow for the use of online meetings as part of the annual meeting process. In today's rapidly changing environment, System institutions are able to employ new technologies to support online meetings conducted over the Internet, creating more opportunities for facilitating member attendance and involvement. These opportunities help mitigate attendance issues arising from larger territories and the costs and inconveniences associated with traveling long distances. In proposed § 611.110, System institutions would be permitted to use online meetings to augment their traditional annual meeting held in a physical location within the institution's territory. Each bank and association using an online meeting space would need to develop policies and procedures that would provide stockholders with the information needed to access the online meeting and register their attendance. Because not all stockholders may have the means to use online technology, online meetings would not substitute for an actual physical meeting location for the annual meeting, but would be in addition to it.

#### 2. Stockholder Attendance [New § 611.110(d)]

We are proposing a requirement that Farm Credit banks and associations actively encourage stockholder attendance at the annual meeting. We encourage institutions to consider using the Annual Meeting Information Statement (AMIS) or other shareholder communications to describe the various opportunities for shareholders' participation in the ownership, control, and management of their institutions. For instance, opportunities may include shareholder appreciation meetings, financial results conference calls, sponsorship of conferences, educational and other agricultural credit-related events, participation in advisory committees, and the opportunity to serve on the institution's board of directors or nominating committee. FCA believes strongly that the Act places significant expectations on System institutions to foster and facilitate shareholder involvement and knowledge of the cooperative nature of the System. As a result, FCA encourages System institutions to be creative in finding ways to reach out to member-shareholders beyond the lending relationship, providing for related services, or simply distributing copies of required disclosures.

#### 3. Quorums [New § 611.120]

The proposed § 611.120 would clarify requirements for Farm Credit institutions' determining if a quorum at a stockholders' meeting was achieved and require institutions to identify quorum requirements in their bylaws. A quorum is the minimum number of voting stockholders necessary to conduct business, including holding a vote. As such, we propose that a quorum count may not include mail ballots. General corporate law principles define a quorum as ''the number of persons who must be present *before* any business can be transacted at a meeting.[3] '' Since mail balloting occurs after a meeting is convened and is an actual component of the business of a meeting, mail ballots cannot be used to establish that there were a sufficient number of voting stockholders present at the start of the meeting. Because our proposed rule in § 611.110 would permit Farm Credit institutions to hold online annual meetings, at which voting stockholders can register their attendance electronically, we believe versatility and sufficient flexibility exist to enable the institution to meet its quorum requirement without the necessity of including mail ballots for that purpose. We are proposing a delayed date for the prohibition on using mail ballots to establish a quorum because we are aware that some Farm Credit institutions may currently allow the counting of mail ballots to determine whether a quorum has been met and will have to amend their procedures accordingly.

The proposed rule would not affect counting proxy ballots towards the quorum requirement because proxies

[3] *See* Fletcher's Cyclopedia of Corporations section 2013 (emphasis added).

are treated as ''present'' and voting members.[4] In order to execute a proxy, the person designated as the proxy holder must be in attendance at the stockholders' meeting. Our proposed rule would also continue to allow those Farm Credit institutions holding annual meetings of stockholders, or any special meeting of stockholders, in consecutive sectional sessions to count the attendance of voting stockholders at all sessions for quorum purposes, provided no voting stockholder is counted more than once. Further, if a quorum is present when a meeting is first convened, the meeting may be recessed to a later time and, when reconvened, be held as a legal meeting even if a quorum is no longer present.

We encourage institution boards to renew their efforts to meet their existing quorum requirements as a result of this proposed change. The board of directors of the cooperative has an important role to play in maintaining open and direct communications with the cooperative's owners. An annual meeting of stockholders provides a unique opportunity for the cooperative's members and their majority-elected directors to reflect on the accomplishments and challenges of the past year and discuss their goals for the future. The annual meeting is also a forum for member-owners to meet with their directors and other members to discuss member concerns and member satisfaction. Taking actions that result in a well-attended stockholders' meeting reflects the board's collective commitment in meeting the needs of its members. Consequently, institutions should consider ways for encouraging stockholder-owner involvement and attendance at annual meetings, even though mail ballots may not be used for quorum purposes. The opportunity to hold annual meetings online and include, in the quorum count, the voting stockholders attending the online meeting is likely to satisfy an institution's existing quorum requirement.

*B. Eligibility for Membership on Board of Directors [§ 611.310]*

We propose modifying the language of existing § 611.310(b)—regarding director eligibility when there is a case of incompetence or criminal conviction—to mirror the statutory language at section 5.65(d) of the Act. Our existing regulatory language identifies felony convictions, but the Act makes no distinction between misdemeanor and felony convictions. Our proposed change would bring the regulatory text into compliance with the Act.

We propose adding new paragraph (e) addressing director eligibility when a person has run for membership on a nominating committee. Our existing rule at § 611.325 already prohibits this dual role, but we believe further clarity is required. We propose clarifying that a person is not eligible to be a director if that person is elected to serve on the institution's nominating committee and attends a meeting of the nominating committee. Attending a meeting of the nominating committee could give a committee member the ability to access information that would allow that person to judge the likelihood of a successful run for the board, thus creating a potential conflict of interest that the rules in § 611.310 seek to avoid. For this reason, we propose including the existing § 611.325 prohibition in § 611.310 after making clarifying changes to § 611.325 to allow a nominating committee member to step down and run as a director-candidate in an election as long as the member has not attended a nominating committee meeting.

We are also proposing to add a new paragraph (f) in § 611.310 that would allow out-of-territory borrowers to serve as association directors. Many out-of-territory borrowers, who are eligible borrowers under § 613.3000, are voting stockholders in their institutions and, as such, are potentially eligible to run for election to the institution's board of directors. We propose giving the institution the discretion to limit out-of-territory borrowers' opportunity to run for the board if made a part of the institution's bylaws. Associations would also be required to inform, in writing, an out-of-territory borrower at the time the loan is made as to the borrower's eligibility to serve as a director.

*C. Impartiality in the Election of Directors [§ 611.320]*

1. Institution Resources [§ 611.320(c)]

Our existing rule at § 611.320(c) on impartiality in elections states that no resources of an institution may be used by a candidate for nomination or election unless the same resources are simultaneously made available, and made known, to all declared candidates. We propose clarifying this provision to explain that facilities and resources include an institution's information technology resources and financial resources. For example, an institution may use its financial resources to provide reasonable reimbursement of travel expenses of director-candidates to attend annual meetings (including sectional sessions) if all candidates are offered the same reimbursement. We propose this clarification to ensure that institutions that have paid the travel expenses of incumbent directors running for re-election do not deny other candidates reimbursement for similar travel expenses. We also propose clarifying that when resources are made available to all candidates, the institution must also make the resources available to floor nominees. To ensure that all candidates, including any floor nominees, are aware of an institution's policy that permits candidate reimbursement, we would expect the institution to include stockholder notice, in the AMIS or elsewhere, that candidates will be provided the opportunity to receive reasonable travel reimbursement. The advance notice to voting stockholders would help ensure fairness and equal access to the reimbursement opportunity. In no instance may an institution provide its financial resources in a manner that results in personal financial gain for the candidate(s). Use of an institution's financial resources must be reasonable, prudent, and consistent with supporting an election that is fair and unbiased.

We further propose amending paragraph (c) to recognize associations as stockholders in their funding banks. We propose treating associations as stockholders and not as ''institutions'' to allow stockholder-associations to use their property, facilities, and resources in support of a candidate to the bank board. As part of this proposal, stockholder-associations would be able to exercise their rights as stockholders in supporting a bank director-candidate—if authorized by the affiliated Farm Credit bank's impartiality in director elections' policies and procedures. Our rule would require the bank's policy and procedures to set reasonable standards for stockholder-associations' use of their property, facilities and resources for this purpose. For example, we would expect the bank to establish a reasonable amount that stockholder-associations could expend in supporting a bank director-candidate. In establishing the reasonable amount, the bank would need to take into consideration the various sizes of the associations in its district before establishing the maximum amount that could be expended by a stockholder-association. The bank's policy and procedures must be fair and equitable and be clear that the amount expended by a stockholder-association is not for the personal use of

[4] A proxy is an authorization to act for a voting stockholder and requires the stockholder issuing the proxy to name a director or another voting stockholder of his or her choosing to cast that stockholder's vote.

any bank director-candidate. The bank's policy could also identify that using photocopying facilities, mailing materials, and the like are acceptable uses of the stockholder-association's resources, but cash outlays are not an acceptable use. Likewise, banks may want to permit stockholder-associations to host moderate social gatherings or reimburse travel expenses in order to introduce candidate(s) to the bank's other voting stockholders.

We believe requiring the bank to authorize the use of association property, facilities, and resources is appropriate because it is the bank's director election process and the bank should have the authority to determine the allowable activities of its stockholders in this process, subject to our regulations. In the event a bank does not choose to allow its stockholder-associations to use property, facilities, and resources in support of bank director-candidates, no stockholder-association in that district would be authorized to provide campaign support to any bank director-candidate in any manner.

We caution System institutions that stockholder-associations may not write checks to any bank director-candidate to support his or her campaign. It is critical that any support provided by a stockholder-association to a bank director-candidate not result in enriching the candidate or providing the candidate with personal financial gain. Should the candidate win election to the board, we believe that such actions may create a conflict of interest in the director's execution of his or her fiduciary duties on behalf of all stockholders.

As a technical change, we propose replacing the phrase ''System institution'' with ''Farm Credit'' everywhere it appears in § 611.320.

2. Involvement of Directors in Board Elections [New § 611.320(f)]

We propose adding a new paragraph (f) to address the involvement of directors in board elections. While our existing rule at § 611.320(b) prohibits, in part, employees and agents from making statements intended to influence votes in elections and nominations, we propose adding a prohibition for directors of Farm Credit institutions from actively supporting a candidate for nomination or election to that institution's board of directors. We believe a director's active support of a candidate creates a potential for conflicts of interest should that director-candidate be elected to the board. An example of prohibited conduct would include a sitting director of an institution distributing or mailing a letter to the voting stockholders endorsing a particular candidate for director (other than him or herself). We are proposing to limit this restriction to activities made on another's behalf. Therefore, the proposed rule would allow any director to freely engage in campaign activities for his or her own election to the board.

*D. Nominating Committees [Existing § 611.325]*

We are proposing that each institution establish and maintain policies and procedures on the formation, operation and duties of its nominating committee, consistent with current laws and regulations. While the nominating committee is a committee of voting stockholders and not a committee of the board, the institution's use of policies and procedures will help meet its obligation to ensure the independence and integrity of the nominating committee process in the election of directors for each and every election cycle. To that end, policies and procedures for the institution's nominating committee would help ensure that nominating committee members are fully informed of their rights and obligations as they perform this important service to their cooperative.

We further propose clarifying that each institution may have only one nominating committee in any one election cycle, consistent with informal guidance we have provided in our brochure on nominating committees, our March 8, 2007 bookletter, ''Guidance on Farm Credit Bank and Association Nominating Committees'' (BL–043 Revised), and Frequently Asked Questions (FAQ) on our Web site.

1. Nominating Committee Composition [Existing § 611.325(a)]

We are proposing to add a requirement to paragraph (a) that would permit out-of-territory borrowers, who are voting stockholders, to serve on an institution's nominating committee. The proposed rule would recognize that an institution may prohibit eligibility for such activities by out-of-territory borrowers in its bylaws. Associations would also be required to inform, in writing, the out-of-territory borrower, at the time the loan is made, whether the borrower is eligible to serve on the nominating committee. We also propose moving the existing § 611.325(a) prohibitions on membership to the nominating committee to proposed new paragraph (c), which is discussed further below.

2. Nominating Committee Election [New § 611.325(b) and Existing § 620.21]

We propose amending our existing rule at § 611.325 by adding a new paragraph (b) on nominating committee elections. We propose clarifying that an institution may use ballots that would allow stockholders to vote for nominating committee members as a slate, as long as stockholders also retain the ability and right to elect members individually. We have encountered questions on whether institutions may present voting stockholders with a list of candidates, identifying only one name for each vacant committee position, and then requiring stockholders to vote either for or against the entire list. Allowing institutions to determine the entire composition of the committee in this manner does not give voting stockholders an ability to choose the individual members of the nominating committee. The proposed rule would not prevent an institution from offering its voting stockholders the option of voting on the list of candidates as an alternative to voting on each individual candidate running for the nominating committee, but the institution would not be allowed to require voting stockholders to vote only for or against the list of nominating committee candidates. We believe that the institution is responsible for developing an open and impartial process for soliciting candidates for nominating committee membership. The process must ensure that the institution, its directors and management, and the existing nominating committee are not naming successors for, or appointing members to, the nominating committee. In our BL–043 Revised, we suggest ways in which potential nominating committee candidates can be identified.

We also propose clarifying in § 611.325(b) that association nominating committee members may only be elected to serve a 1-year term. Section 4.15 of the Act requires each association to elect a nominating committee at the annual meeting to serve for the following year. Individual members of an association nominating committee may be elected to sequential 1-year terms, however. We are not proposing term limits for bank nominating committee members because we recognize that some banks do not conduct their director elections at annual meetings, and there is no statutory provision limiting the terms of bank nominating committees. We further propose clarifying that each Farm Credit Bank, but not agricultural credit banks or banks for cooperatives,

must use weighted voting procedures when electing members to their nominating committees. We propose this change to conform the nominating committee election procedure to our existing rules on Farm Credit Banks' director elections. These proposed changes are consistent with informal guidance we have provided in our brochure on nominating committees, BL–043 Revised, and Frequently Asked Questions (FAQ) on our Web site.

2. Nominating Committee Conflicts of Interest [New § 611.325(c)]

We are proposing regulatory language on conflicts of interest for nominating committees in a new paragraph (c) to § 611.325. We propose moving the existing § 611.325(a) prohibitions on membership to the nominating committee to this new paragraph and adding proposed language clarifying that once elected to a nominating committee, a member may not resign from the committee to be considered as a candidate for a director position if the member has attended a meeting of the nominating committee. We previously explained this limitation in the preamble to the original rulemaking for § 611.325.[5] This clarification is important because we have received numerous questions regarding whether nominating committee members may resign from the committee or recuse themselves from committee deliberations in order to be a director-candidate. Our existing rule at § 611.325(a) prohibits an individual from running for election to the board of directors if that same individual already successfully ran for election to the nominating committee that is identifying director-candidates in that election cycle. We believe that to preserve impartiality, committee members must be free from any interest in a directorship during service on the nominating committee. We continue to believe that an open and fair nominating process must be free of potential conflicts that could result if a nominating committee member, once elected, attends a meeting of the nominating committee and is allowed to recuse himself or herself from committee discussions or resign from the committee in order to run for director in that same election cycle. While we believe that a stockholder has adequate time to decide whether a directorship or nominating committee membership would allow him or her to best serve the cooperative for that election year cycle, we understand that situations may arise that beg reconsideration of the stockholder's original decision. In such situations, we are proposing that a person elected to the nominating committee, but who did not attend any meeting of the nominating committee, may resign his or her position. We are also proposing that nominating committees keep minutes of their meetings, which would reflect attendance. We further encourage institutions to elect alternate members to the nominating committee so the committee can function without interruption if a member decides to resign his or her position on the nominating committee. For example, if nominating committee members are elected by nomination region and the person resigning is the only representative from a region, the institution would have to hold elections to replace the member who resigned if no alternate had been elected to take his or her place.

3. Nominating Committee Duties [Redesignated § 611.325(d)]

We propose redesignating paragraph (b) on nominating committee responsibilities as paragraph (d), clarifying that nominating committees may not be used for other institution business and adding a requirement that nominating committees keep records of their meetings. We believe having other duties diverts the nominating committee from its very significant role in the director election process, and therefore we propose limiting its duties to those described in proposed § 611.325(d). For example, some institutions are giving the nominating committee the task of identifying candidates for election to the nominating committee for the following year. While the institution may invite the nominating committee to suggest names of individuals who may have an interest in succeeding them on the committee, it goes beyond the nominating committee's role to determine the candidates who will stand for election to the next nominating committee. In other occurrences, the nominating committee has been tasked with verifying the eligibility or credentials of a floor nominee. The institution, not the nominating committee, is responsible for ensuring that the floor nominee is eligible. In addition, the nominating committee has completed its tasks for that election cycle before floor nominations are made or accepted.

We are not proposing to prohibit institutions from forming other stockholder committees for various purposes where some or all of the nominating committee members may serve on those committees. We are proposing to clarify that the nominating committee itself may not be used for functions other than those required by section 4.15 of the Act.

4. Nominating Committee Resources [Redesignated § 611.325(e)]

We propose redesignating paragraph (c) on nominating committee resources as paragraph (e) and adding a provision that institutions provide their nominating committees with FCA rules and other FCA-issued guidance on the operation of nominating committees. We believe this requirement is necessary to ensure that the nominating committee is aware of FCA's rules and guidance regarding the nominating committee's role in representing the institution's stockholders in the director elections process and understands how it must operate in accordance with those rules.

*E. Floor Nominations [New § 611.326]*

We propose moving eligibility and procedural requirements for floor nominations from existing § 620.21(d) to new § 611.326. We also propose incorporating previous guidance provided to System institutions in our February 14, 2008 bookletter, ''Floor Nomination Procedures for System Associations and Banks'' (BL–055), and addressing floor nomination procedural requirements for various balloting methods.

Making nominations from the floor is an express right of each association's voting stockholder that may not be unduly restricted in a way that effectively weakens it.[6] As explained in BL–055, the procedures for nominations from the floor may not be unduly burdensome nor have the effect of denying voting stockholders the right to name candidates through floor nominations. We propose requiring System associations, and those Farm Credit banks that allow floor nominations, to have policies and procedures for accepting nominations from the floor. The proposed rule would set minimum procedural limits for the level of voting stockholder support that may be required by the institution before accepting a floor nomination. The proposed limit is no more than a second to a nomination. The proposed rule would also require that a floor nominee accept the nomination prior to placing the nominee on the ballot and clarify that floor nominations may be called for only after the nominating committee has

[5] *See* 71 FR 5740, 5753 (February 2, 2006).

[6] Section 4.15 of the Act requires System associations to accept floor nominations, but does not have a similar requirement for Farm Credit banks.

identified its slate of director candidates.

We are also proposing to address a concern that allowing nominations from the floor only at the physical locations of the annual meeting may create delays and meeting inefficiencies because the institution first has to verify that the nominee is eligible for the position for which he or she has been nominated before the meeting can continue. Our proposed rule in § 611.110(c) would permit online annual meetings. Once the chairperson of the online annual meeting declares the meeting open, a ''virtual floor'' would allow a voting stockholder to make a ''virtual floor nomination'' through the interactive online meeting space. Virtual floor nominations would require using an ''instant access'' method such as ''instant messaging'' or a telephone call to the institution, both of which are unedited as in a physical meeting. An acceptable ''instant access'' method would be one that enables voting stockholders to second the floor nomination immediately and for the nominee to accept the nomination. For example, instant messaging to an online meeting space or a comment board would be considered sufficiently ''instant,'' as well as being public to all voting stockholders. An e-mail or voice mail system would not be considered instant, as the institution staff would have to transfer the information to the virtual floor. This virtual floor could remain open for several hours or be recessed and reopened for several days at set times, enabling the institution to obtain floor nominee eligibility information before voting begins. We believe this process addresses the concerns for time to verify eligibility of candidates and the integrity of the floor nomination process. Floor nominations are public nominations of candidates that are not previously vetted by any person or committee. Ensuring the ''public'' nature and instant responses by stockholders to a floor nomination are essential. Because of the various forms of, and rapid changes in, technology, as well as recognizing the diversity of operations within the System, we are not proposing specific rules on how this innovative online meeting process occurs. We would expect Farm Credit institutions to develop procedures that address the core elements contained in this proposed rule.

If an institution uses a virtual floor in connection with an online meeting, this would not replace the floor at the physical location of the annual meeting. The institution must allow voting stockholders to nominate from the floor at any physical location of the annual meeting if voting stockholders will vote on director-candidates by paper or electronic mail ballot after all sessions of the annual meeting are concluded. Or, if the institution permits stockholders to vote in person at the meeting, then a voting stockholder must be allowed to nominate from the floor at the initial physical location of the annual meeting. It is for these reasons we also propose requiring banks and associations to inform stockholders in the AMIS of the procedures for making floor nominations.

*F. Director-Nominee Disclosures [New § 611.330 and Existing § 620.21]*

We propose moving the existing requirements on director-nominee disclosures from § 620.21(d) to a new § 611.330 called ''Disclosures of Farm Credit bank and association director-nominees.'' We believe that these requirements are process-related, describing steps that are taken in conducting director elections, and do not belong in part 620, which covers reporting requirements. We propose an additional provision in new paragraph (a) of § 611.330, which would require that each institution adopt policies and procedures addressing the acquisition of director-nominee disclosure statements to ensure that all director-nominees are fairly treated in the election and voting processes. We previously provided guidance on this matter in our September 11, 2008 bookletter, ''Distribution of Director Candidate Information'' (BL–056).

As a conforming technical change, we propose changing the reference in § 611.320(e) from § 620.21(d) to § 611.330.

*G. Regional Voting in Director Elections [New § 611.335 and Existing §§ 615.5230(a) and 620.21(d)]*

We propose moving the existing requirements on regional director elections to a new § 611.335 called ''Regional voting in director elections'' to enhance the clarity and organization of our rules. We propose moving the regional voting procedures contained in existing § 615.5230(a)(3) and § 620.21(d)(4)(ii) to a new § 611.335 because existing § 620.21 is an interim report to stockholders (AMIS) and § 615.5230 addresses equity issuances in cooperative principles. As a conforming technical change, we propose deleting the paragraphs addressing regional elections contained in § 620.21(d)(4) and § 615.5230(a)(3).

*H. Confidentiality and Security in Voting [§§ 611.330 and 611.340]*

We propose consolidating into § 611.340 the ''security in voting'' rules and the ''confidentiality in voting'' rules currently located in existing §§ 611.330 and 611.340. We believe the consolidation will eliminate redundancy and make the rule easier to read. As part of the consolidation, we propose clarifying that only an independent third party or a tellers committee may validate and tabulate votes. The proposed clarification would remove a provision that allows another designated group of persons to perform these tasks. We do not believe an institution needs to designate any other group of individuals to validate and tabulate ballots when it can use a tellers committee or an independent third party for this purpose. We also propose new language on the membership of a tellers committee in paragraph (a)(4). We propose that only voting stockholders who do not have a conflict of interest may serve on the tellers committee. That is, only those voting stockholders who are not directors, director-candidates, or serving on the current election-year nominating committee may be members of the tellers committee. Institution employees who hold voting stock in the institution remain eligible to serve on a tellers committee. This limitation ensures that only those voting stockholders who have had no direct involvement in the nomination or election process are tabulating and counting ballots.

We further recognize the practical need for institutions to identify eligible voting stockholders as of the record date set for each stockholder voting action in paragraph (a)(2). The list of stockholders indicates the names of those stockholders holding voting stock as of the record date and thus the stockholder's eligibility to cast a ballot. Each institution is expected to update its list of stockholders, including individuals designated to vote for a legal entity that is a voting stockholder, each time the record date is set for director and nominating committee elections or any other matter requiring a stockholder vote. An updated list is also essential to determine if a floor nominee for a director position or membership on the nominating committee is a voting stockholder.

As a clarifying change, we propose adding language to paragraph (d) to explain that only proxy ballots may be accepted before stockholder meetings are convened for election or other voting purposes. Accepting mail ballots before an annual meeting results in those

stockholders being unable to consider any candidate nominated from the floor because mail ballots cannot be revoked once received by the institution. Proxy ballots must be returned to the institution by the date of the stockholders' meeting and before balloting begins. The stockholder voting by proxy may withdraw the proxy authorization and vote in person at the meeting. Thus, a nominee from the floor could conceivably uphold a viable candidacy with sufficient stockholder support from those voting at the meeting as well as those that decide to revoke their proxy ballots and vote in person at the meeting.

As a conforming technical change, we propose changing the reference in § 611.1240(e) from §§ 611.330 and 611.340 to § 611.340.

*I. Cooperative Principles in Elections [§§ 611.350 and 615.5230(a)]*

We propose moving the contents of existing § 615.5230(a)(1) and (a)(2), addressing voting rights of stockholders in Farm Credit bank and association director elections, to existing § 611.350 on cooperative principles in director elections. We propose no changes to the § 615.5230 provisions on how many votes a stockholder may cast, but propose minor rewording of the language for clarity and to recognize the proposed new location of these provisions.

We also propose adding a new provision to § 611.350 to clarify that out-of-territory borrowers holding voting stock must be assigned to a specific geographic region for voting purposes if the association apportions its territory into regions for voting purposes. Section 4.15 of the Act requires the nominating committee of each association to review a list of farmers from the association's territory and seek to nominate director-candidates representing all sections of the territory. Also, sections 2.1 and 2.11 require that elected directors come from the voting members (voting stockholders) of the association. We believe that these provisions, when read together, allow all voting members of an association, including out-of-territory borrowers, to have equal standing in the association in terms of voting stock. As discussed earlier in section IV.B. of this preamble (see discussion on § 611.310(f)), each institution must determine whether out-of-territory borrowers may serve the institution in other ways, such as on the board of directors or the nominating committee.

We also propose moving the provision requiring the disclosure of the types of agriculture in which directors of an institution engage from the existing provision at § 615.5230(b)(5) to § 620.21. We further propose, as a technical change, removing the remaining portions of § 615.5230(b)(5) regarding the nomination of at least two candidates for each director position as it is redundant of § 611.325.

*J. Annual Meeting Information Statement (AMIS)*

We propose renaming subpart E to clarify that an AMIS is used for more than an annual meeting. We also propose dividing the existing § 620.21 into two sections, one to address preparation and distribution of an AMIS and the other to address the contents of an AMIS. We propose this change to conform the AMIS to our other reporting sections.

1. Preparing and Distributing the AMIS [new § 620.20]

We propose moving that portion of the existing introductory language of § 620.21, discussing distribution of the AMIS to shareholders, to new § 620.20 and adding a requirement that the AMIS be dated. We believe that without a date of preparation, the value of the information in the AMIS is difficult to determine. We also propose an outside timeframe of 30 business days for distributing the AMIS to shareholders. The existing rule requires an AMIS be provided to shareholders at least 10 days before a meeting or election to ensure the shareholders' receipt before the meeting. We believe an outside timeframe is needed to ensure that the information in the AMIS is reasonably current at the time the shareholders' meeting or director elections take place. We also propose clarifying that the existing requirement to provide the AMIS no later than 10 days before a meeting means business days. We further propose referencing in paragraph (b) of new § 620.20 the existing signature and filing requirements of §§ 620.2 and 620.3 for all reports, specifically that the AMIS be provided to the Farm Credit Administration and that every AMIS be signed and dated. Institutions are required in § 620.3(b) to sign all reports, including the AMIS, and we are proposing to reference this requirement in § 620.20 to facilitate compliance with our rules. We are also proposing to include a requirement that the AMIS be electronically filed with the FCA at the time it is issued. On December 4, 2007, the FCA issued a final rule (72 FR 68060) amending the disclosure and reporting regulations for System institutions. As part of this rulemaking, § 620.4 now requires that each System institution prepare and send to FCA an electronic copy of its annual report. This amendment did not address filing requirements for the AMIS. We propose including this provision for the AMIS in new § 620.20 so that the filing requirements are consistent between the annual report and the AMIS.

We further propose adding language to paragraph (a)(3) of new § 620.20 explaining that an AMIS may be posted on an institution's Web site after the AMIS is mailed to shareholders. We propose requiring these postings be maintained on the institution's Web site for a reasonable amount of time, but at least 30 calendar days, to provide shareholders some certainty of time to view the posting. For example, if a posted AMIS addresses an upcoming director election, we would consider a reasonable amount of time to be the duration of the election cycle.

2. Contents of the AMIS [Existing § 620.21]

We propose reorganizing existing § 620.21 to clarify the minimum information that must be included in an AMIS and the additional information that must be included in any AMIS issued in connection with elections.

a. *Minimum Requirements for Each AMIS* [§ 620.21(a)]

We propose keeping existing requirements that each AMIS include the date, time, and place of the meeting; the number of voting shareholders currently in the institution; updates to previously issued financial reports; changes or disagreements with external auditors; and the current composition and attendance history of the board of directors. While we make no changes to the substance of these existing requirements, we do propose some clarifications and additional requirements.

We propose incorporating notice of any online meeting space that might be used into the date, time, and place of meeting section of the AMIS. As explained earlier in the § 620.20 discussion, we propose requiring that the AMIS be issued no earlier than 30 business days in advance of a meeting or election, but no later than 10 business days in advance of the meeting.

We make no changes to how the AMIS identifies the number of voting shareholders, but propose moving the existing language in § 620.21(d)(3), addressing the number of shareholders voting by region, to this paragraph. We propose moving the requirement that each AMIS update financial information and report disagreements or changes in accountants to new paragraph (a)(3). We

propose clarifying that the annual report being updated by the AMIS is the last annual report of record. This would clarify which annual report to reference when an institution holds an annual meeting before mailing the current year's annual report to shareholders.

We propose moving the requirement that institutions record the types of agriculture each incumbent director is engaged in from existing § 615.5230(b)(5) to paragraph (a)(4) of this section. We make the proposed change as part of our effort to consolidate our regulations and enhance clarity by keeping subject matters together.

We are not changing the existing requirement that director attendance be reported in the AMIS. However, we offer clarification of existing § 620.21(c)(2) on whether an institution is to disclose only the number of missed board meetings or the number of missed committee meetings in the director meeting attendance disclosure. The intention of the rule is to disclose any reduced attendance at meetings of official board business and thus the requirement to disclose missed meetings covers both board meetings and committee meetings. In providing this clarification, we propose no change to the current rule.

b. *Additional Information for Elections* [New § 620.21(b)]

i. *Director-Nominees* [New § 620.21(b)(1) and (b)(3)]

We propose moving to paragraph (b)(1) the existing § 620.21(d)(2) language on the efforts of the nominating committee to find two nominees for each vacant position. We then propose amending the provision to require that the names of the director-candidates nominated by the nominating committee be listed. This language captures the provision of existing § 620.21(d)(1) which, when moved to proposed § 611.330, loses the link to the nominating committee.

We propose moving to paragraph (b)(2) existing language requiring an AMIS to include director-nominee disclosures. We propose conforming changes to reference proposed § 611.330. As discussed earlier, the proposed creation of a new § 611.330, addressing the contents of director-nominee disclosures, involves moving those provisions from this section. The proposed creation of a separate director-nominee disclosure section does not remove the requirement of including those disclosures (or a restatement of them) in an election AMIS.

In another matter, we are aware that some institutions indicate on their ballots the director-candidates who are incumbent directors. While we are not proposing to amend the AMIS candidate disclosure requirement, we urge institutions to observe the principles of fairness and equal treatment of all director-candidates in providing disclosure information as stated in BL–056. We believe it is not necessary to indicate incumbency status on the ballots because all candidates provide disclosure statements with résumé-type information and the incumbent's disclosure is likely to indicate past service on the institution board.

ii. *Floor Nominations* [New § 620.21(b)(3)]

We propose moving, but not changing, the existing requirement that institutions state whether floor nominations will be accepted. We are proposing that System institutions explain the procedures for making floor nominations. As discussed in section IV.E. of this preamble, institutions need to explain how voting shareholders can make floor nominations to ensure that the process works efficiently and effectively.

c. *Nominating Committees* [New § 620.21(c)]

We propose adding a requirement in paragraph (c) that the election procedures for nominating committee candidates be included in the AMIS when nominating committees will be elected in connection with director elections. As in the election of directors, the election of members to the nominating committee is subject to each stockholder's right to a secret ballot under section 4.20 of the Act. We believe each institution must inform its voting shareholders of the procedures for voting on candidates for the nominating committee and must do so in a manner that protects each shareholder's right to a secret ballot.

*K. Other Miscellaneous Changes*

1. Similar Entity Participation Lending Limit Voting [§ 613.3300]

We propose clarifying § 613.3300(c)(1)(i)(B) to explain that the stockholder vote for participation lending limits is based on the majority of voting stockholders voting. The existing language does not specify how a majority vote is tabulated.

2. Equityholder Voting on Preferred Stock [§ 615.5230(b)]

We propose clarifying § 615.5230(b)(1) to explain that the equityholder vote on issuing preferred stock requires the approval of the majority of the shares voting of each class of equities adversely affected by the preference, voting as a class. The existing language does not specify that the majority is of the shares actually voted.

3. Definitions [Existing § 620.1(p) and New § 619.9320]

We propose moving the definition of ''shareholder'' from part 620 to our general definition section at part 619. We also propose clarifying that the terms ''shareholder'' and ''stockholder'' have the same meaning for purposes of our rules. These two terms are currently used interchangeably in our rules as well as in the Act.

**V. Regulatory Flexibility Act**

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, Farm Credit System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

**List of Subjects**

*12 CFR Part 611*

Agriculture, Banks, banking, Rural areas.

*12 CFR Part 613*

Agriculture, Banks, banking, Credit, Rural areas.

*12 CFR Part 615*

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

*12 CFR Part 619*

Agriculture, Banks, banking, Rural areas.

*12 CFR Part 620*

Accounting, Agriculture, Banks, banking, Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, parts 611, 613, 615, 619, and 620 of chapter VI, title 12 of the Code of Federal Regulations are proposed to be amended as follows:

## PART 611—ORGANIZATION

1. The authority citation for part 611 continues to read as follows:

**Authority:** Secs. 1.3, 1.4, 1.13, 2.0, 2.1, 2.10, 2.11, 3.0, 3.2, 3.21, 4.12, 4.12A, 4.15, 4.20, 4.21, 5.9, 5.10, 5.17, 6.9, 6.26, 7.0–7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2011, 2012, 2021, 2071, 2072, 2091, 2092, 2121, 2123, 2142, 2183, 2184, 2203, 2208, 2209, 2243, 2244, 2252, 2278a–9, 2278b–6, 2279a–2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; secs. 409 and 414 of Pub. L. 100–399, 102 Stat. 989, 1003, and 1004.

2. Add a new subpart A, consisting of §§ 611.100 through 611.120, to read as follows:

**Subpart A—General**

Sec.
611.100 Definitions.
611.110 Meetings of stockholders.
611.120 Quorums.

## Subpart A—General

### § 611.100 Definitions.

The following definitions apply for the purpose of this part:

(a) *Mail ballot* means a ballot cast by mail or by electronic means after the conclusion of a stockholders' meeting.

(b) *Online meeting* means a meeting that is conducted over the Internet through the use of mediating technologies, such as online services, computer hardware and software, etc., where technology is used to generate objects and environments that are presented to users through a number of senses (*e.g.,* vision and hearing). The mediating technologies allow remote people or objects to appear locally present or at least allow them to be treated that way during the course of the meeting.

(c) *Online meeting space* means an online environment where Farm Credit institutions can hold stockholder meetings that allow stockholders to communicate, collaborate, and share information. Any stockholder with the necessary technology requirements and access (*e.g.,* password-protected meetings) must be allowed to connect to his or her institution's online meeting space.

(d) *Quorum* means the minimum number of voting stockholders of a Farm Credit institution that must be present, either in person (including through an online medium) or by proxy, at an annual meeting or other meeting of stockholders in order for the institution to conduct business.

(e) *Regional election* means the apportionment of a Farm Credit institution's territory into regions in which a director or directors from a region are elected only by those voting stockholders who reside or conduct agricultural or aquatic operations in that same region.

(f) *Stockholder-association* means an association within a Farm Credit bank district holding voting stock in that bank.

(g) *Stockholder-elected director* means a director who is elected by the majority vote of the voting stockholders voting to serve as a member of a Farm Credit institution's board of directors.

### § 611.110 Meetings of stockholders.

(a) *Requirement.* Associations must annually have a meeting of stockholders for the purpose of conducting annual director elections. Associations must elect at least one director at each annual meeting, but the vote on the election of a director or directors may occur in the period following an annual meeting if voting is solely by mail ballots. Farm Credit banks are encouraged to hold annual or periodic meetings of stockholders. Farm Credit banks and associations may use an online meeting space in addition to a physical meeting space to conduct a stockholders' meeting or director elections. A physical meeting space must always exist for meetings involving director elections.

(b) *Notice.* Each Farm Credit bank and association must issue an Annual Meeting Information Statement in accordance with the requirements of §§ 620.20 and 620.21 of this chapter to notify stockholders of the date, time, and place of annual meetings or director elections. If a Farm Credit bank or association uses an online meeting space to conduct part of its meeting, the notice must specify the date, time, and location of the online meeting as well. The notice must be provided at least 10 business days, but no more than 30 business days, before the meeting.

(c) *Online meeting.* Each Farm Credit bank and association using an online meeting space as part of a meeting or election must have policies and procedures in place addressing how the online meeting space will be accessed and used by participants. The policies and procedures must specifically identify any technological adaptations necessary to address the confidentiality and security in voting requirements of § 611.340.

(d) *Attendance.* Each institution must encourage stockholder attendance at the annual meeting, whether in person or through online meeting attendance.

### § 611.120 Quorums.

(a) The bylaws of each Farm Credit bank and association must specify the quorum requirements for stockholder meetings.

(b) After January 1, 2011, mail ballots may not be used to establish a quorum. Proxy ballots and attendance at annual meetings or sectional sessions thereof, including such meetings held online, may be used to establish a quorum.

## Subpart C—Election of Directors and Other Voting Procedures

3. Amend § 611.310 by revising paragraph (b) and adding new paragraphs (e) and (f) to read as follows:

### § 611.310 Eligibility for membership on bank and association boards and subsequent employment.

* * * * *

(b) No bank or association director shall be eligible to continue to serve in that capacity and his or her office shall become vacant if after election as a member of the board, he or she becomes legally incompetent or is convicted of any criminal offense involving dishonesty or breach of trust or held liable in damages for fraud.

* * * * *

(e) No person shall be eligible for membership on a Farm Credit bank or association board of directors in the same election cycle for which the Farm Credit institution's nominating committee is identifying candidates if that person was elected to serve on that institution's nominating committee and attended any meetings called by the nominating committee.

(f) Out-of-territory borrowers who hold voting stock in the association may serve as association directors unless prohibited by the association's bylaws. Associations must inform, in writing, each out-of-territory borrower of his or her eligibility status for directorship at the time the loan is made.

4. Amend § 611.320 by:

a. Removing the word ''System'' and adding the words ''Farm Credit'' each place it appears in paragraphs (a) and (d);

b. Revising paragraphs (c) and (e); and

c. Adding a new paragraph (f) to read as follows:

### § 611.320 Impartiality in the election of directors.

* * * * *

(c) No property, facilities, or resources, including information technology and human or financial resources, of any Farm Credit institution shall be used by any candidate for nomination or election or by any other person for the benefit of any candidate for nomination or election, unless the same property, facilities, or resources are simultaneously available and made known to be available for use by all declared candidates, including floor nominees. For the limited purpose of Farm Credit bank board elections, each stockholder-association of a Farm Credit

bank may, to the extent permitted by the affiliated Farm Credit bank's policies and procedures, use its property, facilities, or resources in support of bank director-candidates. Each Farm Credit bank permitting this activity must establish reasonable standards that stockholder-associations must follow when using property, facilities, and resources for the nomination or election of candidates to the bank board. The Farm Credit bank's policies and procedures must give appropriate consideration to the various sizes of stockholder-associations within a bank's district and include a maximum amount that a stockholder-association may expend in support of a bank director-candidate.

* * * * *

(e) No Farm Credit institution may in any way distribute or mail, whether at the expense of the institution or another, any campaign materials for director-candidates. Institutions may request biographical information, as well as the disclosure information required under § 611.330, from all declared candidates who certify that they are eligible, restate such information in a standard format, and distribute or mail it with ballots or proxy ballots.

(f) No director of a Farm Credit institution shall make any statement, either orally or in writing, which may be construed as intended to influence any vote in that institution's director nominations or elections. This paragraph shall not prohibit director-candidates from engaging in campaign activities on their own behalf.

5. Revise § 611.325 to read as follows:

**§ 611.325 Bank and association nominating committees.**

Each Farm Credit bank and association may have only one nominating committee in any one election cycle. Each Farm Credit bank and association must establish and maintain policies and procedures on its nominating committee, describing the formation, composition, operation, resources, and duties of the committee, consistent with current laws and regulations. Each nominating committee must conduct itself in the impartial manner prescribed by the policies and procedures adopted by its institution under § 611.320 and this section.

(a) *Composition*. The voting stockholders of each bank and association must elect a nominating committee of no fewer than three members. Unless prohibited by association bylaws, out-of-territory borrowers who are voting stockholders may serve as members of an association's nominating committee. Each association must inform, in writing, an out-of-territory borrower of his or her eligibility to serve on the nominating committee at the time the loan is made.

(b) *Election*. Farm Credit banks and associations may use in-person (including use of an online medium) or mail balloting procedures to elect a nominating committee.

(1) Farm Credit banks and associations must provide voting stockholders the opportunity to vote on each nominee for membership on the nominating committee. Farm Credit banks and associations may give voting stockholders the option to vote on a slate of nominees for the nominating committee as long as the right to vote on individual nominees remains.

(2) Association nominating committee members may only be elected to a 1-year term. Farm Credit Banks must use weighted voting, with no cumulative voting permitted, when electing members to serve on a nominating committee.

(c) *Conflicts of interest*. No individual may serve on a nominating committee who, at the time of election to, or during service on, a nominating committee, is an employee, director, or agent of that bank or association. A nominating committee member may not be a candidate for election to the board in the same election for which the committee is identifying nominees. A nominating committee member may resign from the committee to run for election to the board only if the individual did not attend any nominating committee meeting.

(d) *Responsibilities*. It is the responsibility of each nominating committee to identify, evaluate, and nominate candidates for stockholder election to a Farm Credit bank or association board of directors. A nominating committee's responsibilities are limited to the following:

(1) Nominate individuals whom the committee determines meet the eligibility requirements to run for open director positions. The committee must endeavor to ensure representation from all areas of the Farm Credit bank's or association's territory and, as nearly as possible, all types of agriculture practiced within the territory.

(2) Evaluate the qualifications of the director-candidates. The evaluation process must consider whether there are any known obstacles preventing a candidate from performing the duties of the position.

(3) Nominate at least two candidates for each director position being voted on by stockholders. If two nominees cannot be identified, the nominating committee must provide written explanation to the existing board of the efforts to locate candidates or the reasons for disqualifying any other candidate that resulted in fewer than two nominees.

(4) Maintain records of its meetings, including a record of attendance at meetings.

(e) *Resources*. Each Farm Credit bank and association must provide its nominating committee reasonable access to administrative resources in order for the committee to perform its duties. Each Farm Credit bank and association must, at a minimum, provide its nominating committee with FCA regulations and guidance on nominating committees, a current list of stockholders, the most recent bylaws, the current director qualifications policy, and a copy of the policies and procedures that the bank or the association has adopted pursuant to § 611.320(a) ensuring impartial elections. On the request of the nominating committee, the institution must also provide a summary of the current board self-evaluation. The bank or association may require a pledge of confidentiality by committee members prior to releasing evaluation documents.

6. Add a new § 611.326 to subpart C to read as follows:

**§ 611.326 Floor nominations for open Farm Credit bank and association director positions.**

(a) Each floor nominee must be eligible for the director position for which the person has been nominated.

(b) Voting stockholders of associations must be allowed to make floor nominations for every open stockholder-elected director position. Associations using only mail ballots must allow nominations from the floor at every session of an annual meeting. Associations permitting stockholders to cast votes during annual meetings may only allow nominations from the floor at the first session of the annual meeting. Before every director election by a Farm Credit bank, the bank must inform voting stockholders whether floor nominations will be accepted.

(c) Each association must adopt policies and procedures for making and accepting floor nominations of candidates to stand for election to the association's board of directors. Farm Credit banks allowing nominations from the floor must also adopt policies and procedures for making and accepting floor nominations. Policies and procedures for floor nominations must, at a minimum, provide that:

(1) Floor nominations may only be made after the nominating committee

has provided its list of director-nominees.

(2) No more than a second by a voting stockholder to a nomination from the floor is required. After receiving a floor nomination, the floor nominee must state if he or she accepts the nomination.

(3) Floor nominees must make the disclosures required by § 611.330 of this part.

7. Revise § 611.330 to read as follows:

**§ 611.330 Disclosures of Farm Credit bank and association director-nominees.**

(a) Each Farm Credit bank and association must adopt policies and procedures that ensure a disclosure statement is prepared by each director-nominee. At a minimum, each disclosure statement for each nominee must:

(1) State the nominee's name, city and state of residence, business address if any, age, and business experience during the last 5 years, including each nominee's principal occupation and employment during the last 5 years.

(2) List all business interests on whose board of directors the nominee serves or is otherwise employed in a position of authority and state the principal business in which the business interest is engaged.

(3) Identify any family relationship of the nominee that would be reportable under part 612 of this chapter if elected to the institution's board.

(b)(1) Floor nominees who are not incumbent directors must provide to the Farm Credit bank or association the information referred to in this section and in § 620.5(j) and (k) of this chapter. The information must be provided in either paper or electronic form within the time period prescribed by the institution's bylaws or policies and procedures. If the institution does not have a prescribed time period, each floor nominee must provide this information to the institution within 5 business days of the nomination. If stockholders will not vote solely by mail ballot upon conclusion of the meeting, each floor nominee must provide the information at the first session at which voting is held.

(2) For each nominee who is not an incumbent director or a nominee from the floor, the nominee must provide the information referred to in this section and in § 620.5(j) and (k) of this chapter.

(c) Each Farm Credit bank and association must distribute director-nominee disclosure information to all stockholders eligible to vote in the election. Institutions may either restate such information in a standard format or provide complete copies of each nominee's disclosure statement.

(1) Disclosure information for each director-nominee must be provided as part of the Annual Meeting Information Statement issued for director elections.

(2) Disclosure information for each director-nominee must be distributed or mailed with ballots or proxy ballots. Farm Credit banks and associations must ensure that the disclosure information on floor nominees is provided to voting stockholders by delivering ballots for the election of directors in the same format as the comparable information contained in the Annual Meeting Information Statement.

(d) No person may be a nominee for director who does not make the disclosures required by this section.

8. Add a new § 611.335 to subpart C to read as follows:

**§ 611.335 Regional voting in director elections.**

(a) *Authority*. The use of regional voting in director elections requires a bylaw provision approved by a majority of voting stockholders, voting in person or by proxy. The use of regional voting in director elections does not prevent any voting stockholder, regardless of the region where he or she resides or conducts agricultural or aquatic operations, from voting in any stockholder vote to remove a director.

(b) *Region size*. When using regional voting in director elections, there must be an approximately equal number of voting stockholders in each of the voting regions. Regions will have an approximately equal number of voting stockholders if the number of voting stockholders in any one region does not exceed the number of voting stockholders in any other region by more than 25 percent. At least once every 3 years, the number of voting stockholders in each region must be counted and, if the regions do not have an approximately equal number of voting stockholders, the regional boundaries must be adjusted to achieve such result. If more than one director represents a region, the equitability of regions shall be determined by dividing the number of voting stockholders in that region by the number of director positions representing that region, and the resulting quotient shall be the number that is compared to the number of voting stockholders in other regions.

9. Revise §§ 611.340 and 611.350 to read as follows:

**§ 611.340 Confidentiality and security in voting.**

(a) Each Farm Credit bank and association must adopt policies and procedures that:

(1) Ensure the security of all records and materials related to a stockholder vote including, but not limited to, ballots, proxy ballots, and other related materials.

(2) Ensure that ballots and proxy ballots are provided only to stockholders who are eligible to vote as of the record date set for the stockholder vote.

(3) Ensure that all information and materials regarding how or whether an individual stockholder has voted remain confidential, including protecting the information from disclosure to the institution's directors, stockholders, or employees, or any other person except:

(i) An independent third party tabulating the vote; or

(ii) The Farm Credit Administration.

(4) Provide for the establishment of a tellers committee or independent third party who will be responsible for validating ballots and proxies and tabulating voting results. A tellers committee may only consist of voting stockholders who are not directors, director-nominees, or members of that election cycle's nominating committee.

(b) No Farm Credit bank or association may use signed ballots in stockholder votes. A bank or association may use balloting procedures, such as an identity code on the ballot, that can be used to identify how or whether an individual stockholder has voted only if the votes are tabulated by an independent third party. In weighted voting, the votes must be tabulated by an independent third party. An independent third party that tabulates the votes must certify in writing that such party will not disclose to any person (including the institution, its directors, stockholders, or employees) any information about how or whether an individual stockholder has voted, except that the information must be disclosed to the Farm Credit Administration if requested.

(c) Once a Farm Credit bank or association receives a ballot, the vote of that stockholder is final, except that a stockholder may withdraw a proxy ballot before balloting begins at a stockholders' meeting. A Farm Credit bank or association may give a stockholder voting by proxy an opportunity to give voting discretion to the proxy of the stockholder's choice, provided that the proxy is also a stockholder eligible to vote.

(d) Ballots and proxy ballots must be safeguarded before the time of

distribution or mailing to voting stockholders and after the time of receipt by the bank or association until disposal. When stockholder meetings are held for the purpose of conducting elections or other votes, only proxy ballots may be accepted prior to any or all sessions of the stockholders' meeting. In an election of directors, ballots, proxy ballots and election records must be retained at least until the end of the term of office of the director. In other stockholder votes, ballots, proxy ballots, and records must be retained for at least 3 years after the vote.

(e) An institution and its officers, directors, and employees may not make any public announcement of the results of a stockholder vote before the tellers committee or independent third party has validated the results of the vote.

**§ 611.350 Application of cooperative principles to the election of directors.**

In the election of directors, each Farm Credit institution shall comply with the following cooperative principles as well as those set forth in § 615.5230 of this chapter, unless otherwise required by statute or regulation.

(a) Each voting stockholder of an association or bank for cooperatives has only one vote, regardless of the number of shares owned or the number of loans outstanding. Each voting stockholder-association of a Farm Credit Bank has only one vote that is assigned a weight proportional to the number of that association's voting stockholders. Each voting stockholder of an agricultural credit bank has only one vote, unless otherwise approved by the Farm Credit Administration.

(b) Each voting stockholder must be accorded the right to vote in the election of each stockholder-elected director, unless regional voting in director elections is provided for in the institution's bylaws. When electing directors by regions, pursuant to § 611.335, each voting stockholder must be accorded the right to vote in the election of each stockholder-elected director for their region.

(c) If the association apportions its territory into geographic regions for director nomination or election purposes, out-of-territory voting stockholders must be assigned to a geographic region.

(d) Each voting stockholder of a Farm Credit institution must be allowed to cumulate votes and distribute them among the director-nominees at the stockholder's discretion unless otherwise provided in the bylaws or in the case of regional voting in director elections. Cumulative voting is not allowed in the regional voting of directors. A Farm Credit Bank may eliminate cumulative voting if 75 percent of the associations that are voting stockholders of the Farm Credit Bank vote in favor of elimination. In a vote to eliminate cumulative voting, each association shall be accorded one vote that is not a weighted vote.

(e) All voting stockholders of a Farm Credit institution have the right to vote in any stockholder vote to remove any director.

## Subpart P—Termination of System Institution Status

10. Revise § 611.1240(e) to read as follows:

**§ 611.1240 Voting record date and stockholder approval.**

* * * * *

(e) *Voting procedures.* The voting procedures must comply with § 611.340. You must have an independent third party count the ballots. If a voting stockholder notifies you of the stockholder's intent to exercise dissenters' rights, the tabulator must be able to verify to you that the stockholder voted against the termination. Otherwise, the votes of stockholders must remain confidential.

* * * * *

## PART 613—ELIGIBILITY AND SCOPE OF FINANCING

11. The authority citation for part 613 continues to read as follows:

**Authority:** Secs. 1.5, 1.7, 1.9, 1.10, 1.11, 2.2, 2.4, 2.12, 3.1, 3.7, 3.8, 3.22, 4.18A, 4.25, 4.26, 4.27, 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2017, 2018, 2019, 2073, 2075, 2093, 2122, 2128, 2129, 2143, 2206a, 2211, 2212, 2213, 2243, 2252).

## Subpart C—Similar Entity Authority Under Sections 3.1(11)(B) and 4.18A of the Act

**§ 613.3300 [Amended]**

12. Amend § 613.3300(c)(1)(i)(B) by removing the words ''if a majority of the shareholders'' and adding in their place the words ''if a majority of voting stockholders voting''.

## PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

13. The authority citation for part 615 continues to read as follows:

**Authority:** Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.3, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6, 2279aa, 2279aa–3, 2279aa–4, 2279aa–6, 2279aa–7, 2279aa–8, 2279aa–10, 2279aa–12); sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

## Subpart I—Issuance of Equities

14. Amend § 615.5230 by revising paragraphs (a) and (b)(1) and by removing paragraph (b)(5) to read as follows:

**§ 615.5230 Implementation of cooperative principles.**

(a) Voting stockholders of Farm Credit banks and associations shall be accorded full voting rights in accordance with cooperative principles. Except as otherwise required by statute or regulation and except as modified by paragraph (b) of this section, the voting rights of each voting stockholder are as follows:

(1) Each voting stockholder of an association or bank for cooperatives has only one vote, regardless of the number of shares owned or the number of loans outstanding.

(2) Each voting stockholder-association of a Farm Credit Bank has only one vote that is assigned a weight proportional to the number of that association's voting stockholders.

(3) Each voting stockholder of an agricultural credit bank has only one vote unless otherwise approved by the Farm Credit Administration.

(b) * * *

(1) Each issuance of preferred stock (other than preferred stock outstanding on October 5, 1988, and stock into which such outstanding stock is converted that has substantially similar preferences) shall be approved by a majority of the shares voting of each class of equities adversely affected by the preference, voting as a class, whether or not such classes are otherwise authorized to vote;

* * * * *

## PART 619—DEFINITIONS

15. The authority citation for part 619 is revised to read as follows:

**Authority:** Secs. 1.4, 1.7, 2.1, 2.4, 2.11, 3.2, 3.21, 4.9, 5.9, 5.17, 5.18, 5.19, 7.0, 7.1, 7.6, 7.8 and 7.12 of the Farm Credit Act (12 U.S.C. 2012, 2015, 2072, 2075, 2092, 2123, 2142, 2160, 2243, 2252, 2253, 2254, 2279a, 2279a–1, 2279b, 2279c–1, 2279f).

16. Add new § 619.9320 to read as follows:

**§ 619.9320 Shareholder or stockholder.**

A holder of any equity interest in a Farm Credit institution.

## PART 620—DISCLOSURE TO SHAREHOLDERS

17. The authority citation for part 620 continues to read as follows:

**Authority:** Secs. 4.19, 5.9, 5.17, 5.19, 8.11 of the Farm Credit Act (12 U.S.C. 2207, 2243, 2252, 2254, 2279aa–11); sec. 424 of Pub. L. 100–233, 101 Stat. 1568, 1656.

## Subpart A—General

### § 620.1 [Amended]

18. Amend § 620.1 by removing paragraph (p) and redesignating paragraphs (q) and (r) as paragraphs (p) and (q).

## Subpart E—Annual Meeting Information Statements and Other Information To Be Furnished in Connection With Annual Meetings and Director Elections

19. Revise the heading of subpart E to read as set forth above.

20. Amend subpart E by adding a new § 620.20 to read as follows:

### § 620.20 Preparing and distributing the information statement.

(a)(1) Each Farm Credit bank and association must prepare and provide an information statement (''statement'' or ''AMIS'') to its shareholders at least 10 business days, but no more than 30 business days, before any annual meeting or any director elections.

(2) Each Farm Credit bank and association must provide to the Farm Credit Administration an electronic copy of the AMIS when issued.

(3) In addition to the mailed AMIS, each Farm Credit bank and association may post its AMIS on its Web site. Any AMIS posted on an institution's Web site must remain on the Web site for a reasonable period of time, but not less than 30 calendar days.

(b) Every AMIS must be dated and signed in accordance with the requirements of § 620.3(b) of this part.

(c) Every AMIS must be available for public inspection at all offices of the issuing institution pursuant to § 620.2(b) of this part.

21. Amend § 620.21 by revising the heading, removing the introductory text, and revising paragraphs (a) through (d) to read as follows:

### § 620.21 Contents of the information statement.

(a) An AMIS must, at a minimum, address the following items:

(1) *Date, time, and place of the meeting(s).* Notice of the date, time, and meeting location(s) must be provided at least 10 business days, but no more than 30 business days, before the meeting. If the Farm Credit bank or association will use an online meeting space as part of its meeting, the notice must also specify the date, time, and means of accessing the online meeting space.

(2) *Voting shareholders.* For each class of stock entitled to vote at the meeting, state the number of shareholders entitled to vote and, when shareholders are asked to vote on preferred stock, the number of shares entitled to vote. State the record date as of which the shareholders entitled to vote will be determined and the voting requirements for each matter to be voted upon. If directors are nominated or elected by region, describe the regions and state the number of voting shareholders entitled to vote in each region.

(3) *Financial updates.* Each AMIS must reference the most recently issued annual report required by subpart B of this part. The AMIS must also include such other information considered material and necessary to make the required contents of the AMIS, in light of the circumstances under which it is made, not misleading.

(i) If any transactions between the institution and its senior officers and directors of the type required to be disclosed in the annual report to shareholders under § 620.5(j), or any of the events required to be disclosed in the annual report to shareholders under § 620.5(k) have occurred since the end of the last fiscal year and were not disclosed in the annual report to shareholders, the disclosures required by § 620.5(j) and (k) shall be made with respect to such transactions or events in the information statement. If any material change in the matters disclosed in the annual report to shareholders pursuant to § 620.5(j) and (k) has occurred since the annual report to shareholders was prepared, disclosure shall be made of such change in the information statement.

(ii) If the Farm Credit institution has had a change or changes in accountants since the last annual report to shareholders, or if a disagreement with an accountant has occurred, the institution shall disclose the information required by § 621.4(c) and (d) of this chapter.

(4) *Directors.* State the names and ages of persons currently serving as directors of the institution, their terms of office, and the periods during which such persons have served. Institutions must also state the type or types of agriculture or aquaculture engaged in by each director. No information need be given with respect to any director whose term of office as a director will not continue after the meeting to which the statement relates.

(i) Identify by name any incumbent director who attended fewer than 75 percent of the board meetings or any meetings of board committees on which he or she served during the last fiscal year.

(ii) If any director resigned or declined to stand for re-election since the last annual meeting because of a policy disagreement with the board, and if the director has provided a notice requesting disclosure of the nature of the disagreement, state the date of the director's resignation and summarize the director's description of the disagreement. If the institution holds a different view of the disagreement, the institution's view may be summarized.

(b) An AMIS issued for director elections must also include the information required by this paragraph.

(1) Provide the nominating committee's slate of director-nominees. If fewer than two director-nominees for each position are named, describe the efforts of the nominating committee to locate two willing nominees.

(2) Provide, as part of the AMIS, each director-nominee's disclosure information collected under § 611.330 of this chapter. Institutions may either restate such information in a standard format or provide complete copies of each nominee's disclosure statement.

(3) State whether nominations will be accepted from the floor and explain the procedures for making floor nominations.

(c) When the nominating committee will be elected during director elections, notice to voting shareholders of this event must be included in the AMIS. The AMIS must describe the balloting procedures that will be used to elect the nominating committee, including whether floor nominations for committee members will be permitted. The AMIS must state the number of committee positions to be filled and the names of the nominees for the committee.

(d) If shareholders are asked to vote on matters not normally required to be submitted to shareholders for approval, the AMIS must describe fully the material circumstances surrounding the matter, the reason shareholders are asked to vote, and the vote required for approval of the proposition. The AMIS must describe any other matter that will be discussed at the meeting upon which shareholder vote is not required.

* * * * *

Dated: April 10, 2009.

**Roland E. Smith,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. E9–8750 Filed 4–15–09; 8:45 am]

BILLING CODE 6705–01–P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket No. USCG–2009–0012]**

**RIN 1625–AA00**

## Safety Zone: Gwynn Island 4th of July Fireworks, Piankatank River, Gwynn Island, VA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a safety zone on the Piankatank River in the vicinity of Gwynn Island, VA in support of the Gwynn Island 4th of July Fireworks event. This action is intended to restrict vessel traffic movement on the Piankatank River to protect mariners from the hazards associated with fireworks displays.

**DATES:** Comments and related material must be received by the Coast Guard on or before June 15, 2009. Requests for public meetings must be received by the Coast Guard on or before May 1, 2009.

**ADDRESSES:** You may submit comments identified by docket number USCG–2009–0012 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these methods. For instructions on submitting comments, see the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or e-mail Lieutenant Tiffany Duffy, U.S. Coast Guard, Chief Waterways Management Division, Sector Hampton Roads at (757) 668–5580, e-mail *Tiffany.A.Duffy@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

### Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

*Submitting Comments*

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0012), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material Online (via *http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment Online via *http://www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand delivery, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment Online, go to *http://www.regulations.gov*, select the Advanced Docket Search option on the right side of the screen, insert ''USCG–2009–0012'' in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

*Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, select the Advanced Docket Search option on the right side of the screen, insert USCG–2009–0012 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

*Privacy Act*

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

*Public Meeting*

We do not now plan to hold a public meeting. But you may submit a request for one on or before May 1, 2009, using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**. For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact Lieutenant Tiffany Duffy, U.S. Coast Guard, Chief, Waterways Management Division, Sector Hampton Roads at (757) 668–5580.

### Background and Purpose

On July 4, 2009, the Mathews Fireworks Committee will sponsor a fireworks display on the Piankatank River in position 37°29″22′ N/76°18″54′ W (NAD 1983). Due to the need to protect mariners and spectators from the hazards associated with the fireworks display, access to the Piankatank River, within a 560 feet radius of the fireworks display, will be temporarily restricted.

### Discussion of Proposed Rule

The Coast Guard proposes establishing a safety zone on specified waters of the Piankatank River in the vicinity of Gwynn Island in Virginia. The proposed safety zone will encompass all navigable waters within a 560 feet radius of the fireworks display located in position 37°29″22′ N/76°18″54′ W (NAD 1983). We propose regulating this area because it is in the best interest of public safety to have

such a zone during the Gwynn Island 4th of July Fireworks event. We propose enforcing this zone from 9 p.m. to 10:15 p.m. on July 4, 2009, with a rain date of July 5, 2009. We propose restricting access to the safety zone during the specified date and times. Except for participants and vessels authorized by the Captain of the Port or his Representative(s), no person or vessel may enter or remain in the regulated area.

**Regulatory Analyses**

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

*Regulatory Planning and Review*

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. Although this proposed regulation restricts access to the safety zone, the effect of this rule will not be significant because: (i) The temporary safety zone will be in effect for a limited duration; (ii) the zone is of limited size; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

*Small Entities*

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities because the zone will only be in place for a limited duration and maritime advisories will be issued allowing mariners to adjust their plans accordingly. This rule may affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in that portion of the Piankatank River from 9 p.m. to 10:15 p.m. on July 4, 2009. However, the potential impact to these small entities would be so minimal as to not have a significant economic affect. This safety zone would be enforced for only one hour and fifteen minutes during evening hours when vessel traffic is low. Before enforcement of the zone, the Coast Guard will issue maritime advisories widely available to users of the river.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

*Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Tiffany Duffy, U.S. Coast Guard, Chief, Waterways Management Division, Sector Hampton Roads at (757) 668–5580. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

*Collection of Information*

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

*Federalism*

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

*Unfunded Mandates Reform Act*

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

*Taking of Private Property*

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

*Civil Justice Reform*

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

*Protection of Children*

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

*Indian Tribal Governments*

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

*Energy Effects*

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

*Technical Standards*

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their

regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

*Environment*

We have analyzed this proposed rule under Department of Homeland Security Directive 0023.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a safety zone around a fireworks display. The display is taking place on a beach and the safety zone is intended to keep mariners away from any hazardous materials that may land in the water. A preliminary ''Environmental Analysis Check List'' and preliminary categorical exclusion determination, supporting this determination will be available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this preamble. This rule is categorically excluded, under section 2.B.2. Figure 2–1, paragraph 34(g), of the Instruction and neither an environmental assessment nor an environmental impact statement is required. We seek any comments or information that may lead to discovery of a significant environmental impact from this proposed rule.

**List of Subjects 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.T05–0012 to read as follows:

**§ 165.T05–0012 Safety Zone: Gwynn Island 4th of July Fireworks, Piankatank River, Gwynn Island, VA.**

(a) Regulated Area: The following area is a safety zone: specified waters of the Piankatank River located within a 560 feet radius of the fireworks display at the approximate position of 37°29″22′ N/76°18″54′ W (NAD 1983) in the vicinity of Gwynn Island, VA.

(b) Definition: For the purposes of this part, Captain of the Port Representative means: any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his/her behalf.

(c) Regulations: (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his/her designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads can be reached through the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia at telephone Number (757) 668–5555.

(4) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF–FM marine band radio channel 13 (165.65Mhz) and channel 16 (156.8 Mhz).

(d) Enforcement Period: This regulation will be enforced on July 4, 2009, from 9 p.m. until 10:15 p.m., with a rain date of July 5, 2009, from 9 p.m. until 10:15 p.m.

Dated: April 2, 2009.

**Patrick B. Trapp,**

*Captain, U.S. Coast Guard, Captain of the Port, Hampton Roads.*

[FR Doc. E9–8722 Filed 4–15–09; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2009–0089]**

**RIN 1625–AA00**

## Safety Zone; Red Bull Air Race, Detroit River, Detroit, MI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes establishing a temporary safety zone on the Detroit River, Detroit, Michigan. This Zone is intended to restrict vessels from portions of the Detroit River during the Red Bull Air Race. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with air races.

**DATES:** Comments and related material must be received by the Coast Guard on or before May 1, 2009.

**ADDRESSES:** You may submit comments identified by docket number USCG–2009–0089 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or e-mail CDR Joseph Snowden, Prevention Department, Sector Detroit, Coast Guard; telephone (313) 568–9580, e-mail *Joseph.H.Snowden@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

**Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

**Submitting Comments**

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0089), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail or hand delivery, but please use only one of these means. A comment submitted online via *http://www.regulations.gov* will be considered received by the Coast Guard when the comment is successfully transmitted; a comment submitted via fax, hand delivery, or mail, will be considered as having been received by the Coast Guard when the comment is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* select the Advanced Docket Search option on the right side of the screen, insert ''USCG–2009–0089'' in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

**Viewing Comments and Documents**

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* select the Advanced Docket Search option on the right side of the screen, insert USCG–2009–0089 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

**Privacy Act**

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

**Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

**Background and Purpose**

The proposed temporary safety zone is necessary to ensure, to the extent practicable, the safety of vessels and the public from hazards associated with an air race. The Captain of the Port Detroit has determined that air races in close proximity to watercraft and infrastructure pose a significant risk to public safety and property. The likely combination of large numbers of recreation vessels, airplanes traveling at high speeds and performing aerial acrobatics, and large numbers of spectators in close proximity on the water could result in serious injuries or fatalities. Establishing a safety zone around the location of the race course will help ensure the safety of persons and property at these events and help minimize the associated risks. Likewise, the Windsor Port Authority intends to restrict vessel movement on the Canadian side of the Detroit River. The exclusionary area on the Canadian side will be aligned with the east and west borders of the U.S. safety zone and will extend to the shoreline along Windsor, ON.

**Discussion of Proposed Rule**

This proposed rule is intended to ensure safety of the public and vessels during the setup, course familiarization, time trials, and race in conjunction with the Red Bull Air Race. The air race and associated set-up and removal will occur between 9 a.m., June 11, 2009 and 6:30 p.m., June 14, 2009. The safety zone will be enforced daily from 9 a.m. to 6:30 p.m., June 11th through 14th, 2009. Specifically, on June 11–12, 2009, the river closure will be enforced as needed and therefore will be intermittent. On June 13, 2009, the river closure will total no more than 5 hours between the hours of 9 a.m. to 6:30 p.m. On June 14, 2009, the river closure will total no more than 6 hours between the hours of 9 a.m. to 6:30 p.m. The Coast Guard expects to have additional information from the event organizer before publication of the final rule, and expects to provide more specific information in the final rule regarding hours of enforcement for each day.

The safety zone will encompass all navigable waters of the United States on the Detroit River, Detroit, MI, bound by a line extending from a point on land southwest of Joe Louis Arena at position 42°19.4′ N; 083°3.3′ W, northeast along the Detroit shoreline to a point on land at position 42°20.0′ N; 083°1.2′ W, southeast to the international border with Canada at position 42°19.8′ N 083°1.0′ W, southwest along the international border to position 42°19.2′ N; 083°3.3′ W, and northwest to the point of origin at position 42°19.4′ N; 083°3.3′ W. (DATUM: NAD 83). The Captain of the Port will cause notice of enforcement of the safety zone established by this section to be made by all appropriate means to the affected segments of the public. Such means of notification will include, but are not limited to, Broadcast Notice to Mariners and Local Notice to Mariners. The Captain of the Port will issue a broadcast Notice to Mariners notifying the public when enforcement of the safety zone is terminated.

**Regulatory Analyses**

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

**Regulatory Planning and Review**

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

This determination is based on the minimal time that vessels will be restricted from the zone and the zone is an area where the Coast Guard expects minimal adverse impact to mariners from the zone's activation.

**Small Entities**

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the above portion of the Detroit River between 9 a.m. and 6 p.m. on June 11, through June 14, 2009.

The proposed safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for approximately six hours each day of the race. Additionally, small entities such as passenger vessels, have been involved in the planning stages for this event and have had ample time to make alternate arrangements with regards to mooring positions and business operations during the hours this safety zone will be in place. Furthermore, local sailing and yacht clubs will be notified prior to the event, by Coast Guard Station Belle Isle, with information on what to expect during the event with the intention of minimizing interruptions in their normal business practices. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Detroit to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast Notice to Mariners that the regulation is in effect. Additionally, the COTP will suspend enforcement of the safety zone if the event, for which the zone is established, ends earlier than the expected time.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact CDR Joseph Snowden, Prevention Department, Sector Detroit, Coast Guard; telephone (313) 568–9580, e-mail *Joseph.H.Snowden@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

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

**Technical Standards**

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications

of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

**Environment**

We have analyzed this proposed rule under Department of Homeland Security Management Directive 0023.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves the establishment of a safety zone. Based on our preliminary determination, there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. Because this event establishes a safety zone, paragraph (34)(g) of the Instruction applies.

We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Section 165.T09–0089 is added to read as follows:

**§ 165.T09–0089 Safety Zone; Red Bull Air Race, Detroit River, Detroit, MI.**

(a) *Location*. The following area is a temporary safety zone: All U.S. waters of the Detroit River, Detroit, MI, bound by a line extending from a point on land southwest of Joe Louis Arena at position 42°19.4′ N; 083°3.3′ W, northeast along the Detroit shoreline to a point on land at position 42°20.0′ N; 083°1.2′ W, southeast to the international boarder with Canada at position 42°19.8′ N 083°1.0′ W, southwest along the international border to position 42°19.2′ N; 083°3.3′ W, and northwest to the point of origin at position 42°19.4′ N; 083°3.3′ W. (DATUM: NAD 83).

(b) *Enforcement Period*. The safety zone will be enforced daily from 9 a.m. to 6:30 p.m. on June 11, 2009 through June 14, 2009.

(c) *Regulations*. (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit, or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or his on-scene representative to obtain permission to do so.

(5) Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port or his on-scene representative.

Dated: March 26, 2009.

**J.D. Jenkins,**

*Commander, U.S. Coast Guard, Acting Captain of the Port Detroit.*

[FR Doc. E9–8759 Filed 4–15–09; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 300

**RIN 0648–AX72**

## Identification and Certification of Nations Whose Fishing Vessels Are Engaged in Illegal, Unreported, or Unregulated Fishing or Bycatch of Protected Living Marine Resources

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

**ACTION:** Notice of public hearing; request for comments.

**SUMMARY:** On January 14, 2009, NMFS published a proposed rule for developing identification and certification procedures to address illegal, unreported, or unregulated (IUU) fishing activities and bycatch of protected living marine resources (PLMRs) pursuant to the High Seas Driftnet Fishing Moratorium Protection Act (Moratorium Protection Act). On March 3, 2009, NMFS announced five public hearings to discuss and collect comments on the issues described in the proposed rule. This notice is to announce an additional public hearing.

**DATES:** The additional hearing will be held on April 27, 2009, from 11:00 a.m. to 1:00 p.m. The due date for written comments has not changed and must be received no later than 5:00 p.m. Eastern time on May 14, 2009.

**ADDRESSES:** The additional public hearing will be held at 1601 Kapiolani Blvd, 11th Floor, (the main reception is on the 11th floor and all visitors must check in), Honolulu, HI 96814; phone 808–944–2280.

Written comments on this action, identified by RIN 0648–AV51, may be submitted by any of the following methods:

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

• Mail: Laura Cimo, Trade and Marine Stewardship Division, Office of International Affairs, NMFS, 1315 East–West Highway, Silver Spring, MD 20910.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter

may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Laura Cimo (ph. 301–713–9090, fax 301–713–9106, e–mail *Laura.Cimo@noaa.gov*).

**SUPPLEMENTARY INFORMATION:** On January 14, 2009 (74 FR 2019), NMFS published a proposed rule for developing certification procedures to address IUU fishing activities and PLMR bycatch pursuant to the Moratorium Protection Act. The regulatory measures proposed in this rule encourage nations to cooperate with the United States towards ending IUU fishing and reducing the bycatch of PLMRs.

Under the proposed rule, NMFS is required to identify foreign nations whose fishing vessels are engaged in IUU fishing or fishing activities or practices that result in bycatch of PLMRs in a biennial report to Congress. Once a nation has been identified in the biennial report, a notification and consultation process will be initiated. Subsequent to this process, NMFS will initiate a certification process regarding identified nations that considers whether the government of an identified nation has provided evidence that sufficient corrective action has been taken with respect to the activities described in the report or whether the relevant international fishery management organization has implemented measures that are effective in ending the IUU fishing activity by vessels of that nation. Nations will either receive a positive or a negative certification.

The absence of sufficient action by an identified nation to address IUU fishing and/or PLMR bycatch may lead to the denial of port privileges for vessels of that nation, prohibitions on the importation of certain fish or fish products into the United States from that nation, or other measures.

Identified nations that are not positively certified by the Secretary of Commerce could be subject to prohibitions on the importation of certain fisheries products into the United States and other measures, including limitations on port access, under the High Seas Driftnet Fisheries Enforcement Act (16 U.S.C. 1826a).

## Request for Comments

NMFS will hold six public hearings to receive oral and written comments on these proposed actions. Five public hearings were announced on March 3, 2009 (74 FR 9207). This notice provides information on an additional public hearing. Comments received on the proposed rule will assist NMFS in developing a final rule.

## Special Accommodations

The sessions are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Laura Cimo (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the session.

Dated: April 13, 2009.

**Jean–Pierre Ple,**

*Acting Director, Office of International Affairs, National Marine Fisheries Service.*

[FR Doc. E9–8751 Filed 4–13–09; 4:15 pm]

BILLING CODE 3510–22–S

# Notices

Federal Register

Vol. 74, No. 72

Thursday, April 16, 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

April 10, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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

### Agricultural Marketing Service

*Title*: Farmers Market Questionnaire.

*OMB Control Number:* 0581–0169.

*Summary of Collection*: The Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627) authorizes the Transportation and Marketing (T&M) Program, Agricultural Marketing Service (AMS) to conduct research to find better designs, development techniques, and operating methods for modern farmer's markets under the Agency's Marketing Service Branch. Individual studies are conducted in close cooperation with local interested parties. Recommendations are made available to local decision makers interested in constructing modern farmer's markets to serve area producers and consumers. T&M researchers will survey by mail, with telephone follow-up, the managers of farmer's markets. These markets represent a varied range of sizes, geographical locations, types, ownership, and structure and will provide a valid overview of farmer's markets in the United States.

*Need and Use of the Information:* The form, TM–6 ''Farmer's Market Questionnaire,'' is used to collect information and will serve as a survey instrument to obtain a clearer picture of existing farmer's market structure as well as provide a measure of growth. Information such as the size of markets, operating times and days, retail and wholesale sales, management structure, and rules and regulations governing the markets are all important questions that need to be answered in the design of a new market. The information developed by this survey will support better designs, development techniques, and operating methods for modern farmers markets and outline improvements that can be applied to revitalize existing markets. If this information is not collected, the ongoing research to develop new farmers' markets must rely on limited and often anecdotal information. This narrow focus will limit the ability of researchers to provide effective designs and development plans for new markets where such information is not immediately available.

*Description of Respondents*: Not-for-profit institutions.

*Number of Respondents:* 4,685.

*Frequency of Responses*: Reporting: Biennially.

*Total Burden Hours:* 356.

**Charlene Parker,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. E9–8649 Filed 4–15–09; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

### Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* United States Patent and Trademark Office (USPTO).

*Title:* Madrid Protocol.

*Form Number(s):* PTO–2131, PTO–2132, PTO–2133.

*Agency Approval Number:* 0651–0051.

*Type of Request:* Revision of a currently approved collection.

*Burden:* 1,347 hours annually.

*Number of Respondents:* 5,330 responses per year.

*Avg. Hours per Response:* The USPTO estimates that it will take the public approximately 15 minutes (0.25 hours) to one hour to complete the information in this collection, including the time to gather the necessary information, prepare the forms or documents, and submit the completed request.

*Needs and Uses:* The Madrid Protocol is an international treaty that allows a trademark owner to seek registration in any of the participating countries by filing a single international application. The public uses this collection to submit applications for international registration and related requests to the USPTO under the Madrid Protocol. This collection includes electronic forms for filing the Application for International Registration (PTO–2131), Subsequent Designation (PTO–2132), and Response to Notice of Irregularity (PTO–2133) online through the USPTO Web site.

*Affected Public:* Individuals or households; businesses or other for-profits; and not-for-profit institutions.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Nicholas A. Fraser, e-mail: *Nicholas_A._Fraser@omb.eop.gov*.

Once submitted, the request will be publicly available in electronic format through the Information Collection Review page at *http://www.reginfo.gov*.

Paper copies can be obtained by:

- *E-mail: Susan.Fawcett@uspto.gov.* Include ''0651–0051 Madrid Protocol copy request'' in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan K. Fawcett.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, Administrative Management Group, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before May 18, 2009 to Nicholas A. Fraser, OMB Desk Officer, via e-mail at *Nicholas_A._Fraser@omb.eop.gov,* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

**Susan K. Fawcett,**

*Records Officer, USPTO, Office of the Chief Information Officer, Administrative Management Group.*

[FR Doc. E9–8738 Filed 4–15–09; 8:45 am]

**BILLING CODE 3510–16–P**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–557–813, A–549–821, A–570–886]**

### Polyethylene Retail Carrier Bags From Malaysia, Thailand, and the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Reviews

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

**DATES:** *Effective Date:* April 15, 2009.

**FOR FURTHER INFORMATION CONTACT:** Jerrold Freeman or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone: (202) 482–0180 or (202) 482–4477, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

At the request of interested parties, the Department of Commerce (the Department) initiated administrative reviews of the antidumping duty orders on polyethylene retail carrier bags from Malaysia, Thailand, and the People's Republic of China for the period August 1, 2007, through July 31, 2008. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 73 FR 56795 (September 30, 2008).

#### Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. If it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days after the last day of the anniversary month. *See also* 19 CFR 351.213(h)(2).

We determine that it is not practicable to complete the preliminary results of these three administrative reviews by the current deadline of May 3, 2009, for several reasons. Specifically, the Department has granted the respondents in each of the reviews several extensions to respond to the original and supplemental questionnaires. Thus, the Department needs additional time to review and analyze the responses submitted by the respondents in each review. Further, the Department requires additional time to review, and verify as appropriate, cost-of-production and/or sales information submitted by various respondents in each of the reviews. Therefore, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), we are partially extending the time period for issuing the preliminary results of these reviews until July 2, 2009.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act and 19 CFR 351.213(h)(2).

Dated: April 9, 2009.

**John M. Andersen,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. E9–8647 Filed 4–15–09; 8:45 am]

**BILLING CODE 3510–DS–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XN64**

### Endangered Species; File No. 10027

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

**ACTION:** Notice; receipt of application for permit modification

**SUMMARY:** Notice is hereby given that the Center for Biodiversity and Conservation, American Museum of Natural History, Central Park West at 79th Street, New York, New York 10024, has requested a modification to scientific research Permit No. 10027.

**DATES:** Written, telefaxed, or e-mail comments must be received on or before May 18, 2009.

**ADDRESSES:** The modification request and related documents are available for review upon written request or by appointment in the following offices:

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

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808)944–2200; fax (808)973–2941.

Written comments or requests for a public hearing on this request should be submitted 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 modification 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. 10027.

**FOR FURTHER INFORMATION CONTACT:** Patrick Opay or Amy Hapeman, (301)713–2289.

**SUPPLEMENTARY INFORMATION:** The subject modification to Permit No. 10027 is requested under the authority

of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 10027, issued on July 30, 2008 (73 FR 44224), authorizes the permit holder to study the population biology and connectivity of green (*Chelonia mydas*) and hawksbill (*Eretmochelys imbricata*) sea turtles focusing on distribution and abundance, ecology, health, and threats to sea turtles at the Palmyra Atoll in the Pacific Ocean. The permit holder requests a modification to their existing permit to increase the number of green sea turtles they may take each year. Researchers propose to annually satellite tag up to 16 animals; annually sonic transmitter tag up to 30 animals; annually blood and tissue sample up to 100 animals; annually flipper and PIT tag up to 100 animals; and annually gastric lavage up to 50 animals. The modification would allow them to more quickly accumulate appropriate sample sizes so that information from the study can help inform conservation and management of this species in the Pacific. The amended permit would expire July 31, 2013.

Dated: April 10, 2009.

**Tammy C. Adams,**

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

[FR Doc. E9–8756 Filed 4–15–09; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XO56**

### Endangered Species; File No. 1549–01

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

**ACTION:** Notice; issuance of permit modification.

**SUMMARY:** Notice is hereby given that Dr. Boyd Kynard, S.O. Conte Anadromous Fish Research Center (USGS-BRD), Box 796, One Migratory Way, Turners Falls, MA 01376, has been issued a modification to scientific research Permit No. 1549–01.

**ADDRESSES:** The modification and related documents are available for review upon written request or by appointment in the following offices:

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

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

**FOR FURTHER INFORMATION CONTACT:** Malcolm Mohead or Kate Swails, (301)713–2289.

**SUPPLEMENTARY INFORMATION:** On August 4, 2008, notice was published in the **Federal Register** (73 FR 45215) that a modification of Permit No. 1549 had been requested by the above-named individual. The requested modification has been granted under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

In addition to all research activities authorized under Permit No. 1549, this modification authorizes the researcher to conduct new research in the Merrimack River to: (1) take 200 adult/large juvenile and 100 small juvenile (0–3 years) shortnose sturgeon; (2) use trawls for capture of smaller juveniles; (3) telemetry tag 15 adults/large juveniles and 15 early juveniles; (4) change the action area to include the Estuary to I–495 at Haverhill, MA; and (5) increase incidental mortality of shortnose sturgeon to a total of two sturgeon, but only one adult per year. The purpose of the modification is to provide a mark/recapture population estimate of shortnose sturgeon for the river and to provide evidence for recolonization verses recruitment to explain an apparent recent increase in abundance of shortnose sturgeon recently found in the river. This modification is valid through the expiration date of the original permit, January 31, 2012.

Issuance of this modification, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: April 9, 2009.

**Tammy C. Adams,**

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

[FR Doc. E9–8757 Filed 4–15–09; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket 14–2009]**

### Foreign-Trade Zone 15—Kansas City, Missouri Area; Application for Reorganization/Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Greater Kansas City Foreign-Trade Zone, Inc., grantee of FTZ 15, requesting authority to reorganize and expand the zone in the Kansas City, Missouri, area, within the Kansas City Customs and Border Protection port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on April 8, 2009.

FTZ 15 was approved by the Board on March 23, 1973 (Board Order 93, 38 FR 8622, 4/4/73) and expanded on December 20, 1973 (Board Order 97, 39 FR 26, 1/2/74), on October 25, 1974 (Board Order 102, 39 FR 39487, 11/7/74), on February 28, 1996 (Board Order 804, 61 FR 9676, 3/11/96), on May 31, 1996 (Board Order 824, 61 FR 29529, 6/11/96), on December 8, 1997 (Board Order 934, 62 FR 65654, 12/15/97), on October 19, 1998 (Board Order 1004, 63 FR 59761, 11/5/98), on January 8, 1999 (Board Order 1016, 64 FR 3064, 1/20/99), on June 17, 1999 (Board Order 1042, 64 FR 34188, 6/25/99), on April 15, 2002 (Board Order 1226, 67 FR 20087, 4/24/02), on April 20, 2005 (Board Order 1388, 70 FR 22630, 5/2/05), and on September 7, 2007 (Board Order 1524, 72 FR 53228, 9/18/07).

The general-purpose zone project currently consists of 14 sites (13,338 acres total): *Site 1* (5.7 acres)—Midland International Corporation warehouse facility located at 1650 North Topping in Kansas City; *Site 1A* (3 acres)—1226 Topping Drive in Kansas City; *Site 2* (64 acres)—warehouse complex located at 8300 NE Underground Drive and 3600 Great Midwest Drive in Kansas City; *Site 3* (9,615 acres)—within the 10,000 acre Kansas City International Airport facility in Kansas City; *Site 3A* (1 acre)—located at 10201 North Everton in Kansas City; *Site 3B* (384 acres, 5 parcels) located in Kansas City as follows: Parcel 1 (68 acres)—the Air World Center Business Park located at the intersection of Interstate Highway 29 and 12th Street; Parcel 2 (66 acres)—the Congress Corporate Center Industrial Park located at the intersection of 112th Street and North Congress; Parcel 3 (161 acres)—an industrial park located at 11401 North Congress; Parcel 4 (37

acres)—7501 NW 106th Terrace; and, Parcel 5 (52 acres)—the KCI Logistics Center, located at the intersection of NW 104th Street and Interstate Highway 29; *Site 4* (416 acres)—the Carefree Industrial Park located at 1600 N. Missouri Highway 291 in Sugar Creek/Independence; *Site 5* (1,000 acres) the CARMAR Underground Business Park/CARMAR Industrial Park located at No. 1 Civil War Road in Carthage; *Site 7* (1,567 acres)—the Richards-Gebaur Memorial Airport/Industrial Park complex located at 1540 Maxwell in Kansas City; *Site 8* (26 acres, 2 parcels)—20 acres located at Ryan Road and Brunswick Road and 6 acres located at 411 Brunswick Road, both in Chillicothe; *Site 9* (10 acres)—located at 3800 South 48th Terrace in St. Joseph; *Site 10* (72 acres)—located at 8201 East 23rd Road in Kansas City; *Site 11* (49 acres, 3 parcels)—located at 13700 South Highway 71 (18 acres), 5610 East 139th Street (9 acres), and, 13500 15th Street (22 acres), all in Grandview; *Site 12* (125 acres)—the Botts warehouse located 14100 Botts Road in Grandview.

The applicant is now requesting that the Board grant permanent authority for Parcel 4 and Parcel 5 of *Site 3B,* which were granted temporary designation through an administrative action with authority expiring 12/31/09. As part of the zone reorganization, Parcel 5 of *Site 3B* (52 acres) will become part of existing *Site 3,* while Parcel 4 of *Site 3B* (37 acres) will become proposed *Site 13.* The applicant is also requesting that zone status be restored to the acreage that was temporarily transferred from *Site 3B,* Parcel 2 (89 acres) to create the temporary sites. Proposed *Site 13* is currently being used for warehousing, storage and distribution activities, while the acreage being transferred to *Site 3* is part of the KCI Intermodal Business Centre, which is currently undeveloped. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, Christopher Kemp of the FTZ staff is designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address listed below. The closing period for their receipt is June 15, 2009. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to June 30, 2009).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.* For further information, contact Christopher Kemp at *christopher_kemp@ita.doc.gov* or (202) 482–0862.

Dated: April 8, 2009.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. E9–8766 Filed 4–15–09; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XO72**

### Marine Mammals; File No. 1000–1617

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

**ACTION:** Notice; receipt of application for amendment.

**SUMMARY:** Notice is hereby given that Whitlow Au, University of Hawaii, Hawaii Institute of Marine Biology, Marine Mammal Research Program, PO Box 1106, Kailua, Hawaii 96734, has applied for an amendment to Scientific Research Permit No. 1000–1617–04.

**DATES:** Written, telefaxed, or e-mail comments must be received on or before May 18, 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*, and then selecting File No. 1000–1617 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;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018; and

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808)944–2200; fax (808)973–2941.

Written comments or requests for a public hearing on this request should be submitted 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 amendment 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. 1000–1617.

**FOR FURTHER INFORMATION CONTACT:** Kristy Beard or Carrie Hubard, (301)713–2289.

**SUPPLEMENTARY INFORMATION:** The subject amendment to Permit No. 1000–1617–04 is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

Permit No. 1000–1617 was issued on June 22, 2001 (66 FR 34155), and has since been amended four times. The permit currently authorizes behavioral observations, photo-identification, genetic sampling, and suction-cup tagging of cetaceans in Hawaii and California. The purpose of the small cetacean research is to investigate population structure, genetic variability, dispersal patterns, social structure, and foraging and diving behavior. Large whale research on humpback whales (*Megaptera novaeangliae*), killer whales (*Orcinus orca*), and Cuvier's and Blainville's beaked whales (*Ziphius cavirostris* and *Mesoplodon densirostris*) focuses on behavior and use of the acoustic environment. The permit holder is now requesting an increase in the number of suction cup tags to be deployed on nine non-ESA-listed species of small cetaceans, and to allow acoustic playbacks to 18 non-ESA-listed cetacean species around Hawaii. The purpose of increased suction cup tagging is to collect adequate data to address the research objectives; because the duration of tag attachment is highly variable, more tagging attempts are required to account for very short

attachment times where behavior may be biased by reactions to the tagging. Requested increases are up to 200 tags on pantropical spotted dolphins (*Stenella attenuata*), 80 on spinner dolphins (*S. longirostris*), 60 on short-finned pilot whales (*Globicephala macrorhynchus*), 50 on melon-headed whales (*Peponocephala electra*), and 40 each on pygmy and false killer whales (*Feresa attenuata* and *Pseudorca crassidens*) and on striped (*S. coeruleoalba*), rough-toothed (*Steno bredanensis*), and bottlenose dolphins (*Tursiops truncatus*). The purpose of acoustic playbacks is to determine the effects of noise on the behavior of cetaceans around Hawaii, and to research low-level sounds that might elicit mild alert responses. A maximum of 3000 spinner dolphins, 300 each of pygmy and dwarf sperm whales (*Kogia sima* and *K. breviceps*), 600 each of other authorized species of small cetaceans, and 270 each of killer whales, Cuvier's and Blainville's beaked whales would be exposed to playbacks. The amendment would be valid until the permit expires on November 15, 2010.

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: April 13, 2009.

**P. Michael Payne,**

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

[FR Doc. E9–8763 Filed 4–15–09; 8:45 am]

**BILLING CODE 3510–22–S**

## CONSUMER PRODUCT SAFETY COMMISSION

### Proposed Extension of Approval of Information Collection; Comment Request—Testing and Recordkeeping Requirements Under the Standard for the Flammability (Open Flame) of Mattresses

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** As required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Consumer Product Safety Commission (Commission) requests comments on a proposed three year extension of approval of information collection requirements in the Standard for the Flammability—Open Flame—of Mattresses Set (Open Flame standard), 16 CFR part 1633. The Commission has a separate flammability standard that addresses cigarette ignition of mattresses, 16 CFR part 1632. The Open Flame standard is intended to reduce unreasonable risks of burn injuries and deaths from fires associated with mattresses, particularly those initially ignited by open flame sources such as lighters, candles, and matches. The Open Flame standard prescribes a test to minimize or delay flashover when a mattress is ignited. The standard requires manufacturers to test specimens of each of their mattress prototypes before mattresses based on that prototype may be introduced into commerce. The Office of Management and Budget (OMB) previously approved the collection of information under control number 3041–0133. OMB's most recent extension of approval will expire on June 30, 2009. The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from OMB.

**DATES:** Written comments must be received by the Office of the Secretary not later than June 15, 2009.

**ADDRESSES:** Written comments should be captioned ''Collection of Information—Mattress Sets (Open Flame) Standard'' and e-mailed to *cpsc-os@cpsc.gov*. Comments may also be sent by facsimile to (301) 504–0127, or by mail to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814.

**FOR FURTHER INFORMATION CONTACT:** For information about the proposed renewal of this collection of information, or to obtain a copy of the pertinent regulations, call or write Linda L. Glatz, Division of Policy and Planning, Office of Information Technology and Technology Services, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; (301) 504–7671, or by e-mail to *lglatz@cpsc.gov*.

**SUPPLEMENTARY INFORMATION:**

#### A. Estimated Burden

The Commission staff estimates that at this time there are 571 firms producing conventional mattresses and 100 firms producing non-conventional mattresses for a total of 671 firms affected by this standard. The staff further estimates that each firm will spend 4 hours and 44 minutes hours for testing and recordkeeping annually per prototype. The staff estimates that there will be an average of 20 different prototypes tested by each firm for a total of 94.7 hours per firm (4.73 hours × 20 prototypes). The annual time cost for testing and recordkeeping for all firms is estimated to be 63,521 hours (94.7 hours × 671 firms). The annualized cost is estimated to be $1.7 million based on an hourly wage for the recordkeeping of approximately $27.14 (Bureau of Labor Statistics: All workers, goods-producing industries, sales and office, September 2008) × 63,521 hours.

The Commission will expend approximately fifty months of professional staff time annually for reviewing testing, record review and follow-up on consumer complaints and reports of injury. The annual cost to the Federal government of the collection of information on the Open Flame standard is estimated to be $830,380.

#### B. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: April 10, 2009.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. E9–8720 Filed 4–15–09; 8:45 am]

**BILLING CODE 6355–01–P**

## CONSUMER PRODUCT SAFETY COMMISSION

### Proposed Extension of Approval of Information Collection; Comment Request—Children's Sleepwear

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (Commission) requests comments on a proposed extension of approval, for a period of three years from the date of approval by

the Office of Management and Budget (OMB), of a collection of information from manufacturers and importers of children's sleepwear. This collection of information is in the Standard for the Flammability of Children's Sleepwear: Sizes 0 through 6X and the Standard for the Flammability of Children's Sleepwear: Sizes 7 through 14 and regulations implementing those standards. See 16 CFR Parts 1615 and 1616. The children's sleepwear standards and implementing regulations establish requirements for testing and recordkeeping by manufacturers and importers of children's sleepwear.

The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from OMB.

**DATES:** The Office of the Secretary must receive written comments not later than June 15, 2009.

**ADDRESSES:** Written comments should be captioned ''Children's Sleepwear, Collection of Information'' and sent by e-mail to *cpsc-os@cpsc.gov*. Comments may also be sent by facsimile to (301) 504–0127, or by mail to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814.

**FOR FURTHER INFORMATION CONTACT:** For information about the proposed collection of information call or write Linda Glatz, Division of Policy and Planning, Office of Information Technology and Technology Services, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7671 or by e-mail to *lglatz@cpsc.gov*.

**SUPPLEMENTARY INFORMATION:**

### A. The Standards

Children's sleepwear in sizes 0 through 6X manufactured for sale in or imported into the United States is subject to the Standard for the Flammability of Children's Sleepwear: Sizes 0 through 6X (16 CFR Part 1615). Children's sleepwear in sizes 7 through 14 is subject to the Standard for the Flammability of Children's Sleepwear: Sizes 7 through 14 (16 CFR Part 1616). The children's sleepwear flammability standards require that fabrics, seams, and trim used in children's sleepwear in sizes 0 through 14 must self-extinguish when exposed to a small open-flame ignition source. The children's sleepwear standards and implementing regulations also require manufacturers and importers of children's sleepwear in sizes 0 through 14 to perform testing of products and to maintain records of the results of that testing. 16 CFR Part 1615, Subpart B; 16 CFR Part 1616; Subpart B. The Commission uses the information compiled and maintained by manufacturers and importers of children's sleepwear to help protect the public from risks of death or burn injuries associated with children's sleepwear. More specifically, the Commission reviews this information to determine whether the products produced and imported by the firms comply with the applicable standard. Additionally, the Commission uses this information to arrange corrective actions if items of children's sleepwear fail to comply with the applicable standard in a manner that creates a substantial risk of injury to the public.

OMB approved the collection of information in the children's sleepwear standards and implementing regulations under control number 3041–0027. OMB's most recent extension of approval will expire on June 30, 2009. The Commission proposes to request an extension of approval for the collection of information in the children's sleepwear standards and implementing regulations.

### B. Estimated Burden

The Commission staff estimates that about 62 firms manufacture or import products subject to the two children's sleepwear flammability standards. These firms may perform an estimated 2,000 tests each that take up to three hours per test. The Commission staff estimates that these standards and implementing regulations will impose an average annual burden of about 6,000 hours on each of those firms (2,000 tests × 3 hours). That burden will result from conducting the testing required by the standards and maintaining records of the results of that testing required by the implementing regulations. The total annual burden imposed by the standards and regulations on all manufacturers and importers of children's sleepwear will be about 372,000 hours (62 firms × 6,000). The annual cost to the industry is estimated to be $20,415,360 based on an hourly wage of $54.88 (Bureau of Labor Statistics: All workers, goods-producing industries, management, professional and related, September 2008) × 372,000 hours.

The Commission will expend approximately three months of professional staff time annually for examination of information in the records maintained by manufacturers and importers of children's sleepwear subject to the standards. The annual cost to the Federal Government of the collection of information in the sleepwear standards and implementing regulations is estimated to be $41,516.

### C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;
—Whether the estimated burden of the proposed collection of information is accurate;
—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: April 10, 2009.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. E9–8719 Filed 4–15–09; 8:45 am]

BILLING CODE 6355–01–P

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## CONSUMER PRODUCT SAFETY COMMISSION

### Proposed Extension of Approval of Information Collection; Comment Request—Testing and Recordkeeping Requirements for Carpets and Rugs

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (Commission) requests comments on a proposed extension of approval, for a period of three years from the date of approval by the Office of Management and Budget (OMB), of information collection requirements for manufacturers and importers of carpets and rugs. The collection of information is in regulations implementing the Standard for the Surface Flammability of Carpets and Rugs (16 CFR Part 1630) and the Standard for the Surface Flammability of Small Carpets and Rugs (16 CFR Part 1631). These regulations establish requirements for testing and recordkeeping for manufacturers and importers who furnish guaranties for

products subject to the carpet flammability standards. The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from the OMB.

**DATES:** The Office of the Secretary must receive comments not later than June 15, 2009.

**ADDRESSES:** Written comments should be captioned ''Carpets and Rugs; Paperwork Reduction Act,'' and sent by e-mail to *cpsc-os@cpsc.gov*. Comments may also be sent by facsimile to (301) 504–0127, or by mail to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814.

**FOR FURTHER INFORMATION CONTACT:** For information about the proposed collection of information call or write Linda Glatz, Division of Policy and Planning, Office of Information Technology and Technology Services, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7671 or by e-mail to *lglatz@cpsc.gov*.

**SUPPLEMENTARY INFORMATION:**

## A. The Standards

Carpets and rugs that have one dimension greater than six feet, a surface area greater than 24 square feet, and are manufactured for sale in or imported into the United States are subject to the Standard for the Surface Flammability of Carpets and Rugs (16 CFR Part 1630). Carpets and rugs that have no dimension greater than six feet and a surface area not greater than 24 square feet are subject to the Standard for the Surface Flammability of Small Carpets and Rugs (16 CFR Part 1631).

Both of these standards were issued under the Flammable Fabrics Act (FFA) (15 U.S.C. 1191 *et seq.*). Both standards require that products subject to their provisions must pass a flammability test that measures resistance to a small, timed ignition source. Small carpets and rugs that do not pass the flammability test comply with the standard for small carpets and rugs if they are permanently labeled with the statement that they fail the standard and should not be used near sources of ignition.

Section 8 of the FFA (15 U.S.C 1197) provides that a person who receives a guaranty in good faith that a product complies with an applicable flammability standard is not subject to criminal prosecution for a violation of the FFA resulting from the sale of any product covered by the guaranty. Section 8 of the FFA requires that a guaranty must be based on ''reasonable and representative'' tests. Many manufacturers and importers of carpets and rugs issue guaranties that the products they produce or import comply with the applicable standard. Regulations implementing the carpet flammability standards prescribe requirements for testing and recordkeeping by firms that issue guaranties. See 16 CFR Part 1630, Subpart B, and 16 CFR Part 1631, Subpart B. The Commission uses the information compiled and maintained by firms that issue these guaranties to help protect the public from risks of injury or death associated with carpet fires. More specifically, the information helps the Commission arrange corrective actions if any products covered by a guaranty fail to comply with the applicable standard in a manner that creates a substantial risk of injury or death to the public. The Commission also uses this information to determine whether the requisite testing was performed to support the guaranties.

The OMB approved the collection of information in the regulations under control number 3041–0017. OMB's most recent extension of approval expires on June 30, 2009. The Commission now proposes to request an extension of approval for the collection of information in the regulations.

### *B. Estimated Burden*

The Commission staff estimates that the enforcement rules result in an industry expenditure of a total of 30,000 hours for testing and recordkeeping. The Commission staff estimates that 120 firms are subject to the information collection requirements because the firms have elected to issue a guaranty of compliance with the FFA. The number of tests that a firm issuing a guaranty of compliance would be required to perform each year varies, depending upon the number of carpet styles and the annual volume of production. The staff estimates that the average firm issuing a continuing guaranty under the FFA is required to conduct a maximum of 200 tests per year. The actual number of tests required by a given firm may vary from 1 to 200, depending upon the number of carpet styles and the annual production volume. For purposes of estimating the burden, the staff used the midpoint, 100 tests per year. The time required to conduct each test is estimated by the staff to be 2½ hours plus the time required to establish and maintain the test record. The total annualized burden to respondents may be up to 12,000 tests per year at 2.5 hours per test or 30,000 hours. The estimated annualized cost to respondents may be up to $1,646,400, based on an hourly wage of $54.88 (Bureau of Labor Statistics: All workers, goods-producing industries, management, professional and related, September 2008) × 30,000 hours. The estimated annual cost of the information and collection requirements to the Federal Government is approximately $42,000. This sum includes three staff months expended for examination of the records required to be maintained.

### *C. Request for Comments*

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: April 10, 2009.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. E9–8714 Filed 4–15–09; 8:45 am]

BILLING CODE 6355–01–P

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## CONSUMER PRODUCT SAFETY COMMISSION

### Proposed Extension of Approval of Information Collection; Comment Request—Baby Bouncers, Walker-Jumpers, and Baby-Walkers

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (Commission) requests comments on a proposed extension of approval, for a period of three years from the date of approval by the Office of Management and Budget (OMB), of information collection requirements for manufacturers and importers of children's articles known

as baby-bouncers, walker-jumpers, or baby-walkers. The collection of information consists of requirements that manufacturers and importers of these products must make, keep and maintain records of inspections, testing, sales, and distributions consistent with the provisions of the Federal Hazardous Substances Act, 15 U.S.C. 1261, 1262, and 16 CFR Part 1500.

The CPSC will consider all comments received in response to this notice before requesting approval of this collection of information from OMB.

**DATES:** The Office of the Secretary must receive written comments not later than June 15, 2009.

**ADDRESSES:** Written comments should be captioned ''Baby-Bouncers'' and sent by e-mail to *cpsc-os@cpsc.gov*. Comments may also be sent by facsimile to (301) 504–0127, or by mail to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814. *cpsc-os@cpsc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For information about the proposed collection of information call or write Linda Glatz, Division of Policy and Planning, Office of Information Technology and Technology Services, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7671 or by e-mail to *lglatz@cpsc.gov*.

**SUPPLEMENTARY INFORMATION:** Regulations issued under provisions of the Federal Hazardous Substances Act (15 U.S.C. 1261, 1262), codified at 16 CFR Part 1500, establish safety requirements for products called ''baby-bouncers,'' ''walker-jumpers,'' or ''baby-walkers.''

### A. Requirements for Baby-Bouncers, Walker-Jumpers, and Baby Walkers

One CPSC regulation bans any product known as a baby-bouncer, walker-jumper, baby-walker or similar article if it is designed in such a way that exposed parts present hazards of amputations, crushing, lacerations, fractures, hematomas, bruises or other injuries to children's fingers, toes, or other parts of the body. 16 CFR 1500.18(a)(6).

A second CPSC regulation establishes criteria for exempting baby-bouncers, walker-jumpers, and baby-walkers from the banning rule under specified conditions. 16 CFR 1500.86(a)(4). The exemption regulation requires certain labeling on these products and their packaging to identify the name and address of the manufacturer or distributor and the model number of the product. Additionally, the exemption regulation requires that records must be established and maintained for three years relating to testing, inspection, sales, and distributions of these products. The regulation does not specify a particular form or format for the records. Manufacturers and importers may rely on records kept in the ordinary course of business to satisfy the recordkeeping requirements if those records contain the required information.

If a manufacturer or importer distributes products that violate the banning rule, the records required by section 1500.86(a)(4) can be used by the manufacturer or importer and the CPSC (i) to identify specific models of products that fail to comply with applicable requirements, and (ii) to notify distributors and retailers if the products are subject to recall.

The OMB approved the collection of information requirements in the regulations under control number 3041–0019. OMB's most recent extension of approval expires on June 30, 2009. The CPSC now proposes to request an extension of approval without change for the collection of information requirements.

### B. Estimated Burden

The CPSC staff estimates that about 34 firms are subject to the testing and recordkeeping requirements of the regulations. Firms are expected to test on the average two new models per year per firm. The CPSC staff estimates further that the burden imposed by the regulations on each of these firms is approximately 1 hour per year on the recordkeeping requirements and 30 minutes or less per model on the label requirements. Thus, the annual burden imposed by the regulations on all manufacturers and importers is approximately 68 hours on recordkeeping (34 firms × 2 hours) and 34 hours on labeling (34 firms × 1 hour) for a total annual burden of 102 hours per year.

The CPSC staff estimates that the hourly wage for the time required to perform the required testing and recordkeeping is approximately $54.88 (Bureau of Labor Statistics, All workers, goods-producing industries, management, professional and related September 2008), and the hourly wage for the time required to maintain the labeling requirements is approximately $27.14 (Bureau of Labor Statistics, All workers, goods-producing industries, sales and office September 2008). The annualized total cost to the industry is estimated to be $4,654.60 (68 hours × $54.88 plus 34 hours × $27.14).

The Commission will expend approximately two days of professional staff time reviewing records required to be maintained by the regulations for baby-bouncers, walker-jumpers, and baby-walkers. The annual cost to the Federal government of the collection of information in these regulations is estimated to be $1,277.51.

### C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: April 10, 2009.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. E9–8713 Filed 4–15–09; 8:45 am]

BILLING CODE 6355–01–P

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## CONSUMER PRODUCT SAFETY COMMISSION

## Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Children's Products Containing Lead; Procedures and Requirements for Commission Determination or Exclusion

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** The Consumer Product Safety Commission (Commission) is announcing that a collection of information entitled Children's Products Containing Lead; Procedures and Requirements for Commission Determination or Exclusion has been approved by the Office of Management and budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** Linda Glatz, Division of Policy and Planning, Office of Information Technology and Technology Services, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7671 or by e-mail to *lglatz@cpsc.gov.*

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of March 11, 2009, 74 FR 10475, 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 3041–0138. The approval expires on March 31, 2012. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: April 10, 2009.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. E9–8721 Filed 4–15–09; 8:45 am]

**BILLING CODE 6355–01–P**

## CONSUMER PRODUCT SAFETY COMMISSION

**[CPSC Docket No. 09–C0014]**

## Kidz World, Inc., d/b/a High Energy USA, Provisional Acceptance of a Settlement Agreement and Order

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Kidz World, Inc., d/b/a High Energy USA, containing a civil penalty of $25,000.00.

**DATES:** Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by May 1, 2009.

**ADDRESSES:** Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 09–C0014, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814–4408.

**FOR FURTHER INFORMATION CONTACT:** Dennis C. Kacoyanis, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7587.

**SUPPLEMENTARY INFORMATION:** The text of the Agreement and Order appears below.

Dated: April 9, 2009.

**Todd A. Stevenson,**

*Secretary.*

### Settlement Agreement

1. In accordance with 16 CFR 1118.20, Kidz World, Inc., d/b/a High Energy USA (''Kidz World'') and the staff (''Staff'') of the United States Consumer Product Safety Commission (''Commission'') enter into this Settlement Agreement (''Agreement''). The Agreement and the incorporated attached Order (''Order'') settle the Staff's allegations set forth below.

### Parties

2. The Commission is an independent federal regulatory agency established pursuant to, and responsible for the enforcement of the Consumer Product Safety Act, 15 U.S.C. 2051–2089 (''CPSA'').

3. Kidz World is a corporation organized and existing under the laws of the State of New York, with its principal offices located in New York, NY. Kidz World is an importer of apparel.

### Staff Allegations

4. From September 2007 to October 2007, Kidz World imported and/or sold to U.S. retailers about 5,000 boy's hooded sweatshirts with drawstrings (''Drawstring Sweatshirts'').

5. The Drawstring Sweatshirts are ''consumer product[s],'' and, at all times relevant hereto, Kidz World was a ''manufacturer'' of those consumer products, which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a), (5), (8), and (11), 15 U.S.C. 2052(a), (5), (8), and (11).

6. In February 1996, the Staff issued the Guidelines for Drawstrings on Children's Upper Outerwear (''Guidelines'') to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, the Staff recommends that there be no hood and neck drawstrings in children's upper outerwear sized 2T to 12.

7. In June 1997, ASTM adopted a voluntary standard, ASTM F1816–97, that incorporated the Guidelines. The Guidelines state that firms should be aware of the hazards and should be sure garments they sell conform to the voluntary standard.

8. On May 19, 2006, the Commission posted on its Web site a letter from the Commission's Director of the Office of Compliance to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper outerwear sold in the United States complies with ASTM F1816–97. The letter states that the Staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (''FHSA'') section 15(c), 15 U.S.C. 1274(c). The letter also notes the CPSA's section 15(b) reporting requirements.

9. Kidz World reported to the Commission there had been no incidents or injuries involving Drawstring Sweatshirts.

10. Kidz World's importation and distribution in commerce of the Drawstring Sweatshirts did not meet the Guidelines or ASTM F1816–97, failed to comport with the Staff's May 2006 defect notice, and posed a strangulation hazard to children.

11. On March 28, 2008, the Commission and Kidz World announced a recall of the Drawstring Sweatshirts. The recall informed consumers that they should immediately remove the drawstrings to eliminate the hazard.

12. Kidz World had presumed and actual knowledge that the Drawstring Sweatshirts distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(1), 15 U.S.C. 1274(c)(1). Kidz World had obtained information that reasonably supported the conclusion that the Drawstring Sweatshirts contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), required Kidz World to immediately inform the Commission of the defect and risk.

13. Kidz World knowingly failed to immediately inform the Commission about the Drawstring Sweatshirts as required by CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), and as the term ''knowingly'' is defined in CPSA section 20(d), 15 U.S.C. 2069(d).

This failure violated CPSA section 19(a)(4), 15 U.S.C. 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. 2069, this failure subjected Kidz World to civil penalties.

**Kidz World Response**

14. Kidz World denies the Staff's allegations that Kidz World violated the CPSA.

**Agreement of the Parties**

15. Under the CPSA, the Commission has jurisdiction over this matter and over Kidz World.

16. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Kidz World, or a determination by the Commission, that Kidz World has knowingly violated the CPSA.

17. In settlement of the Staff's allegations, Kidz World shall pay a civil penalty in the amount of twenty-five thousand dollars ($25,000.00) in three (3) installments as follows: The first installment payment of $8,334.00 shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement; the second installment payment of $8,333.00 shall be paid within one (1) year of service of the Commission's final Order accepting the Agreement; and the third installment of $8,333.00 shall be paid within two (2) years of service of the Commission's final Order accepting the Agreement. Each installment payment shall be by check payable to the order of the United States Treasury.

18. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the **Federal Register**.

19. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Kidz World knowingly, voluntarily, and completely waives any rights it may have regarding the Staff's allegations to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether Kidz World failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

20. The Commission may publicize the terms of the Agreement and the Order.

21. The Agreement and the Order shall apply to, and be binding upon, Kidz World and each of its successors and assigns.

22. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject Kidz World to appropriate legal action.

23. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

24. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Kidz World agree that severing the provision materially affects the purpose of the Agreement and the Order.

Kidz World, Inc., d/b/a High Energy USA.

Dated: December 29, 2008.
By:

Victor Hara,
*President, Kidz World, Inc., d/b/a High Energy USA, Empire State Building, 350 5th Avenue, Suite 5005, New York, NY 10118.*

Dated: January 7, 2009.
By:

Dennis R. McCoy,
*Esquire, Counsel for Respondent Kidz World, Inc., d/b/a High Energy USA, Hiscock & Barclay, 1100 M & T Center, 3 Fountain Plaza, Buffalo, NY 14203.*

U.S. Consumer Product Safety Commission.

Cheryl A. Falvey,
*General Counsel.*

Ronald G. Yelenik,
*Assistant General Counsel, Office of the General Counsel.*

Dated: January 7, 2009
By:

Dennis C. Kacoyanis,
*Trial Attorney, Division of Compliance, Office of the General Counsel.*

**Order**

Upon consideration of the Settlement Agreement entered into between Kidz World, Inc., d/b/a High Energy USA (''Kidz World'') and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over Kidz World, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

*Ordered,* that the Settlement Agreement be, and hereby is, accepted; and it is

*Further ordered,* Kidz World shall pay a civil penalty in the amount of twenty-five thousand dollars ($25,000.00) in three (3) installments as follows: The first installment payment of $8,334.00 shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement; the second installment payment of $8,333.00 shall be paid within one (1) year of service of the Commission's final Order accepting the Agreement; and the third installment of $8,333.00 shall be paid within two (2) years of service of the Commission's final Order accepting the Agreement. Each installment payment shall be by check payable to the order of the United States Treasury.

Upon the failure of Kidz World to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Kidz World at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 8th April, 2009.

By Order of the Commission.

Todd A. Stevenson,
*Secretary, U.S. Consumer Product Safety Commission.*

[FR Doc. E9–8688 Filed 4–15–09; 8:45 am]
BILLING CODE 6355–01–P

## CONSUMER PRODUCT SAFETY COMMISSION

**[CPSC Docket No. 09–C0013]**

## Coolibar, Inc., Provisional Acceptance of a Settlement Agreement and Order

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally accepted Settlement Agreement with Coolibar, Inc., containing a civil penalty of $25,000.00.

**DATES:** Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by May 1, 2009.

**ADDRESSES:** Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 09–C0013, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814–4408.

**FOR FURTHER INFORMATION CONTACT:** Dennis C. Kacoyanis, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7587.

**SUPPLEMENTARY INFORMATION:** The text of the Agreement and Order appears below.

Dated: April 9, 2009.

**Todd A. Stevenson,**

*Secretary.*

## Settlement Agreement

1. In accordance with 16 CFR 1118.20, Coolibar, Inc. (''Coolibar'') and the staff (''Staff'') of the United States Consumer Product Safety Commission (''Commission'') enter into this Settlement Agreement (''Agreement''). The Agreement and the incorporated attached Order (''Order'') settle the Staff's allegations set forth below.

## Parties

2. The Commission is an independent Federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051–2089 (''CPSA'').

3. Coolibar is a corporation organized and existing under the laws of the State of Minnesota, with its principal offices located in St. Louis Park, MN. Coolibar is an importer, and retailer of sun protection apparel and other sun protection products.

## Staff Allegations

4. From March 2005 to April 2008, Coolibar imported about 6,100 children's sun block jackets and hoodies with drawstrings (''Drawstring Jackets'') for sale to consumers through its Web site and catalog.

5. The Drawstring Jackets are ''consumer product[s],'' and, at all times relevant hereto, Coolibar was a ''manufacturer'' and ''retailer'' of those consumer products, which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(5), (8), (11) and (13), 15 U.S.C. 2052(a), (5) (8), (11), and (13).

6. In February 1996, the Staff issued the Guidelines for Drawstrings on Children's Upper Outerwear (''Guidelines'') to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, the Staff recommends that there be no hood and neck drawstrings in children's upper outerwear sized 2T to 12.

7. In June 1997, ASTM adopted a voluntary standard, ASTM F1816–97 that incorporated the Guidelines. The Guidelines state that firms should be aware of the hazards and should be sure garments they sell conform to the voluntary standard.

8. On May 19, 2006, the Commission posted on its Web site a letter from the Commission's Director of the Office of Compliance to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper outerwear sold in the United States complies with ASTM F1816–97. The letter states that the Staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (''FHSA'') section 15(c), 15 U.S.C. 1274(c). The letter also notes the CPSA's section 15(b) reporting requirements.

9. Coolibar reported to the Commission there had been no incidents or injuries involving Drawstring Jackets.

10. Coolibar's distribution in commerce of the Drawstring Jackets did not meet the Guidelines or ASTM F1816–97, failed to comport with the Staff's May 2006 defect notice, and posed a strangulation hazard to children.

11. On June 26, 2008, the Commission and Coolibar announced a recall of the Drawstring Jackets. The recall informed consumers that they should immediately remove the drawstrings to eliminate the hazard.

12. Coolibar had presumed and actual knowledge that the Drawstring Jackets distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(1), 15 U.S.C. 274(c)(1). Coolibar had obtained information that reasonably supported the conclusion that the Drawstring Jackets contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), required Coolibar to immediately inform the Commission of the defect and risk.

13. Coolibar knowingly failed to immediately inform the Commission about the Drawstring Jackets as required by CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), and as the term ''knowingly'' is defined in CPSA section 20(d), 15 U.S.C. 2069(d). This failure violated CPSA section 19(a)(4), 15 U.S.C. 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. 2069, this failure subjected Coolibar to civil penalties.

## Coolibar Response

14. Coolibar denies the Staff's allegations that Coolibar violated the CPSA.

## Agreement of the Parties

15. Under the CPSA, the Commission has jurisdiction over this matter and over Coolibar.

16. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Coolibar, or a determination by the Commission, that Coolibar has knowingly violated the CPSA.

17. In settlement of the Staff's allegations, Coolibar shall pay a civil penalty in the amount of twenty-five thousand dollars ($25,000.00) in three (3) installments as follows: The first installment payment of $8,334.00 shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement; the second installment payment of $8,333.00 shall be paid within one (1) year of service of the Commission's final Order accepting the Agreement; and the third installment of $8,333.00 shall be paid within two (2) years of service of the Commission's final Order accepting the Agreement. Each installment payment shall be by check payable to the order of the United States Treasury.

18. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the **Federal Register**.

19. Upon the Commission's final acceptance of the Agreement and

issuance of the final Order, Coolibar knowingly, voluntarily, and completely waives any rights it may have regarding the Staff's allegations to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether Coolibar failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

20. The Commission may publicize the terms of the Agreement and the Order.

21. The Agreement and the Order shall apply to, and be binding upon, Coolibar and each of its successors and assigns.

22. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject those referenced in paragraph 21 to appropriate legal action.

23. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

24. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Coolibar agree that severing the provision materially affects the purpose of the Agreement and the Order.

COOLIBAR, INC.,

Dated: January 19, 2009.
By:

John Barrow,
*President, Coolibar, Inc., 2401 Edgewood Avenue S., St. Louis Park, MN 55426.*

Dated: January 21, 2009.
By:

Mark R. Kaster, Esquire,
*Counsel for Respondent Coolibar, Inc., Dorsey & Whitney, LLP, 50 South Sixth Street, Suite 1500, Minneapolis, MN 20814.*

U.S. CONSUMER PRODUCT SAFETY COMMISSION.

Cheryl A. Falvey,
*General Counsel.*

Ronald G. Yelenik,
*Assistant General Counsel, Office of the General Counsel.*

Dated: January 27, 2009.
By:

Dennis C. Kacoyanis,
*Trial Attorney, Division of Compliance, Office of the General Counsel.*

## Order

Upon consideration of the Settlement Agreement entered into between Coolibar, Inc., d/b/a High Energy USA (''Coolibar'') and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over Coolibar, and it appearing that the Settlement Agreement and the Order are in the public interest, *it is*

*Ordered,* that the Settlement Agreement be, and hereby is, accepted; and *it is*

*Further Ordered,* Coolibar shall pay a civil penalty in the amount of twenty-five thousand dollars ($25,000.00) in three (3) installments as follows: The first installment payment of $8,334.00 shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement; the second installment payment of $8,333.00 shall be paid within one (1) year of service of the Commission's final Order accepting the Agreement; and the third installment of $8,333.00 shall be paid within two (2) years of service of the Commission's final Order accepting the Agreement. Each installment payment shall be by check payable to the order of the United States Treasury. Upon the failure of Coolibar to make any of the foregoing payments when due, the entire amount of the civil penalty shall become due and payable and interest on the unpaid amount shall accrue and be paid by Coolibar at the Federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 8th day of April, 2009.

BY ORDER OF THE COMMISSION.

Todd A. Stevenson,
*Secretary, U.S. Consumer Product Safety Commission.*

[FR Doc. E9–8689 Filed 04–15–09; 8:45 am]

BILLING CODE 6355–01–P

## CONSUMER PRODUCT SAFETY COMMISSION

**[CPSC Docket No. 09–C0011]**

## Seventy Two, Inc., Provisional Acceptance of a Settlement Agreement and Order

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Seventy Two, Inc., containing a civil penalty of $25,000.00.

**DATES:** Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by May 1, 2009.

**ADDRESSES:** Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 09–C0011, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814–4408.

**FOR FURTHER INFORMATION CONTACT:** Dennis C. Kacoyanis, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7587.

**SUPPLEMENTARY INFORMATION:** The text of the Agreement and Order appears below.

Dated: April 9, 2009.

**Todd A. Stevenson,**
*Secretary.*

## Settlement Agreement

1. In accordance with 16 CFR 1118.20, Seventy Two, Inc. (''Seventy Two'') and the staff (''Staff'') of the United States Consumer Product Safety Commission (''Commission'') enter into this Settlement Agreement (''Agreement''). The Agreement and the incorporated attached Order (''Order'') settle the Staff's allegations set forth below.

## Parties

2. The Commission is an independent federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051–2089 (''CPSA'').

3. Seventy Two is a corporation organized and existing under the laws of the State of California, with its principal offices located in La Puente, CA. Seventy Two is an importer of apparel.

**Staff Allegations**

4. From November 2007 to December 2007, Seventy Two imported and distributed about 1,734 hooded sweaters with drawstrings (''Drawstring Sweaters'') to a nationwide retailer for sale to consumers.

5. The Drawstring Sweaters are ''consumer product[s],'' and, at all times relevant hereto, Seventy Two was a ''manufacturer'' of those consumer products, which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(5), (8), and (11), 15 U.S.C. 2052(a)(5), (8), and (11).

6. In February 1996, the Staff issued the Guidelines for Drawstrings on Children's Upper Outerwear (''Guidelines'') to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, the Staff recommends that there be no hood and neck drawstrings in children's upper outerwear sized 2T to 12.

7. In June 1997, ASTM adopted a voluntary standard, ASTM F1816–97, that incorporated the Guidelines. The Guidelines state that firms should be aware of the hazards and should be sure garments they sell conform to the voluntary standard.

8. On May 19, 2006, the Commission posted on its website a letter from the Commission's Director of the Office of Compliance to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper outerwear sold in the United States complies with ASTM F1816–97. The letter states that the Staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (''FHSA'') section 15(c), 15 U.S.C. 1274(c). The letter also notes the CPSA's section 15(b) reporting requirements.

9. Seventy Two reported to the Commission there had been no incidents or injuries involving Drawstring Sweaters.

10. Seventy Two's importation and distribution in commerce of the Drawstring Sweaters did not meet the Guidelines or ASTM F1816–97, failed to comport with the Staff's May 2006 defect notice, and posed a strangulation hazard to children.

11. On February 6, 2008, the Commission and Seventy Two announced a recall of the Drawstring Sweaters. The recall informed consumers that they should immediately remove the drawstrings to eliminate the hazard.

12. Seventy Two had presumed and actual knowledge that the Drawstring Sweaters distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(1), 15 U.S.C. 1274(c)(1). Seventy Two had obtained information that reasonably supported the conclusion that the Drawstring Sweaters contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), required Seventy Two to immediately inform the Commission of the defect and risk.

13. Seventy Two knowingly failed to immediately inform the Commission about the Drawstring Sweaters as required by CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), and as the term ''knowingly'' is defined in CPSA section 20(d), 15 U.S.C. 2069(d). This failure violated CPSA section 19(a)(4), 15 U.S.C. 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. 2069, this failure subjected Seventy Two to civil penalties.

**Seventy Two's Responsive Allegations**

14. Seventy Two denies the Staff's allegations that it violated the CPSA.

**Agreement of the Parties**

15. Under the CPSA, the Commission has jurisdiction over this matter and over Seventy Two.

16. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Seventy Two, or a determination by the Commission, that Seventy Two has knowingly violated the CPSA.

17. In settlement of the Staff's allegations, Seventy Two shall pay a civil penalty in the amount of twenty-five thousand dollars ($25,000.00) in three (3) installments as follows: The first installment payment of $8,334.00 shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement; the second installment payment of $8,333.00 shall be paid within one (1) year of service of the Commission's final Order accepting the Agreement; and the third installment of $8,333.00 shall be paid within two (2) years of service of the Commission's final Order accepting the Agreement. Each installment payment shall be made by check payable to the order of the United States Treasury.

18. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the **Federal Register**.

19. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Seventy Two knowingly, voluntarily, and completely waives any rights it may have regarding the Staff's allegations to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether Seventy Two failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

20. The Commission may publicize the terms of the Agreement and the Order.

21. The Agreement and the Order shall apply to, and be binding upon, Seventy Two and each of its successors and assigns.

22. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject those referenced in paragraph 21 above to appropriate legal action.

23. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

24. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect,

unless the Commission and Seventy Two agree that severing the provision materially affects the purpose of the Agreement and the Order.

SEVENTY TWO, INC.

Dated: March 3, 2009
By:

Chiu Fai Yeung,
*Chief Executive Officer Seventy Two, Inc. 227 S. Sixth Avenue La Puente, CA 91746.*

U.S. CONSUMER PRODUCT SAFETY COMMISSION.

Cheryl A. Falvey,
*General Counsel.*

Ronald G. Yelenik,
*Assistant General Counsel Office of the General Counsel.*

Dated: March 3, 2009.
By:

Dennis C. Kacoyanis,
*Trial Attorney, Division of Compliance, Office of the General Counsel.*

**Order**

Upon consideration of the Settlement Agreement entered into between Seventy Two, Inc., and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over Seventy Two, and it appearing that the Settlement Agreement and the Order are in the public interest, *it is*

*Ordered,* that the Settlement Agreement be, and hereby is, accepted; and it is

*Further Ordered,* Seventy Two shall pay a civil penalty in the amount of twenty-five thousand dollars ($25,000.00) in three (3) installments as follows: The first installment payment of $8,334.00 shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement; the second installment payment of $8,333.00 shall be paid within one (1) year of service of the Commission's final Order accepting the Agreement; and the third installment of $8,333.00 shall be paid within two (2) years of service of the Commission's final Order accepting the Agreement. Each installment payment shall be made by check payable to the order of the United States Treasury. Upon the failure of Seventy Two to make any of the foregoing payments when due, the total amount of the civil penalty shall become immediately due and payable and interest on the unpaid amount shall accrue and be paid by Seventy Two at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 8th day of April, 2009.

By Order of the Commission.

Todd A. Stevenson,
*Secretary, U.S. Consumer Product Safety Commission.*

[FR Doc. E9–8705 Filed 4–15–09; 8:45 am]

BILLING CODE 6355–01–M

## CONSUMER PRODUCT SAFETY COMMISSION

**[CPSC Docket No. 09–C0012]**

## Urgent Gear, Inc., Provisional Acceptance of a Settlement Agreement and Order

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Urgent Gear, Inc., containing a civil penalty of $35,000.00.

**DATES:** Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by May 1, 2009.

**ADDRESSES:** Persons wishing to comment on this Settlement Agreement should send written comments to Comment 09–C0012, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814–4408.

**FOR FURTHER INFORMATION CONTACT:** Dennis C. Kacoyanis, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7587.

**SUPPLEMENTARY INFORMATION:** The text of the Agreement and Order appears below.

Dated: April 9, 2009.

**Todd A. Stevenson,**
*Secretary.*

**Settlement Agreement**

1. In accordance with 16 CFR 1118.20, Urgent Gear, Inc. (''Urgent Gear'') and the staff (''Staff'') of the United States Consumer Product Safety Commission (''Commission'') enter into this Settlement Agreement (''Agreement''). The Agreement and the incorporated attached Order (''Order'') settle the Staff's allegations set forth below.

**Parties**

2. The Commission is an independent Federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051–2089 (''CPSA'').

3. Urgent Gear is a corporation organized and existing under the laws of the State of California, with its principal offices located in Los Angeles, CA. At all times relevant hereto, Urgent Gear imported and sold apparel.

**Staff Allegations**

4. Urgent Gear imported about 700 Micros boy's hooded jackets drawstrings (''Drawstring Jackets'').

5. From October through December 2007, Urgent Gear sold the Drawstring Jackets to a nationwide retailer.

6. The Drawstring Jackets are ''consumer product[s],'' and, at all times relevant hereto, Urgent Gear was a ''manufacturer'' of those consumer products, which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(5), (8), and (11), 15 U.S.C. 2052(a)(5), (8), and (11).

7. In February 1996, the Staff issued the Guidelines for Drawstrings on Children's Upper Outerwear (''Guidelines'') to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, the Staff recommends that there be no hood and neck drawstrings in children's upper outerwear sized 2T to 12.

8. In June 1997, ASTM adopted a voluntary standard, ASTM F1816–97, that incorporated the Guidelines. The Guidelines state that firms should be aware of the hazards and should be sure garments they sell conform to the voluntary standard.

9. On May 19, 2006, the Commission posted on its Web site a letter from the Commission's Director of the Office of Compliance to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper outerwear sold in the United States complies with ASTM F1816–97. The letter states that the Staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (''FHSA'') section 15(c), 15 U.S.C. 1274(c). The letter also notes the CPSA's section 15(b) reporting requirements.

10. Urgent Gear reported to the Commission there had been no incidents or injuries from the Drawstring Jackets.

11. Urgent Gear's distribution in commerce of the Drawstring Jackets did not meet the Guidelines or ASTM F1816–97, failed to comport with the Staff's May 2006 defect notice, and posed a strangulation hazard to children.

12. On March 11, 2008, the Commission and Urgent Gear announced a recall of the Drawstring Jackets. The recall informed consumers that they should immediately remove the drawstrings to eliminate the hazard.

13. Urgent Gear had presumed and actual knowledge that the Drawstring Jackets distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(1), 15 U.S.C. 1274(c)(1). Urgent Gear had obtained information that reasonably supported the conclusion that the Drawstring Jackets contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), required Urgent Gear to immediately inform the Commission of the defect and risk.

14. Urgent Gear knowingly failed to immediately inform the Commission about the Drawstring Jackets as required by CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), and as the term ''knowingly'' is defined in CPSA section 20(d), 15 U.S.C. 2069(d). This failure violated CPSA section 19(a)(4), 15 U.S.C. 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. 2069, this failure subjected Urgent Gear to civil penalties.

**Urgent Gear Response**

15. Urgent Gear denies the Staff's allegations that Urgent Gear violated the CPSA.

**Agreement of the Parties**

16. Under the CPSA, the Commission has jurisdiction over this matter and over Urgent Gear.

17. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Urgent Gear, or a determination by the Commission, that Urgent Gear has knowingly violated the CPSA.

18. In settlement of the Staff's allegations, Urgent Gear shall pay a civil penalty in the amount of thirty-five thousand dollars ($35,000.00) in four (4) installment payments as follows: The first installment payment of eight thousand seven hundred-fifty dollars ($8,750.00) shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement; the second installment payment of eight thousand seven hundred-fifty dollars ($8,750.00) shall be paid within four (4) months of service of the Commission's final Order accepting the Agreement; the third installment payment of eight thousand seven hundred-fifty dollars ($8,750.00) shall be paid within eight (8) months of the Commission's final Order accepting the Agreement; and the fourth installment payment of eight thousand seven hundred-fifty dollars ($8,750.00) shall be paid within twelve (12) months of the Commission's final Order accepting the Agreement. The payment shall be by check payable to the order of the United States Treasury.

19. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the **Federal Register**.

20. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Urgent Gear knowingly, voluntarily, and completely waives any rights it may have regarding the Staff's allegations to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether Urgent Gear failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

21. The Commission may publicize the terms of the Agreement and the Order.

22. The Agreement and the Order shall apply to, and be binding upon, Urgent Gear and each of its successors and assigns.

23. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject Urgent Gear to appropriate legal action.

24. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

25. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Urgent Gear agree that severing the provision materially affects the purpose of the Agreement and the Order.

Urgent Gear, Inc.

Dated: November 5, 2008.
By:

Bob Roofian,
*CEO, Urgent Gear, Inc., 728 E. Commercial Street, Los Angeles, CA 90012.*

Dated: November 5, 2008.
By:

Barry E. Powell, Esquire,
*Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt, LLP, Attorneys for Urgent Gear, Inc., 707 Wilshire Boulevard, Suite 4150, Los Angeles, CA 90017.*

U.S. Consumer Product Safety Commission.

Cheryl A. Falvey,
*General Counsel.*

Ronald G. Yelenik,
*Assistant General Counsel, Division of Compliance, Office of the General Counsel.*

Dated: November 5, 2008.
By:

Dennis C. Kacoyanis,
*Trial Attorney, Division of Compliance, Office of the General Counsel.*

**Order**

Upon consideration of the Settlement Agreement entered into between Urgent Gear, Inc. (''Urgent Gear'') and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over Urgent Gear, and it appearing that the Settlement Agreement and the Order are in the public interest, *it is*

*ordered,* that the Settlement Agreement be, and hereby is, accepted; and *it is*

*further ordered,* that Urgent Gear shall pay a civil penalty in the amount of thirty-five thousand dollars ($35,000.00) in four (4) installment payments as follows: The first installment payment of eight thousand seven hundred-fifty dollars ($8,750.00) shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement; the second installment payment of eight thousand seven

hundred-fifty dollars ($8,750.00) shall be paid within four (4) months of service of the Commission's final Order accepting the Agreement; the third installment payment of eight thousand seven hundred-fifty dollars ($8,750.00) shall be paid within eight (8) months of the Commission's final Order accepting the Agreement; and the fourth installment payment of eight thousand seven hundred-fifty dollars ($8,750.00) shall be paid within twelve (12) months of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury. Upon the failure of Urgent Gear to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Urgent Gear at the Federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 8th day of April, 2009.

By Order of the Commission.

Todd A. Stevenson,
*Secretary, U.S. Consumer Product Safety Commission.*

[FR Doc. E9–8701 Filed 4–15–09; 8:45 am]

**BILLING CODE 6355–01–P**

## CONSUMER PRODUCT SAFETY COMMISSION

**[CPSC Docket No. 09–C0010]**

## Orioxi International Corporation, Provisional Acceptance of a Settlement Agreement and Order

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Orioxi International Corporation, containing a civil penalty of $70,000.00.

**DATES:** Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by May 1, 2009.

**ADDRESSES:** Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 09–C0010, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814–4408.

**FOR FURTHER INFORMATION CONTACT:** Renee K. Haslett, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7673.

**SUPPLEMENTARY INFORMATION:** The text of the Agreement and Order appears below.

Dated: April 9, 2009.

**Todd A. Stevenson,**
*Secretary.*

### Settlement Agreement

1. In accordance with 16 CFR 1118.20, Orioxi International Corporation (''Orioxi'') and the staff (''Staff'') of the United States Consumer Product Safety Commission (''Commission'') enter into this Settlement Agreement (''Agreement''). The Agreement and the incorporated attached Order (''Order'') settle the Staff's allegations set forth below.

### Parties

2. The Commission is an independent federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051–2089 (''CPSA'').

3. Orioxi is a corporation organized and existing under the laws of California, with its principal offices located in Brea, California. At all times relevant hereto, Orioxi imported and sold apparel.

### Staff Allegations

4. From at least September 2005 to June 2008, Orioxi imported and/or distributed in commerce children's hooded sweatshirts and jackets with drawstrings at the hood or neck, which were later recalled on August 28, 2008 (''Garments'').

5. A retailer sold the Garments to consumers.

6. The Garments are ''consumer product[s],'' and, at all times relevant hereto, Orioxi was a ''manufacturer'' of those consumer products, which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(5), (8), and (11), 15 U.S.C. 2052(a)(5), (8), and (11).

7. In February 1996, the Staff issued the Guidelines for Drawstrings on Children's Upper Outerwear (''Guidelines'') to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, the Staff recommends that there be no hood and neck drawstrings in children's upper outerwear sized 2T to 12.

8. In June 1997, ASTM adopted a voluntary standard, ASTM F1816–97, that incorporated the Guidelines. The Guidelines state that firms should be aware of the hazards and should be sure garments they sell conform to the voluntary standard.

9. On May 19, 2006, the Commission posted on its Web site a letter from the Commission's Director of the Office of Compliance to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper outerwear sold in the United States complies with ASTM F1816–97. The letter states that the Staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (''FHSA'') section 15(c), 15 U.S.C. 1274(c). The letter also notes the CPSA's section 15(b) reporting requirements.

10. Orioxi informed the Commission that there had been no incidents or injuries from the Garments.

11. Orioxi's distribution in commerce of the Garments did not meet the Guidelines or ASTM F1816–97, failed to comport with the Staff's May 2006 defect notice, and posed a strangulation hazard to children.

12. On August 28, 2008, the Commission, in cooperation with Orioxi, announced a recall of the Garments.

13. Orioxi had presumed an actual knowledge that the Garments distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(1), 15 U.S.C. 1274(c)(1). Orioxi had obtained information that reasonably supported the conclusion that the Garments contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), required Orioxi to immediately inform the Commission of the defect and risk.

14. Orioxi knowingly failed to immediately inform the Commission about the Garments as required by CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), and as the term ''knowingly'' is defined in CPSA section 20(d), 15 U.S.C. 2069(d). This failure violated CPSA section 19(a)(4), 15 U.S.C. 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. 2069, this failure subjected Orioxi to civil penalties.

**Orioxi's Responsive Allegation**

15. Orioxi denies the Staff's allegations above that Orioxi knowingly violated the CPSA.

**Agreement of the Parties**

16. Under the CPSA, the Commission has jurisdiction over this matter and over Orioxi.

17. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Orioxi, or a determination by the Commission, that Orioxi knowingly violated the CPSA.

18. In settlement of the Staff's allegations, Orioxi shall pay a civil penalty in the amount of seventy thousand dollars ($70,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be by check payable to the order of the United States Treasury.

19. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the **Federal Register**.

20. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Orioxi knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether Orioxi failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

21. The Commission may publicize the terms of the Agreement and the Order.

22. The Agreement and the Order shall apply to, and be binding upon, Orioxi and each of its successors and assigns.

23. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject Orioxi and each of its successors and assigns to appropriate legal action.

24. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

25. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Orioxi agree that severing the provision materially affects the purpose of the Agreement and the Order.

Orioxi International Corporation.

Dated: March 13, 2009.

By:

Ziegfred Young,
*President, Orioxi International Corporation, 145 S. State College Boulevard, #250, Brea, CA 92821.*

U.S. Consumer Product Safety Commission Staff.

Cheryl A. Falvey,
*General Counsel.*

Ronald G. Yelenik,
*Assistant General Counsel, Office of the General Counsel.*

Dated: March 17, 2009.

By:

Renee K. Haslett,
*Trial Attorney, Division of Compliance, Office of the General Counsel.*

**Order**

Upon consideration of the Settlement Agreement entered into between Orioxi International Corporation (''Orioxi'') and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over Orioxi, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

*Ordered,* that the Settlement Agreement be, and hereby is, accepted; and it is

*Further ordered,* that Orioxi shall pay a civil penalty in the amount of seventy thousand dollars ($70,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury. Upon the failure of Orioxi to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Orioxi at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 8th day of April, 2009.

By order of the Commission.

Todd A. Stevenson,
*Secretary U.S. Consumer Product Safety Commission.*

[FR Doc. E9–8707 Filed 4–15–09; 8:45 am]

**BILLING CODE 6355–01–P**

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## CONSUMER PRODUCT SAFETY COMMISSION

**[CPSC Docket No. 09–C0004]**

## Marshalls of MA, Inc., Provisional Acceptance of a Settlement Agreement and Order

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Marshalls of MA, Inc., containing a civil penalty of $235,000.00.

**DATES:** Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by May 1, 2009.

**ADDRESSES:** Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 09–C0004, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814–4408.

**FOR FURTHER INFORMATION CONTACT:** Seth B. Popkin, Lead Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7612.

**SUPPLEMENTARY INFORMATION:** The text of the Agreement and Order appears below.

Dated: April 9, 2009.

**Todd A. Stevenson,**
*Secretary.*

**Settlement Agreement**

1. In accordance with 16 CFR 1118.20, Marshalls of MA, Inc. (''Marshalls'') and the staff (''Staff'') of the United States Consumer Product Safety Commission

(''Commission'') enter into this Settlement Agreement (''Agreement''). The Agreement and the incorporated attached Order (''Order'') settle the Staff's allegations set forth below.

**Parties**

2. The Commission is an independent Federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051–2089 (''CPSA'').

3. Marshalls is a corporation organized and existing under the laws of Massachusetts, with its principal offices located in Framingham, Massachusetts. At all times relevant hereto, Marshalls sold apparel.

**Staff Allegations**

4. From July 2007 to January 2008, Marshalls held for sale and/or sold various quantities of the following children's upper outerwear products with drawstrings at the hood or neck: Apollo Active Wear girls' hooded jackets; Scope Imports boys' hooded sweatshirts; Liberty Apparel Jewel girls' hooded sweatshirts; Rebelette girls' hooded sweatshirts; Kids with Character bongo jackets; GWB II French Fries/ Heartbreakers Club hooded henleys; Siegfried & Parzival Karl Kani sweatshirts; and U.S. Design Group Request Jeans sweatshirts. From July to August, 2008, Marshalls held for sale and/or sold the following children's upper outerwear products with drawstrings at the hood or neck: nZania/ Element hoodies; and Seven Apparel Group hooded sweatshirts. The products identified in this paragraph are collectively referred to herein as ''Sweatshirts.'' These Sweatshirts identifications correspond to and are coextensive with information Marshalls reported to the Staff about the Sweatshirts.

5. Marshalls sold Sweatshirts to consumers.

6. The Sweatshirts are ''consumer product[s],'' and, at all times relevant hereto, Marshalls was a ''retailer'' of those consumer products, which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(5), (8), and (13), 15 U.S.C. 2052(a)(5), (8), and (13).

7. In February 1996, the Staff issued the Guidelines for Drawstrings on Children's Upper Outerwear (''Guidelines'') to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, the Staff recommends that there be no hood and neck drawstrings in children's upper outerwear sized 2T to 12.

8. In June 1997, ASTM adopted a voluntary standard, ASTM F1816–97, that incorporated the Guidelines. The Guidelines state that firms should be aware of the hazards and should be sure garments they sell conform to the voluntary standard.

9. On May 19, 2006, the Commission posted on its Web site a letter from the Commission's Director of the Office of Compliance to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper outerwear sold in the United States complies with ASTM F1816–97. The letter states that the Staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (''FHSA'') section 15(c), 15 U.S.C. 1274(c). The letter also notes the CPSA's section 15(b) reporting requirements.

10. Marshalls informed the Commission that there had been no incidents or injuries from the Sweatshirts.

11. Marshall's distribution in commerce of the Sweatshirts did not meet the Guidelines or ASTM F1816–97, failed to comport with the Staff's May 2006 defect notice, and posed a strangulation hazard to children.

12. Recalls have been announced regarding the Sweatshirts as warranted.

13. Marshalls had presumed and had actual knowledge that the Sweatshirts distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(1), 15 U.S.C. 1274(c)(1). Marshalls had obtained information that reasonably supported the conclusion that the Sweatshirts contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), required Marshalls to immediately inform the Commission of the defect and risk.

14. Marshalls knowingly failed to immediately inform the Commission about the Sweatshirts as required by CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), and as the term ''knowingly'' is defined in CPSA section 20(d), 15 U.S.C. 2069(d). This failure violated CPSA section 19(a)(4), 15 U.S.C. 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. 2069, this failure subjected Marshalls to civil penalties.

**Marshalls's Response**

15. Marshalls denies the Staff's allegations set forth above, including, but not limited to, any allegation that Marshalls failed timely to notify the Commission in accordance with section 15 of the CPSA.

16. Marshalls requires that its vendors represent and warrant that all products sold to Marshalls comply with all applicable regulations, standards and requirements.

17. Marshalls promptly notified the Commission pursuant to section 15 of the CPSA without first being contacted by the Commission upon verifying that certain garments contained drawstrings at the hood or neck.

18. Marshalls fully cooperated with the Commission in providing information necessary for the Commission to determine, with the vendor, whether a recall was warranted and whether the vendor had sold affected garments to any other retailers.

19. Marshalls has entered into the Agreement for settlement purposes only, to avoid incurring additional expenses and the distraction of litigation. The Agreement and Order do not constitute and are not evidence of any fault or wrongdoing by Marshalls.

**Agreement of the Parties**

20. Under the CPSA, the Commission has jurisdiction over this matter and over Marshalls.

21. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Marshalls, or a determination by the Commission, that Marshalls knowingly violated the CPSA.

22. In settlement of the Staff's allegations, Marshalls shall pay a civil penalty in the amount of two hundred thirty-five thousand dollars ($235,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be by check payable to the order of the United States Treasury.

23. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the **Federal Register**.

24. Upon the Commission's final acceptance of the Agreement and

issuance of the final Order, Marshalls knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether Marshalls failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

25. The Commission may publicize the terms of the Agreement and the Order.

26. The Agreement and the Order shall apply to, and be binding upon, Marshalls and each of its successors and assigns.

27. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject Marshalls to appropriate legal action.

28. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

29. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Marshalls agree that severing the provision materially affects the purpose of the Agreement and the Order.

Marshalls of MA, Inc.

Dated: March 2, 2009.
By:

Ann McCauley,
*Secretary, Marshalls of MA, Inc., 770 Cochituate Road, Framingham, MA 01701.*

Dated: March 3, 2009.
By:

Eric A. Rubel, Esq.,
*Arnold & Porter LLP, 555 12th Street, NW., Washington, DC 20004–1206.*
Counsel for Marshalls of MA, Inc.

U.S. Consumer Product Safety Commission Staff.

Cheryl A. Falvey,
*General Counsel.*

Ronald G. Yelenik,
*Assistant General Counsel, Division of Compliance, Office of the General Counsel.*

Dated: March 6, 2009.
By:

Seth B. Popkin,
*Lead Trial Attorney, Division of Compliance, Office of the General Counsel.*

### Order

Upon consideration of the Settlement Agreement entered into between Marshalls of MA, Inc. (''Marshalls'') and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over Marshalls, and it appearing that the Settlement Agreement and the Order are in the public interest, *it is*

*ordered*, that the Settlement Agreement be, and hereby is, accepted; and *it is*

*further ordered*, that Marshalls shall pay a civil penalty in the amount of two hundred thirty-five thousand dollars ($235,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury. Upon the failure of Marshalls to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Marshalls at the Federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 8th day of April, 2009.

By Order of the Commission.

Todd A. Stevenson,
*Secretary, U.S. Consumer Product Safety Commission.*

[FR Doc. E9–8712 Filed 4–15–09; 8:45 am]

BILLING CODE 6355–01–P

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## CONSUMER PRODUCT SAFETY COMMISSION

**[CPSC Docket No. 09–C0015]**

## Forman Mills, Inc., Provisional Acceptance of a Settlement Agreement and Order

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Forman Mills, Inc, containing a civil penalty of $35,000.00.

**DATES:** Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by May 1, 2009.

**ADDRESSES:** Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 09–C0015, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814–4408.

**FOR FURTHER INFORMATION CONTACT:** Dennis C. Kacoyanis, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7587.

**SUPPLEMENTARY INFORMATION:** The text of the Agreement and Order appears below.

April 9, 2009.

**Todd A. Stevenson,**
*Secretary.*

### Settlement Agreement

1. In accordance with 16 CFR 1118.20, Forman Mills, Inc. (''Forman Mills'') and the staff (''Staff'') of the United States Consumer Product Safety Commission (''Commission'') enter into this Settlement Agreement (''Agreement''). The Agreement and the incorporated attached Order (''Order'') settle the Staff's allegations set forth below.

### Parties

2. The Commission is an independent Federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051–2089 (''CPSA'').

3. Forman Mills is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal offices located in Pennsauken, NJ. Forman Mills is a clothing retailer.

### Staff Allegations

4. On or about August 30, 2007, Forman Mills purchased from a U.S. importer approximately 2,292 boy's hooded sweatshirts with drawstrings (''Drawstring Sweatshirts'').

5. Forman Mills sold the Drawstring Sweatshirts to consumers.

6. The Drawstring Sweatshirts are ''consumer product[s],'' and, at all times relevant hereto, Forman Mills was a ''retailer'' of those consumer products, which were ''distributed in commerce,'' as those terms are defined in CPSA

sections 3(a)(5), (8), and (13), 15 U.S.C. 2052(a)(5), (8), and (13).

7. In February 1996, the Staff issued the Guidelines for Drawstrings on Children's Upper Outerwear (''Guidelines'') to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, the Staff recommends that there be no hood and neck drawstrings in children's upper outerwear sized 2T to 12.

8. In June 1997, ASTM adopted a voluntary standard, ASTM F1816–97, that incorporated the Guidelines. The Guidelines state that firms should be aware of the hazards and should be sure garments they sell conform to the voluntary standard.

9. On May 19, 2006, the Commission posted on its Web site a letter from the Commission's Director of the Office of Compliance to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper outerwear sold in the United States complies with ASTM F1816–97. The letter states that the Staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (''FHSA'') section 15(c), 15 U.S.C. 1274(c). The letter also notes the CPSA's section 15(b) reporting requirements.

10. Forman Mills reported to the Commission there had been no incidents or injuries involving the Drawstring Sweatshirts.

11. Forman Mills' distribution in commerce of the Drawstring Sweatshirts did not meet the Guidelines or ASTM F1816–97, failed to comport with the Staff's May 2006 defect notice, and posed a strangulation hazard to children.

12. On December 6, 2007, the Commission and the importer of the Drawstring Sweatshirts announced a recall of the garments. The recall informed consumers that they should immediately remove the drawstrings to eliminate the hazard.

13. Forman Mills had presumed and actual knowledge that the Drawstring Sweatshirts distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(1), 15 U.S.C. 1274(c)(1). Forman Mills had obtained information that reasonably supported the conclusion that the Drawstring Sweatshirts contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), required Forman Mills to immediately inform the Commission of the defect and risk.

14. Forman Mills knowingly failed to immediately inform the Commission about the Drawstring Sweatshirts as required by CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), and as the term ''knowingly'' is defined in CPSA section 20(d), 15 U.S.C. 2069(d). This failure violated CPSA section 19(a)(4), 15 U.S.C. 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. 2069, this failure subjected Forman Mills to civil penalties.

**Forman Mills Response**

15. Forman Mills denies the Staff's allegations that Forman Mills violated the CPSA.

**Agreement of the Parties**

16. Under the CPSA, the Commission has jurisdiction over this matter and over Forman Mills.

17. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Forman Mills, or a determination by the Commission, that Forman Mills has knowingly violated the CPSA.

18. In settlement of the Staff's allegations, Forman Mills shall pay a civil penalty in the amount of thirty-five thousand dollars ($35,000.00) within forty-five (45) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be by check payable to the order of the United States Treasury.

19. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the **Federal Register**.

20. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Forman Mills knowingly, voluntarily, and completely waives any rights it may have regarding the Staff's allegations to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether Forman Mills failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

21. The Commission may publicize the terms of the Agreement and the Order.

22. The Agreement and the Order shall apply to, and be binding upon, Forman Mills and each of its successors and assigns.

23. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject Forman Mills to appropriate legal action.

24. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

25. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Forman Mills agree that severing the provision materially affects the purpose of the Agreement and the Order.

FORMAN MILLS, INC.
Dated: December 30, 2008.
By:

Richard P. Forman,
*President Forman Mills, Inc. 1070 Thomas Busch Memorial Highway Pennsauken, NJ 08110.*

U.S. CONSUMER PRODUCT SAFETY COMMISSION.

Cheryl A. Falvey,
*General Counsel.*

Ronald G. Yelenik,
*Assistant General Counsel Office of the General Counsel.*

Dated: January 6, 2009.
By:

Dennis C. Kacoyanis,
*Trial Attorney, Division of Compliance, Office of the General Counsel.*

**Order**

Upon consideration of the Settlement Agreement entered into between Forman Mills, Inc. (''Forman Mills'') and the U.S. Consumer Product Safety

Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over Forman Mills, and it appearing that the Settlement Agreement and the Order are in the public interest, *it is*

*Ordered*, that the Settlement Agreement be, and hereby is, accepted; and *it is*

*Further Ordered*, that Forman Mills shall pay a civil penalty in the amount of thirty-five thousand dollars ($35,000.00) within forty-five (45) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury. Upon the failure of Forman Mills to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Forman Mills at the Federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 8th day of April 2009.

BY ORDER OF THE COMMISSION.

Todd A. Stevenson,
*Secretary, U.S. Consumer Product Safety Commission.*

[FR Doc. E9–8711 Filed 4–15–09; 8:45 am]

**BILLING CODE 6355–01–P**

## CONSUMER PRODUCT SAFETY COMMISSION

**[CPSC Docket No. 09–C0016]**

## The Bon-Ton Stores, Inc., Provisional Acceptance of a Settlement Agreement and Order

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** It is the policy of the Commission to publish settlements, which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with The Bon-Ton Stores, Inc., containing a civil penalty of $50,000.00.

**DATES:** Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by May 1, 2009.

**ADDRESSES:** Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 09–C0016, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814–4408.

**FOR FURTHER INFORMATION CONTACT:** Dennis C. Kacoyanis, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7587.

**SUPPLEMENTARY INFORMATION:** The text of the Agreement and Order appears below.

Dated: April 9, 2009.

**Todd A. Stevenson,**
*Secretary.*

### Settlement Agreement

1. In accordance with 16 CFR 1118.20, The Bon-Ton Stores, Inc. (''Bon-Ton'') and the staff (''Staff'') of the United States Consumer Product Safety Commission (''Commission'') enter into this Settlement Agreement (''Agreement''). The Agreement and the incorporated attached Order (''Order'') settle the Staff's allegations set forth below.

### Parties

2. The Commission is an independent Federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051–2089 (''CPSA'').

3. Bon-Ton is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal offices located in York, PA. Bon-Ton is a retailer selling a wide selection of apparel, shoes, jewelry, fragrances, and accessories.

### Staff Allegations

4. On or about August 30, 2007, Bon-Ton purchased from a U.S. importer approximately 12, 200 boys' hooded sweatshirts with drawstrings (''Drawstring Sweatshirts'').

5. From August 2007 through November 2007, Bon-Ton sold and/or offered for sale the Drawstring Sweatshirts to consumers.

6. The Drawstring Sweatshirts are ''consumer product[s],'' and, at all times relevant hereto, Bon-Ton was a ''retailer'' of those consumer products, which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(5), (8), and (13), 15 U.S.C. 2052(a)(5), (8), and (13).

7. In February 1996, the Staff issued the Guidelines for Drawstrings on Children's Upper Outerwear (''Guidelines'') to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, the Staff recommends that there be no hood and neck drawstrings in children's upper outerwear sized 2T to 12.

8. In June 1997, ASTM adopted a voluntary standard, ASTM F1816–97, that incorporated the Guidelines. The Guidelines state that firms should be aware of the hazards and should be sure garments they sell conform to the voluntary standard.

9. On May 19, 2006, the Commission posted on its Web site a letter from the Commission's Director of the Office of Compliance to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper outerwear sold in the United States complies with ASTM F1816–97. The letter states that the Staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (''FHSA'') section 15(c), 15 U.S.C. 1274(c). The letter also notes the CPSA's section 15(b) reporting requirements.

10. Bon-Ton reported to the Commission there had been no incidents or injuries involving the Drawstring Sweatshirts.

11. Bon-Ton's distribution in commerce of the Drawstring Sweatshirts did not meet the Guidelines or ASTM F1816–97, failed to comport with the Staff's May 2006 defect notice, and posed a strangulation hazard to children.

12. On November 27, 2007, the Commission and Bon-Ton announced a recall of the Drawstring Sweatshirts. The recall informed consumers that they should immediately remove the drawstrings to eliminate the hazard.

13. Bon-Ton had presumed and actual knowledge that the Drawstring Sweatshirts distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(1), 15 U.S.C. 1274(c)(1). Bon-Ton had obtained information that reasonably supported the conclusion that the Drawstring Sweatshirts contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), required Bon-Ton to immediately inform the Commission of the defect and risk.

14. Bon-Ton knowingly failed to immediately inform the Commission about the Drawstring Sweatshirts as

required by CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), and as the term ''knowingly'' is defined in CPSA section 20(d), 15 U.S.C. 2069(d). This failure violated CPSA section 19(a)(4), 15 U.S.C. 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. 2069, this failure subjected Bon-Ton to civil penalties.

**Bon-Ton Response**

15. Bon-Ton denies the Staff's allegations that Bon-Ton violated the CPSA or the FHSA including, but not limited to the allegations that Bon-Ton failed to immediately inform the Commission about the Drawstring Sweatshirts as required by section 15(b) of the CPSA, *supra.*

16. Bon-Ton contends that within 24 hours of learning of the presence of Drawstring Sweatshirts in its stores, Bon-Ton had the Drawstring Sweatshirts removed and took steps to prevent the further sales of Drawstring Sweatshirts.

17. Bon-Ton asserts that within 24 hours of learning of the presence of Drawstring Sweatshirts in its stores, Bon-Ton filed a section 15(b) report to the Commission.

18. In cooperation with the Commission, Bon-Ton announced the recall of Drawstring Sweatshirts. As part of the recall, Bon-Ton posted recall notices in its stores, provided a toll-free telephone line for consumers and posted information regarding the recall on its website.

**Agreement of the Parties**

19. Under the CPSA, the Commission has jurisdiction over this matter and over Bon-Ton.

20. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Bon-Ton, or a determination by the Commission, that Bon-Ton has knowingly violated the CPSA.

21. In settlement of the Staff's allegations, Bon-Ton shall pay a civil penalty in the amount of fifty-thousand dollars ($50,000.00) within forty-five (45) days of receipt of the Commission's final Order accepting the Agreement. The payment shall be by check payable to the order of the United States Treasury.

22. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the **Federal Register**.

23. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Bon-Ton knowingly, voluntarily, and completely waives any rights it may have regarding the Staff's allegations to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether Bon-Ton failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

24. Upon issuance of, and Bon-Ton's compliance with the final Order, the Commission regards this matter as resolved and agrees not to bring a civil penalty action against Bon-Ton based upon the Staff's allegations set forth in paragraphs 4–14 above regarding the Drawstring Sweatshirts.

25. The Commission may publicize the terms of the Agreement and the Order.

26. The Agreement and the Order shall apply to, and be binding upon, Bon-Ton and each of its successors and assigns.

27. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject those named in paragraph 26 to appropriate legal action.

28. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

29. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Bon-Ton agree that severing the provision materially affects the purpose of the Agreement and the Order.

THE BON-TON STORES, INC.

Dated: January 6, 2009.

By:

Mark H. Pettigrew, Esquire,
*Associate General Counsel, The Bon-Ton Stores, Inc., 2801 East Market Street, York, PA 17402.*

U.S. CONSUMER PRODUCT SAFETY COMMISSION.

Cheryl A. Falvey,
*General Counsel.*

Ronald G. Yelenik,
*Assistant General Counsel, Office of the General Counsel.*

Dated: January 6, 2009.

By:

Dennis C. Kacoyanis,
*Trial Attorney, Division of Compliance Office of the General Counsel*

**Order**

Upon consideration of the Settlement Agreement entered into between The Bon-Ton Stores, Inc. (''Bon-Ton'') and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over Bon-Ton, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

*Ordered*, that the Settlement Agreement be, and hereby is, accepted; and it is

*Further Ordered*, that Bon-Ton shall pay a civil penalty in the amount of fifty-thousand dollars ($50,000.00) within forty-five (45) days of receipt of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury. Upon the failure of Bon-Ton to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Bon-Ton at the Federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 8th day of April, 2009.

BY ORDER OF THE COMMISSION.

Todd A. Stevenson,
*Secretary, U.S. Consumer Product Safety Commission.*

[FR Doc. E9–8710 Filed 4–15–09; 8:45 am]

BILLING CODE 6355–01–P

## CONSUMER PRODUCT SAFETY COMMISSION

**[CPSC Docket No. 09–C0017]**

## Brents-Riordan Co., LLC, Provisional Acceptance of a Settlement Agreement and Order

**AGENCY:** Consumer Product Safety Commission

**ACTION:** Notice.

**SUMMARY:** It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Brents-Riordan Co., LLC, containing a civil penalty of $30,000.00.

**DATES:** Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by May 1, 2009.

**ADDRESSES:** Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 09–C0017, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814–4408.

**FOR FURTHER INFORMATION CONTACT:** Dennis C. Kacoyanis, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7587.

**SUPPLEMENTARY INFORMATION:** The text of the Agreement and Order appears below.

Dated: April 9, 2009.

**Todd A. Stevenson,**

*Secretary.*

## Settlement Agreement

1. In accordance with 16 CFR 1118.20, Brents-Riordan Co., LLC (''Brents-Riordan'') and the staff (''Staff'') of the United States Consumer Product Safety Commission (''Commission'') enter into this Settlement Agreement (''Agreement''). The Agreement and the incorporated attached Order (''Order'') settle the Staff's allegations set forth below.

## Parties

2. The Commission is an independent federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051–2089 (''CPSA'').

3. Brents-Riordan is a corporation organized and existing under the laws of the State of Louisiana, with its principal offices located in Shreveport, LA. Brents-Riordan is an importer of apparel.

## Staff Allegations

4. Brents-Riordan imported about 7,400 hooded youth sweatshirts and jackets with drawstrings (''Drawstring Jackets and Sweatshirts''). From March 2007 to December 2007, Brents-Riordan sold the Drawstring Jackets and Sweaters to various retailers who in-turn sold them to consumers.

5. The Drawstring Jackets and Sweatshirts are ''consumer product[s],'' and, at all times relevant hereto, Brents-Riordan was a ''manufacturer'' of those consumer products, which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(5), (8), and (11), 15 U.S.C. 2052(a), (5), (8), and (11).

6. In February 1996, the Staff issued the Guidelines for Drawstrings on Children's Upper Outerwear (''Guidelines'') to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, the Staff recommends that there be no hood and neck drawstrings in children's upper outerwear sized 2T to 12.

7. In June 1997, ASTM adopted a voluntary standard, ASTM F1816–97, that incorporated the Guidelines. The Guidelines state that firms should be aware of the hazards and should be sure garments they sell conform to the voluntary standard.

8. On May 19, 2006, the Commission posted on its Web site a letter from the Commission's Director of the Office of Compliance to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper outerwear sold in the United States complies with ASTM F1816–97. The letter states that the Staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (''FHSA'') section 15(c), 15 U.S.C. 1274(c). The letter also notes the CPSA's section 15(b) reporting requirements.

9. Brents-Riordan reported to the Commission there had been no incidents or injuries involving Drawstring Jackets and Sweatshirts.

10. Brents-Riordan's manufacture and distribution in commerce of the Drawstring Jackets and Sweatshirts did not meet the Guidelines or ASTM F1816–97, failed to comport with the Staff's May 2006 defect notice, and posed a strangulation hazard to children.

11. On April 2, 2008, the Commission and Brents-Riordan announced a recall of the Drawstring Jackets and Sweatshirts. The recall informed consumers that they should immediately remove the drawstrings to eliminate the hazard.

12. Brents-Riordan had presumed and actual knowledge that the Drawstring Jackets and Sweatshirts distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(1), 15 U.S.C. 1274(c)(1). Brents-Riordan had obtained information that reasonably supported the conclusion that the Drawstring Jackets and Sweatshirts contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), required Brents-Riordan to immediately inform the Commission of the defect and risk.

13. Brents-Riordan knowingly failed to immediately inform the Commission about the Drawstring Jackets and Sweatshirts as required by CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), and as the term ''knowingly'' is defined in CPSA section 20(d), 15 U.S.C. 2069(d). This failure violated CPSA section 19(a)(4), 15 U.S.C. 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. 2069, this failure subjected Brents-Riordan to civil penalties.

## Brents-Riordan Response

14. Brents-Riordan denies the Staff's allegations that Brents-Riordan violated the CPSA.

## Agreement of the Parties

15. Under the CPSA, the Commission has jurisdiction over this matter and over Brents-Riordan.

16. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Brents-Riordan, or a determination by the Commission, that Brents-Riordan has knowingly violated the CPSA.

17. In settlement of the Staff's allegations, Brents-Riordan shall pay a civil penalty in the amount of thirty-five thousand dollars ($35,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be by check payable to the order of the United States Treasury.

18. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any

written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the **Federal Register**.

19. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Brents-Riordan knowingly, voluntarily, and completely waives any rights it may have regarding the Staff's allegations to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether Brents-Riordan failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

20. The Commission may publicize the terms of the Agreement and the Order.

21. The Agreement and the Order shall apply to, and be binding upon, Brents-Riordan and each of its successors and assigns.

22. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject those referenced in paragraph 21 to appropriate legal action.

23. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

24. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Brents-Riordan agree that severing the provision materially affects the purpose of the Agreement and the Order.

BRENTS–RIORDAN CO., LLC.

Dated: January 19, 2009.
By:

Michael Riordan,
*Managing Member, Brents-Riordan Co., LLC, 9151 Youree Drive, Shreveport, LA 71115.*

Dated: January 19, 2009.
By:

Michael E. Powell, III, Esquire,
*Counsel for Respondent Brents-Riordan, LLC, 6425 Youree Drive, Suite 440, Shreveport, LA 71105.*

U.S. CONSUMER PRODUCT SAFETY COMMISSION.

Cheryl A. Falvey,
*General Counsel.*

Ronald G. Yelenik,
*Assistant General Counsel, Office of the General Counsel.*

Dated: January 28, 2009.
By:

Dennis C. Kacoyanis,
*Trial Attorney, Division of Compliance, Office of the General Counsel.*

### Order

Upon consideration of the Settlement Agreement entered into between Brents-Riordan Co., LLC (''Brents-Riordan'') and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over Brents-Riordan, and it appearing that the Settlement Agreement and the Order are in the public interest, *it is Ordered,* that the Settlement Agreement be, and hereby is, accepted; and it is

*Further ordered,* that Brents-Riordan shall pay a civil penalty in the amount of thirty-five thousand dollars ($35,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be by check payable to the order of the United States Treasury. Upon the failure of Brents-Riordan to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Brents-Riordan at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 8th day of April, 2009.

BY ORDER OF THE COMMISSION.

Todd A. Stevenson,
*Secretary, U.S. Consumer Product Safety Commission.*

[FR Doc. E9–8708 Filed 4–15–09; 8:45 am]
BILLING CODE 6355–01–P

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## CONSUMER PRODUCT SAFETY COMMISSION

**[CPSC Docket No. 09–C0005]**

## Bob's Stores Corp., Provisional Acceptance of a Settlement Agreement and Order

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally accepted Settlement Agreement with Bob's Stores Corp., containing a civil penalty of $55,000.00.

**DATES:** Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by May 1, 2009.

**ADDRESSES:** Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 09–C0005, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814–4408.

**FOR FURTHER INFORMATION CONTACT:** Seth B. Popkin, Lead Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7612.

**SUPPLEMENTARY INFORMATION:** The text of the Agreement and Order appears below.

April 9, 2009.

**Todd A. Stevenson,**
*Secretary.*

### Settlement Agreement

1. In accordance with 16 CFR 1118.20, Bob's Stores Corp. (''Bob's'') and the staff (''Staff'') of the United States Consumer Product Safety Commission (''Commission'') enter into this Settlement Agreement (''Agreement''). The Agreement and the incorporated attached Order (''Order'') settle the Staff's allegations set forth below.

### Parties

2. The Commission is an independent federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C.2051—2089 (''CPSA'').

3. Bob's is a corporation organized and existing under the laws of New Hampshire, with its principal offices located in Meriden, Connecticut. At all times relevant hereto, Bob's sold apparel.

### Staff Allegations

4. From August to December, 2007, Bob's held for sale and/or sold various quantities of the following children's upper outerwear products with drawstrings at the hood or neck: Scope

Imports boys' hooded sweatshirts; and Earth Products Adio Champ Custom boys' hooded zip fleece sweatshirts (collectively referred to herein as ''Sweatshirts''). These Sweatshirts identifications correspond to and are coextensive with information Bob's reported to the Staff about the Sweatshirts.

5. Bob's sold Sweatshirts to consumers.

6. The Sweatshirts are ''consumer product[s],'' and, at all times relevant hereto, Bob's was a ''retailer'' of those consumer products, which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(5), (8), and (13), 15 U.S.C. 2052(a)(5), (8), and (13).

7. In February 1996, the Staff issued the Guidelines for Drawstrings on Children's Upper Outerwear (''Guidelines'') to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, the Staff recommends that there be no hood and neck drawstrings in children's upper outerwear sized 2T to 12.

8. In June 1997, ASTM adopted a voluntary standard, ASTM F1816–97, that incorporated the Guidelines. The Guidelines state that firms should be aware of the hazards and should be sure garments they sell conform to the voluntary standard.

9. On May 19, 2006, the Commission posted on its Web site a letter from the Commission's Director of the Office of Compliance to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper outerwear sold in the United States complies with ASTM F1816–97. The letter states that the Staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (''FHSA'') section 15(c), 15 U.S.C. 1274(c). The letter also notes the CPSA's section 15(b) reporting requirements.

10. Bob's informed the Commission that there had been no incidents or injuries from the Sweatshirts.

11. Bob's distribution in commerce of the Sweatshirts did not meet the Guidelines or ASTM F1816–97, failed to comport with the Staff's May 2006 defect notice, and posed a strangulation hazard to children.

12. After distribution in commerce, recalls were announced regarding the Sweatshirts.

13. Bob's had presumed an actual knowledge that the Sweatshirts distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(1), 15 U.S.C. 1274(c)(1). Bob's had obtained information that reasonably supported the conclusion that the Sweatshirts contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), required Bob's to immediately inform the Commission of the defect and risk.

14. Bob's knowingly failed to immediately inform the Commission about the Sweatshirts as required by CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), and as the term ''knowingly'' is defined in CPSA section 20(d), 15 U.S.C. 2069(d). This failure violated CPSA section 19(a)(4), 15 U.S.C. 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. 2069, this failure subjected Bob's to civil penalties.

**Bob's Response**

15. Bob's denies the Staff's allegations set forth above, including, but not limited to, any allegation that Bob's failed timely to notify the Commission in accordance with section 15 of the CPSA.

16. Bob's requires that its vendors represent and warrant that all products sold to Bob's comply with all applicable regulations, standards and requirements.

17. Bob's promptly notified the Commission pursuant to section 15 of the CPSA without first being contacted by the Commission upon verifying that certain garments contained drawstrings at the hood or neck.

18. Bob's fully cooperated with the Commission in providing information necessary for the Commission to determine, with the vendor, whether a recall was warranted and whether the vendor had sold affected garments to any other retailers.

19. Bob's has entered into the Agreement for settlement purposes only, to avoid incurring additional expenses and the distraction of litigation. The Agreement and Order do not constitute and are not evidence of any fault or wrongdoing by Bob's.

**Agreement of the Parties**

20. Under the CPSA, the Commission has jurisdiction over this matter and over Bob's.

21. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Bob's, or a determination by the Commission, that Bob's knowingly violated the CPSA.

22. In settlement of the Staff's allegations, Bob's shall pay a civil penalty in the amount of fifty-five thousand dollars ($55,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be by check payable to the order of the United States Treasury.

23. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the **Federal Register**.

24. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Bob's knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether Bob's failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

25. The Commission may publicize the terms of the Agreement and the Order.

26. The Agreement and the Order shall apply to, and be binding upon, Bob's and each of its successors and assigns.

27. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject Bob's to appropriate legal action.

28. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

29. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Bob's agree that severing the provision materially affects the purpose of the Agreement and the Order.

Bob's Stores Corp.

Dated: March 2, 2009.
By:

Kelly Toussaint,
*President, Bob's Stores Corp., 160 Corporate Court, Meriden, CT 06450.*

Dated: March 5, 2009.
By:

Eric A. Rubel, Esq.,
*Arnold & Porter LLP, 555 12th Street, NW., Washington, DC 20004–1206, Counsel for Bob's Stores Corp.*

U.S. CONSUMER PRODUCT SAFETY COMMISSION STAFF.

Cheryl A. Falvey,
*General Counsel.*

Ronald G. Yelenik,
*Assistant General Counsel, Division of Compliance, Office of the General Counsel.*

Dated: March 6, 2009.
By:

Seth B. Popkin,
*Lead Trial Attorney, Division of Compliance, Office of the General Counsel.*

**Order**

Upon consideration of the Settlement Agreement entered into between Bob's Stores Corp. (''Bob's'') and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over Bob's, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

*Ordered,* that the Settlement Agreement be, and hereby is, accepted; and it is

*Further ordered,* that Bob's shall pay a civil penalty in the amount of fifty-five thousand dollars ($55,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury. Upon the failure of Bob's to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Bob's at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 8th day of April, 2009.

BY ORDER OF THE COMMISSION.

Todd A. Stevenson,
*Secretary, U.S. Consumer Product Safety Commission.*

[FR Doc. E9–8727 Filed 4–15–09; 8:45 am]

BILLING CODE 6355–01–P

## CONSUMER PRODUCT SAFETY COMMISSION

**[CPSC Docket No. 09–C0008]**

## Retco, Inc., Provisional Acceptance of a Settlement Agreement and Order

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Retco, Inc., containing a civil penalty of $45,000.00.

**DATES:** Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by May 1, 2009.

**ADDRESSES:** Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 09–C0008, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814–4408.

**FOR FURTHER INFORMATION CONTACT:** Renee K. Haslett, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7673.

**SUPPLEMENTARY INFORMATION:** The text of the Agreement and Order appears below.

Dated: April 9, 2009.

**Todd A. Stevenson,**
*Secretary.*

**Settlement Agreement**

1. In accordance with 16 CFR 1118.20, Retco Inc. (''Retco'') and the staff (''Staff'') of the United States Consumer Product Safety Commission (''Commission'') enter into this Settlement Agreement (''Agreement''). The Agreement and the incorporated attached Order (''Order'') settle the Staff's allegations set forth below.

**Parties**

2. The Commission is an independent federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051–2089 (''CPSA'').

3. Retco is a corporation organized and existing under the laws of Colorado, with its principal offices located in Breckenridge, Colorado. At all times relevant hereto, Retco sold apparel.

**Staff Allegations**

4. From at least September 2005 to May 2008, Retco held for sale and/or sold children's hooded sweatshirts and jackets with drawstrings at the hood or neck, which were later recalled on August 28, 2008 (''Garments'').

5. Retco sold Garments to consumers.

6. The Garments are ''consumer product[s],'' and, at all times relevant hereto, Retco was a ''retailer'' of those consumer products, which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(5), (8), and (13), 15 U.S.C. 2052(a)(5), (8), and (13).

7. In February 1996, the Staff issued the Guidelines for Drawstrings on Children's Upper Outerwear (''Guidelines'') to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, the Staff recommends that there be no hood and neck drawstrings in children's upper outerwear sized 2T to 12.

8. In June 1997, ASTM adopted a voluntary standard, ASTM F1816–97, that incorporated the Guidelines. The Guidelines state that firms should be aware of the hazards and should be sure garments they sell conform to the voluntary standard.

9. On May 19, 2006, the Commission posted on its Web site a letter from the Commission's Director of the Office of Compliance to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper outerwear sold in the United States complies with ASTM F1816–97. The letter states that the Staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (''FHSA'') section 15(c), 15 U.S.C. 1274(c). The letter also notes the CPSA's section 15(b) reporting requirements.

10. Retco informed the Commission that there had been no incidents or injuries from the Garments.

11. Retco's distribution in commerce of the Garments did not meet the Guidelines or ASTM F1816–97, failed to comport with the Staff's May 2006 defect notice, and posed a strangulation hazard to children.

12. On August 28, 2008, the Commission, in cooperation with the importer of the Garments, announced a recall of the Garments.

13. Retco had presumed an actual knowledge that the Garments distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(1), 15 U.S.C. 1274(c)(1). Retco had obtained information that reasonably supported the conclusion that the Garments contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), required Retco to immediately inform the Commission of the defect and risk.

14. Retco knowingly failed to immediately inform the Commission about the Garments as required by CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), and as the term ''knowingly'' is defined in CPSA section 20(d), 15 U.S.C. 2069(d). This failure violated CPSA section 19(a)(4), 15 U.S.C. 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. 2069, this failure subjected Retco to civil penalties.

**Retco's Responsive Allegation**

15. Retco denies the Staff's allegations above that Retco knowingly violated the CPSA.

**Agreement of the Parties**

16. Under the CPSA, the Commission has jurisdiction over this matter and over Retco.

17. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Retco, or a determination by the Commission, that Retco knowingly violated the CPSA.

18. In settlement of the Staff's allegations, Retco shall pay a civil penalty in the amount of forty-five thousand dollars ($45,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be by check payable to the order of the United States Treasury.

19. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the **Federal Register**.

20. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Retco knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether Retco failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

21. The Commission may publicize the terms of the Agreement and the Order.

22. The Agreement and the Order shall apply to, and be binding upon, Retco and each of its successors and assigns.

23. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject Retco and each of its successors and assigns to appropriate legal action.

24. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

25. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Retco agree that severing the provision materially affects the purpose of the Agreement and the Order.

Retco, Inc.

Dated: March 11, 2009.

By:

Patrick Somers,
*President, Retco, Inc., 7540 S. Grant Street, Littleton, CO 80122.*

U.S. Consumer Product Safety Commission Staff.

Cheryl A. Falvey,
*General Counsel.*

Ronald G. Yelenik,
*Assistant General Counsel, Office of the General Counsel.*

Dated: March 18, 2009.

By:

Renee K. Haslett,
*Trial Attorney, Division of Compliance Office of the General Counsel.*

**Order**

Upon consideration of the Settlement Agreement entered into between Retco, Inc. (''Retco'') and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over Retco, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

Ordered, that the Settlement Agreement be, and hereby is, accepted; and it is Further ordered, that Retco shall pay a civil penalty in the amount of forty-five thousand dollars ($45,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury. Upon the failure of Retco to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Retco at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 8th day of April, 2009.

By Order of the Commission.

Todd A. Stevenson,
*Secretary, U.S. Consumer Product Safety Commission.*

[FR Doc. E9–8729 Filed 4–15–09; 8:45 am]

BILLING CODE 6355–01–P

## CONSUMER PRODUCT SAFETY COMMISSION

**[CPSC Docket No. 09–C0009]**

## Outfitter Trading Company LLC, Provisional Acceptance of a Settlement Agreement and Order

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted

Settlement Agreement with Outfitter Trading Company LLC, containing a civil penalty of $35,000.00.

**DATES:** Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by May 1, 2009.

**ADDRESSES:** Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 09–C0009, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814–4408.

**FOR FURTHER INFORMATION CONTACT:** Renee K. Haslett, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7673.

**SUPPLEMENTARY INFORMATION:** The text of the Agreement and Order appears below.

Dated: April 9, 2009.

**Todd A. Stevenson,**

*Secretary.*

## Settlement Agreement

1. In accordance with 16 CFR 1118.20, Outfitter Trading Company LLC (''Outfitter'') and the staff (''Staff'') of the United States Consumer Product Safety Commission (''Commission'') enter into this Settlement Agreement (''Agreement''). The Agreement and the incorporated attached Order (''Order'') settle the Staff's allegations set forth below.

## Parties

2. The Commission is an independent Federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051–2089 (''CPSA'').

3. Outfitter is a corporation organized and existing under the laws of Colorado with its principal offices located in Littleton, Colorado. At all times relevant hereto, Outfitter sold apparel.

## Staff Allegations

4. From at least September 2005 to May 2008, Outfitter distributed in commerce children's hooded sweatshirts and jackets with drawstrings at the hood or neck, which were later recalled on August 28, 2008 (''Garments'').

5. A retailer sold the Garments to consumers.

6. The Garments are ''consumer product[s],'' and, at all times relevant hereto, Outfitter was a ''distributor'' of those consumer products, which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(5), (7), and (8), 15 U.S.C. 2052(a)(5), (7), and (8).

7. In February 1996, the Staff issued the Guidelines for Drawstrings on Children's Upper Outerwear (''Guidelines'') to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, the Staff recommends that there be no hood and neck drawstrings in children's upper outerwear sized 2T to 12.

8. In June 1997, ASTM adopted a voluntary standard, ASTM F1816–97, that incorporated the Guidelines. The Guidelines state that firms should be aware of the hazards and should be sure garments they sell conform to the voluntary standard.

9. On May 19, 2006, the Commission posted on its Web site a letter from the Commission's Director of the Office of Compliance to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper outerwear sold in the United States complies with ASTM F1816–97. The letter states that the Staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (''FHSA'') section 15(c), 15 U.S.C. 1274(c). The letter also notes the CPSA's section 15(b) reporting requirements.

10. Outfitter informed the Commission that there had been no incidents or injuries from the Garments.

11. Outfitter's distribution in commerce of the Garments did not meet the Guidelines or ASTM F1816–97, failed to comport with the Staff's May 2006 defect notice, and posed a strangulation hazard to children.

12. On August 28, 2008, the Commission, in cooperation with the importer of the Garments, announced a recall of the Garments.

13. Outfitter had presumed an actual knowledge that the Garments distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(1), 15 U.S.C. 1274(c)(1). Outfitter had obtained information that reasonably supported the conclusion that the Garments contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), required Outfitter to immediately inform the Commission of the defect and risk.

14. Outfitter knowingly failed to immediately inform the Commission about the Garments as required by CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), and as the term ''knowingly'' is defined in CPSA section 20(d), 15 U.S.C. 2069(d). This failure violated CPSA section 19(a)(4), 15 U.S.C. 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. 2069, this failure subjected Outfitter to civil penalties.

## Outfitter's Responsive Allegation

15. Outfitter denies the Staff's allegations above that Outfitter knowingly violated the CPSA.

## Agreement of the Parties

16. Under the CPSA, the Commission has jurisdiction over this matter and over Outfitter.

17. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Outfitter, or a determination by the Commission, that Outfitter knowingly violated the CPSA.

18. In settlement of the Staff's allegations, Outfitter shall pay a civil penalty in the amount of thirty-five thousand dollars ($35,000.00). The civil penalty shall be paid in two (2) installments as follows: $20,000.00 shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement; and $15,000.00 shall be paid within one hundred and twenty (120) calendar days of service of the Commission's final Order accepting the Agreement. Each payment shall be made by check payable to the order of the United States Treasury.

19. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the **Federal Register**.

20. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Outfitter knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) An

administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether Outfitter failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

21. The Commission may publicize the terms of the Agreement and the Order.

22. The Agreement and the Order shall apply to, and be binding upon, Outfitter and each of its successors and assigns.

23. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject Outfitter and each of its successors and assigns to appropriate legal action.

24. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

25. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Outfitter agree that severing the provision materially affects the purpose of the Agreement and the Order.

Outfitter Trading Company LLC.

Dated: March 11, 2009.

By:

Patrick Somers,
*President, Outfitter Trading Company LLC, 7540 S. Grant Street, Littleton, Colorado 80122.*

U.S. Consumer Product Safety Commission Staff.

Cheryl A. Falvey,
*General Counsel.*

Ronald G. Yelenik,
*Assistant General Counsel, Office of the General Counsel.*

Dated: March 18, 2009.

By:

Renee K. Haslett,
*Trial Attorney, Division of Compliance, Office of the General Counsel.*

**Order**

Upon consideration of the Settlement Agreement entered into between Outfitter Trading Company LLC (''Outfitter'') and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over Outfitter, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

*Ordered,* that the Settlement Agreement be, and hereby is, accepted; and it is

*Further Ordered,* that Outfitter shall pay a civil penalty in the amount of thirty-five thousand dollars ($35,000.00). The civil penalty shall be paid in two (2) installments as follows: $20,000.00 shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement; and $15,000.00 shall be paid within one hundred and twenty (120) calendar days of service of the Commission's final Order accepting the Agreement. Each payment shall be made by check payable to the order of the United States Treasury. Upon the failure of Outfitter to make any of the foregoing payments when due, the total amount of the civil penalty shall become immediately due and payable, and interest on the unpaid amount shall accrue and be paid by Outfitter at the Federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 8th day of April, 2009.

By Order Of The Commission.

Todd A. Stevenson,
*Secretary, U.S. Consumer Product Safety Commission.*

[FR Doc. E9–8728 Filed 4–15–09; 8:45 am]

BILLING CODE 6355–01–P

## CONSUMER PRODUCT SAFETY COMMISSION

**[CPSC Docket No. 09–C0006]**

## The TJX Companies, Inc., d/b/a T.J. Maxx, Provisional Acceptance of a Settlement Agreement and Order

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with The TJX Companies, Inc., d/b/a T.J. Maxx, containing a civil penalty of $315,000.00.

**DATES:** Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by May 1, 2009.

**ADDRESSES:** Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 09–C0006, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814–4408.

**FOR FURTHER INFORMATION CONTACT:** Seth B. Popkin, Lead Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7612.

**SUPPLEMENTARY INFORMATION:** The text of the Agreement and Order appears below.

Dated: April 9, 2009.

**Todd A. Stevenson,**
*Secretary.*

**Settlement Agreement**

1. In accordance with 16 CFR 1118.20, The TJX Companies, Inc., d/b/a T.J. Maxx (''T.J. Maxx'') and the staff (''Staff'') of the United States Consumer Product Safety Commission (''Commission'') enter into this Settlement Agreement (''Agreement''). The Agreement and the incorporated attached Order (''Order'') settle the Staff's allegations set forth below.

**Parties**

2. The Commission is an independent Federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051—2089 (''CPSA'').

3. T.J. Maxx is a corporation organized and existing under the laws of Delaware, with its principal offices located in Framingham, Massachusetts. At all times relevant hereto, T.J. Maxx sold apparel.

**Staff Allegations**

4. From June 2007 to January 2008, T.J. Maxx held for sale and/or sold various quantities of the following children's upper outerwear products with drawstrings at the hood or neck: Scope Imports boys' hooded sweatshirts; Ms. Bubbles Passport girls' blue denim jackets; GWB II LLC French Fries/Heartbreakers Club hooded

henleys; Maran Squeeze Kids girls' corduroy jackets; and Oved Apparel Corp. Company 81 sweatshirts. From July to September, 2008, T.J. Maxx held for sale and/or sold the following children's upper outerwear products with drawstrings at the hood or neck: nZania/Element hoodies; Lost assorted hoodies; Ed Hardy sweatshirts; and Kids Headquarters Calvin Klein garments. The products identified in this paragraph are collectively referred to herein as ''Sweatshirts.'' These Sweatshirts identifications correspond to and are coextensive with information T.J. Maxx reported to the Staff about the Sweatshirts.

5. T.J. Maxx sold Sweatshirts to consumers.

6. The Sweatshirts are ''consumer product[s],'' and, at all times relevant hereto, T.J. Maxx was a ''retailer'' of those consumer products, which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(5), (8), and (13), 15 U.S.C. 2052(a)(5), (8), and (13).

7. In February 1996, the Staff issued the Guidelines for Drawstrings on Children's Upper Outerwear (''Guidelines'') to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, the Staff recommends that there be no hood and neck drawstrings in children's upper outerwear sized 2T to 12.

8. In June 1997, ASTM adopted a voluntary standard, ASTM F1816–97, that incorporated the Guidelines. The Guidelines state that firms should be aware of the hazards and should be sure garments they sell conform to the voluntary standard.

9. On May 19, 2006, the Commission posted on its Web site a letter from the Commission's Director of the Office of Compliance to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper outerwear sold in the United States complies with ASTM F1816–97. The letter states that the Staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (''FHSA'') section 15(c), 15 U.S.C. 1274(c). The letter also notes the CPSA's section 15(b) reporting requirements.

10. T.J. Maxx informed the Commission that there had been no incidents or injuries from the Sweatshirts.

11. T.J. Maxx's distribution in commerce of the Sweatshirts did not meet the Guidelines or ASTM F1816–97, failed to comport with the Staff's May 2006 defect notice, and posed a strangulation hazard to children.

12. Recalls have been announced regarding the Sweatshirts as warranted.

13. T.J. Maxx had presumed an actual knowledge that the Sweatshirts distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(1), 15 U.S.C. 1274(c)(1). T.J. Maxx had obtained information that reasonably supported the conclusion that the Sweatshirts contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), required T.J. Maxx to immediately inform the Commission of the defect and risk.

14. T.J. Maxx knowingly failed to immediately inform the Commission about the Sweatshirts as required by CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), and as the term ''knowingly'' is defined in CPSA section 20(d), 15 U.S.C. 2069(d). This failure violated CPSA section 19(a)(4), 15 U.S.C. 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. 2069, this failure subjected T.J. Maxx to civil penalties.

**T.J. Maxx's Response**

15. T.J. Maxx denies the Staff's allegations set forth above, including, but not limited to, any allegation that T.J. Maxx failed timely to notify the Commission in accordance with section 15 of the CPSA.

16. T.J. Maxx requires that its vendors represent and warrant that all products sold to T.J. Maxx comply with all applicable regulations, standards and requirements.

17. T.J. Maxx promptly notified the Commission pursuant to section 15 of the CPSA without first being contacted by the Commission upon verifying that certain garments contained drawstrings at the hood or neck.

18. T.J. Maxx fully cooperated with the Commission in providing information necessary for the Commission to determine, with the vendor, whether a recall was warranted and whether the vendor had sold affected garments to any other retailers.

19. T.J. Maxx has entered into the Agreement for settlement purposes only, to avoid incurring additional expenses and the distraction of litigation. The Agreement and Order do not constitute and are not evidence of any fault or wrongdoing by T.J. Maxx.

**Agreement of the Parties**

20. Under the CPSA, the Commission has jurisdiction over this matter and over T.J. Maxx.

21. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by T.J. Maxx, or a determination by the Commission, that T.J. Maxx knowingly violated the CPSA.

22. In settlement of the Staff's allegations, T.J. Maxx shall pay a civil penalty in the amount of three hundred fifteen thousand dollars ($315,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be by check payable to the order of the United States Treasury.

23. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the **Federal Register**.

24. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, T.J. Maxx knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether T.J. Maxx failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

25. The Commission may publicize the terms of the Agreement and the Order.

26. The Agreement and the Order shall apply to, and be binding upon, T.J. Maxx and each of its successors and assigns.

27. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject T.J. Maxx to appropriate legal action.

28. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the

Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

29. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and T.J. Maxx agree that severing the provision materially affects the purpose of the Agreement and the Order.

The TJX Companies, Inc., d/b/a T.J. Maxx.

Dated: March 2, 2009.
By:

Ann McCauley,
*Exec. Vice President, General Counsel, and Secretary. The TJX Companies, Inc., d/b/a T.J. Maxx, 770 Cochituate Road, Framingham, MA 01701.*

Dated: March 3, 2009.
By:

Eric A. Rubel, Esq.,
*Arnold & Porter LLP, 555 12th Street, NW., Washington, DC 20004–1206. Counsel for The TJX Companies, Inc., d/b/a T.J. Maxx.*

U.S. Consumer Product Safety Commission Staff.

Cheryl A. Falvey,
*General Counsel.*

Ronald G. Yelenik,
*Assistant General Counsel, Division of Compliance, Office of the General Counsel.*

Dated: March 6, 2009.
By:

Seth B. Popkin,
*Lead Trial Attorney, Division of Compliance, Office of the General Counsel.*

**Order**

Upon consideration of the Settlement Agreement entered into between The TJX Companies, Inc., d/b/a T.J. Maxx (''T.J. Maxx'') and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over T.J. Maxx, and it appearing that the Settlement Agreement and the Order are in the public interest, *it is*

*Ordered,* that the Settlement Agreement be, and hereby is, accepted; and it is

*Further Ordered,* that T.J. Maxx shall pay a civil penalty in the amount of three hundred fifteen thousand dollars ($315,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury. Upon the failure of T.J. Maxx to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by T.J. Maxx at the Federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 8th day of April, 2009.

By Order of the Commission.

Todd A. Stevenson,
*Secretary, U.S. Consumer Product Safety Commission.*

[FR Doc. E9–8726 Filed 4–15–09; 8:45 am]

**BILLING CODE 6355–01–P**

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## CONSUMER PRODUCT SAFETY COMMISSION

**[CPSC Docket No. 09–C0007]**

## Concord Buying Group, Inc., d/b/a A.J. Wright, Provisional Acceptance of a Settlement Agreement and Order

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Concord Buying Group, Inc., d/b/a A.J. Wright, containing a civil penalty of $70,000.00.

**DATES:** Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by May 1, 2009.

**ADDRESSES:** Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 09–C0007, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814–4408.

**FOR FURTHER INFORMATION CONTACT:** Seth B. Popkin, Lead Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7612.

**SUPPLEMENTARY INFORMATION:** The text of the Agreement and Order appears below.

Dated: April 9, 2009.

**Todd A. Stevenson,**
*Secretary.*

**Settlement Agreement**

1. In accordance with 16 CFR 1118.20, Concord Buying Group, Inc., d/b/a A.J. Wright (''A.J. Wright'') and the staff (''Staff'') of the United States Consumer Product Safety Commission (''Commission'') enter into this Settlement Agreement (''Agreement''). The Agreement and the incorporated attached Order (''Order'') settle the Staff's allegations set forth below.

**Parties**

2. The Commission is an independent federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051–2089 (''CPSA'').

3. A.J. Wright is a corporation organized and existing under the laws of New Hampshire, with its principal offices located in Framingham, Massachusetts. At all times relevant hereto, A.J. Wright sold apparel.

**Staff Allegations**

4. From August to November, 2007, A.J. Wright held for sale and/or sold various quantities of the following children's upper outerwear products with drawstrings at the hood or neck: Scope Imports boys' hooded sweatshirts; Raw Blue sweatshirts; and Kidz World Inc. High Energy USA boys' sweatshirts (collectively referred to herein as ''Sweatshirts''). These Sweatshirts' identifications correspond to and are coextensive with information A.J. Wright reported to the Staff about the Sweatshirts.

5. A.J. Wright sold Sweatshirts to consumers.

6. The Sweatshirts are ''consumer product[s],'' and, at all times relevant hereto, A.J. Wright was a ''retailer'' of those consumer products, which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(5), (8), and (13), 15 U.S.C. 2052(a)(5), (8), and (13).

7. In February 1996, the Staff issued the Guidelines for Drawstrings on Children's Upper Outerwear (''Guidelines'') to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, the Staff recommends that there be no hood and neck drawstrings in children's upper outerwear sized 2T to 12.

8. In June 1997, ASTM adopted a voluntary standard, ASTM F1816–97, that incorporated the Guidelines. The Guidelines state that firms should be aware of the hazards and should be sure garments they sell conform to the voluntary standard.

9. On May 19, 2006, the Commission posted on its Web site a letter from the Commission's Director of the Office of Compliance to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper outerwear sold in the United States complies with ASTM F1816–97. The letter states that the Staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (''FHSA'') section 15(c), 15 U.S.C. 1274(c). The letter also notes the CPSA's section 15(b) reporting requirements.

10. A.J. Wright informed the Commission that there had been no incidents or injuries from the Sweatshirts.

11. A.J. Wright's distribution in commerce of the Sweatshirts did not meet the Guidelines or ASTM F1816–97, failed to comport with the Staff's May 2006 defect notice, and posed a strangulation hazard to children.

12. After distribution in commerce, recalls were announced regarding the Sweatshirts.

13. A.J. Wright had presumed an actual knowledge that the Sweatshirts distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(1), 15 U.S.C. 1274(c)(1). A.J. Wright had obtained information that reasonably supported the conclusion that the Sweatshirts contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), required A.J. Wright to immediately inform the Commission of the defect and risk.

14. A.J. Wright knowingly failed to immediately inform the Commission about the Sweatshirts as required by CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), and as the term ''knowingly'' is defined in CPSA section 20(d), 15 U.S.C. 2069(d). This failure violated CPSA section 19(a)(4), 15 U.S.C. 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. 2069, this failure subjected A.J. Wright to civil penalties.

**A.J. Wright's Response**

15. A.J. Wright denies the Staff's allegations set forth above, including, but not limited to, any allegation that A.J. Wright failed timely to notify the Commission in accordance with section 15 of the CPSA.

16. A.J. Wright requires that its vendors represent and warrant that all products sold to A.J. Wright comply with all applicable regulations, standards and requirements.

17. A.J. Wright promptly notified the Commission pursuant to section 15 of the CPSA without first being contacted by the Commission upon verifying that certain garments contained drawstrings at the hood or neck.

18. A.J. Wright fully cooperated with the Commission in providing information necessary for the Commission to determine, with the vendor, whether a recall was warranted and whether the vendor had sold affected garments to any other retailers.

19. A.J. Wright has entered into the Agreement for settlement purposes only, to avoid incurring additional expenses and the distraction of litigation. The Agreement and Order do not constitute and are not evidence of any fault or wrongdoing by A.J. Wright.

**Agreement of the Parties**

20. Under the CPSA, the Commission has jurisdiction over this matter and over A.J. Wright.

21. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by A.J. Wright, or a determination by the Commission, that A.J. Wright knowingly violated the CPSA.

22. In settlement of the Staff's allegations, A.J. Wright shall pay a civil penalty in the amount of seventy thousand dollars ($70,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be by check payable to the order of the United States Treasury.

23. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the **Federal Register**.

24. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, A.J. Wright knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether A.J. Wright failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

25. The Commission may publicize the terms of the Agreement and the Order.

26. The Agreement and the Order shall apply to, and be binding upon, A.J. Wright and each of its successors and assigns.

27. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject A.J. Wright to appropriate legal action.

28. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

29. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and A.J. Wright agree that severing the provision materially affects the purpose of the Agreement and the Order.

Concord Buying Group, Inc., d/b/a A.J. Wright.

Dated: March 2, 2009.
By:

Ann McCauley,
*Secretary, Concord Buying Group, Inc., d/b/a A.J. Wright, 770 Cochituate Road, Framingham, MA 01701.*

Dated: March 3, 2009.
By:

Eric A. Rubel, Esq.,
*Arnold & Porter LLP, 555 12th Street, NW., Washington, DC 20004–1206, Counsel for Concord Buying Group, Inc., d/b/a A.J. Wright.*

U.S. Consumer Product Safety Commission Staff.

Cheryl A. Falvey,

*General Counsel.*

Ronald G. Yelenik,

*Assistant General Counsel, Division of Compliance, Office of the General Counsel.*

Dated: March 6, 2009.

By:

Seth B. Popkin,

*Lead Trial Attorney, Division of Compliance, Office of the General Counsel.*

**Order**

Upon consideration of the Settlement Agreement entered into between Concord Buying Group, Inc., d/b/a A.J. Wright (''A.J. Wright'') and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over A.J. Wright, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

*Ordered,* that the Settlement Agreement be, and hereby is, accepted; and it is

*Further ordered,* that A.J. Wright shall pay a civil penalty in the amount of seventy thousand dollars ($70,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury. Upon the failure of A.J. Wright to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by A.J. Wright at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 8th day of April, 2009.

By Order of the Commission.

Todd A. Stevenson,

*Secretary, U.S. Consumer Product Safety Commission.*

[FR Doc. E9–8725 Filed 4–15–09; 8:45 am]

BILLING CODE 6355–01–P

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0130]**

### Federal Acquisition Regulation; Information Collection; Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for an extension to an existing OMB clearance (9000–0130).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR), Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate. The clearance currently expires on June 30, 2009.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before June 15, 2009.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden to the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Ms. Meredith Murphy, Contract Policy Division, GSA, (202) 208–6925.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

Under the Free Trade Agreements Acts of 1979, unless specifically exempted by statute or regulation, agencies are required to evaluate offers over a certain dollar limitation to supply an eligible product without regard to the restrictions of the Buy American Act or the Balance of Payments program. Offerors identify excluded end products and FTA end products on this certificate.

The contracting officer uses the information to identify the offered items which are domestic and FTA country end products so as to give these products a preference during the evaluation of offers. Items having components of unknown origin are considered to have been mined, produced, or manufactured outside the United States.

**B. Annual Reporting Burden**

*Respondents:* 1,140.
*Responses Per Respondent:* 5.
*Annual Responses:* 5,700.
*Hours per Response:* .167.
*Total Burden Hours:* 666.
*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0130, Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, in all correspondence.

Dated: April 9, 2009.

**Al Matera,**

*Director, Office of Acquisition Policy.*

[FR Doc. E9–8779 Filed 4–15–09; 8:45 am]

BILLING CODE 6820–EP–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary of Defense

**[Docket ID: USAF–2009–0025]**

### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice to delete a system of records.

**SUMMARY:** The Department of the Air Force proposes to delete a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** The changes will be effective on May 18, 2009 unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to the Air Force Privacy Act Officer, Office of Warfighting Integration and Chief Information Officer, SAF/XCPPI, 1800 Air Force Pentagon, Suite 220, Washington, DC 20330–1800.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ben Swilley at (703) 696–6648.

**SUPPLEMENTARY INFORMATION:** The Department of the Air Force systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Air Force proposes to delete a system of records notice in its inventory of record systems

subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

**Morgan E. Frazier,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**F036 AFPC I**

**SYSTEM NAME:**

Airmen Utilization Records System (June 11, 1997, 62 FR 31793).

**REASON:**

This is a duplicate system that is now merged with F036 AFPC M, Officer Utilization Records System (June 11, 1997, 62 FR 31793). There should be only one system for Utilization Records System.

[FR Doc. E9–8715 Filed 4–15–09; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DOD–2009–OS–0050]**

### Privacy Act of 1974; System of Records

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Notice to delete a system of records.

**SUMMARY:** The Office of the Secretary of Defense is deleting a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on May 18, 2009 unless comments are received which result in a contrary determination.

**ADDRESSES:** Send comments to the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Cindy Allard at (703) 588–6830.

**SUPPLEMENTARY INFORMATION:** The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Office of the Secretary of Defense proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: April 13, 2009.

**Morgan E. Frazier,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**DELETION:**

**DATSD 03**

**SYSTEM NAME:**

Files of Personnel Evaluated for Non-Career Employment in DoD May 17, 1994, 59 FR 25620).

**REASON:**

The Office of the Secretary of Defense is using the Government-wide System of Records Notice ''OPM/Govt 1'', General Personnel Records (June 19, 2006, 71 FR 35342), that covers general personnel records and also includes working files derived from this notice that management is using in its personnel management capacity. Therefore, this notice should be deleted.

[FR Doc. E9–8717 Filed 4–15–09; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Concerning Assembled Hematin, Method for Forming Same and Method for Polymerizing Aromatic Monomers Using Same

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice.

**SUMMARY:** In accordance with 37 CFR Part 404.6, announcement is made of the availability for licensing of U.S. Patent No. US 7,510,739 entitled ''Assembled Hematin, Method for Forming Same and Method for Polymerizing Aromatic Monomers Using Same'' issued March 31, 2009. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeffrey DiTullio at U.S. Army Soldier Systems Center, Kansas Street, Natick, MA 01760, Phone: (508) 233–4184 or E-mail: *Jeffrey.Ditullio@natick.army.mil.*

**SUPPLEMENTARY INFORMATION:** Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR Part 404.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. E9–8740 Filed 4–15–09; 8:45 am]

**BILLING CODE 3710–08–P**

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### Notice of Public Scoping for the Missouri River Ecosystem Restoration Plan, Missouri River Basin, United States

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of public scoping and opportunity for comment.

**SUMMARY:** On Monday, January 26, 2009, the U.S. Department of Defense (DoD), U.S Army Corps of Engineers (USACE), Kansas City and Omaha Districts, issued a Notice of Intent to prepare an Environmental Impact Statement (EIS) for the preparation of the Missouri River Ecosystem Restoration Plan (74 FR 4382). Pursuant to Subsection (a) of Section 5018 of the Water Resources Development Act of 2007 (WRDA 2007), the U.S. Army Corps of Engineers must study actions required to mitigate habitat losses of aquatic and terrestrial habitat, recover federally listed species under the Endangered Species Act and restore ecosystem functions to prevent further declines among other native species. As part of this effort, the Kansas City and Omaha District offices of the U.S. Army Corps of Engineers are hosting public scoping meetings. The first official phase of public scoping will occur from May 1, 2009 through December 1, 2009 and address the plan purpose, need, and target resource identification. For information regarding public scoping meetings see **SUPPLEMENTARY INFORMATION**, below.

**DATES:** USACE invites comments on the proposed scope and content of the plan/EIS from all interested parties beginning May 1, 2009. Comments must be received by December 1, 2009 to ensure appropriate consideration. Late comments will be considered to the extent practicable. USACE also invites members of the public to participate in public scoping meetings (*see* **SUPPLEMENTARY INFORMATION**) to learn more about the proposed plan and provide oral comments on the issues to be considered.

**ADDRESSES:** Requests to be added to the project mailing list may be submitted by

completing a form available on the Web site for the Missouri River Ecosystem Restoration Plan, located at: *http://www.mrerp.org*. Electronic comments may be submitted at: *comments@mrerp.org*. Written comments may be submitted by mail to the NEPA Document Manager for the Missouri River Ecosystem Restoration Plan: Ms. Jennifer Switzer, Project Manager, 601 E. 12th Street, Kansas City, MO 64106.

**FOR FURTHER INFORMATION CONTACT:** For further information and/or questions about the proposed plan/EIS, please contact Ms. Jennifer Switzer, Project Manager, by telephone: (816) 389–3062, by mail: 601 E. 12th Street, Kansas City, MO 64106, or by e-mail: *jennifer.l.switzer@usace.army.mil*, or Mr. Randy Sellers, Project Manager, by telephone (402) 995–2689, by mail: CENWO–PM–AE, 1616 Capitol Avenue, Omaha, NE 68102, or by e-mail: *randy.p.sellers@usace.army.mil*. For inquiries from the media, please contact the Corps, Kansas City District Public Affairs Officer (PAO), Mr. David Kolarik by telephone: (816) 389–3486, by mail: 601 E. 12th Street, Kansas City, MO 64106, or by e-mail: *david.s.kolarik@usace.army.mil*.

**SUPPLEMENTARY INFORMATION:** USACE is seeking public input on its proposed draft purpose and need statements for developing the Plan/EIS. The Plan is needed to fully implement the direction received in Subsection (a) of Section 5018 of the Water Resources Development Act of 2007; and address current trends indicating: diminished natural habitat; reduced populations of native species and communities; and reduced variability of physical processes such as flows, flooding, and sediment erosion/deposition. Therefore, the draft purpose of the Plan is to determine the actions required to mitigate losses of aquatic and terrestrial habitat; to recover federally listed species under the Endangered Species Act; and to restore the ecosystem to prevent further declines among other native species, while seeking to balance with social, economic, and cultural values for future generations. The overall goal of the planning process is to result in a sustainable decision that will guide mitigation, recovery, and restoration actions over the next 30 to 50 years.

In addition to seeking input on the proposed draft purpose and need for the Plan, the USACE is also seeking comments on what specific natural resources should be addressed and other issues that should be considered in this type of plan.

USACE is hosting public scoping meetings throughout the basin to address the plan purpose, need, and target resources. For specific information regarding these meetings (dates, locations, and times) please see *http://www.mrerp.org*.

All meetings are accessible to people with disabilities. Any individual with a disability who requires special assistance, such as a sign language interpreter, or a translator, please contact either project manager listed above at least 48 hours in advance of the meeting so that arrangements can be made.

Additional information about the Missouri River Ecosystem Restoration Plan can be found at *http://www.mrerp.org*.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. E9–8739 Filed 4–15–09; 8:45 am]

**BILLING CODE 3720–58–P**

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## DEPARTMENT OF DEFENSE

### Department of the Air Force

**[Docket ID: USAF–2009–0026]**

### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice to delete a system of records.

**SUMMARY:** The Department of the Air Force proposes to delete a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** The changes will be effective on May 18, 2009 unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to the Air Force Privacy Act Officer, Office of Warfighting Integration and Chief Information Officer, SAF/XCPPI, 1800 Air Force Pentagon, Suite 220, Washington, DC 20330–1800.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ben Swilley at (703) 696–6648.

**SUPPLEMENTARY INFORMATION:** The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Air Force proposes to delete a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: April 13, 2009.

**Morgan E. Frazier,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**DELETION: F036 AFPC G**

**SYSTEM NAME:**

Medical Officer Personnel Utilization Records (May 9, 2003, 68 FR 24949).

**REASON:**

This is a duplicate system that is now merged with F036 AFPC M, Officer Utilization Records System (June 11, 1997, 62 FR 31793). There should be only one system for Utilization Records System. Therefore, this notice should be deleted.

[FR Doc. E9–8716 Filed 4–15–09; 8:45 am]

**BILLING CODE 5001–06–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8785–9; Docket ID No. EPA–HQ–ORD–2009–0173]**

### Physiological Parameters Database for PBPK Modeling

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of public comment period.

**SUMMARY:** EPA is announcing a public comment period for an on-line database file, using the Microsoft® Access database management system, that contains a comprehensive collection of physiological parameter data intended to be suitable for application in physiologically based pharmacokinetic (PBPK) modeling. The public comment period will be for 30 days. EPA requests that interested users comment on the functionality or usability of this resource and provide comments that may be considered for improving the final product.

The draft database represents a compilation of several individual databases developed over the past few years. It contains physiological parameter data for humans from infancy through old age, as well as data for experimental laboratory species. EPA requests that end-users provide feedback regarding their experience working with this database. Users are also encouraged to comment on specific studies or methods employed in the

studies included in the entire draft database.

As a means of quality assurance and quality control (QA/QC), about 30% of the data entries, randomly selected, have been verified by an independent contractor. This QA/QC process will be ongoing.

**DATES:** The 30-day public comment period begins April 16, 2009 and ends May 18, 2009. Technical comments should be in writing and must be received by EPA by close of business, May 18, 2009.

**ADDRESSES:** The draft database is available for download from the U.S. EPA Web site *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=204443.* Users must have Microsoft® Access in order to open and manipulate the database file.

Comments may be submitted electronically via EPA's E-Docket, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

**FOR FURTHER INFORMATION CONTACT:** For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov.*

If you have questions about the database, please contact the Information Management Staff, National Center for Environmental Assessment, U.S. Environmental Protection Agency, Washington, DC 20460; telephone: 703–347–8561; facsimile: 703–347–8691; or e-mail: *NCEADC.Comment@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Information About the Product

Physiologically based pharmacokinetic (PBPK) models represent an important class of dosimetry models that are useful for predicting internal dose at target organs for risk assessment applications. Dose-response relationships that appear unclear or confusing at the administered dose level can become more understandable when expressed on the basis of internal dose of the chemical. To predict internal dose level, PBPK models use physiological data to construct mathematical representations of biological processes associated with the absorption, distribution, metabolism, and elimination of compounds. With the appropriate data, these models can be used to extrapolate across species, lifestages, and exposure scenarios, as well as address various sources of uncertainty in risk assessments. This database contains a collection of physiological data relevant for parameterizing PBPK models for children, adults, and the elderly. In addition, the database contains physiological data for parameterizing PBPK models for young (i.e., developing) and adult rodents.

## II. How To Submit Technical Comments to the Docket at Regulations.gov

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2009–0173, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov.*
- *Fax:* 202–566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, Room 3334 EPA West Building, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center 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. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments by mail or hand delivery, please submit an original and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–ORD–2009–0173. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

*Docket:* Documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: March 16, 2009.

**Rebecca Clark,**

*Acting Director, National Center for Environmental Assessment.*

[FR Doc. E9–8795 Filed 4–15–09; 8:45 am]

BILLING CODE 6560–50–P

# EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

## Commission Meeting

**AGENCY HOLDING THE MEETING:** Equal Employment Opportunity Commission.

**DATE AND TIME:** Wednesday, April 22, 2009, 10 a.m. Eastern Time.

**PLACE:** Commission Meeting Room on the First Floor of the EEOC Office Building, 131 ''M'' Street, NE., Washington, DC 20507.

**STATUS:** The meeting will be open to the public.

**MATTERS TO BE CONSIDERED:**

**OPEN SESSION:**

1. Announcement of Notation Votes, and

2. Best Practices to Avoid Discrimination Against Caregivers.

**Note:** In accordance with the Sunshine Act, the meeting will be open to public observation of the Commission's deliberations and voting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTY) at any time for information on these meetings. The EEOC provides sign language interpretation at Commission meetings for the hearing impaired. Requests for other reasonable accommodations may be made by using the voice and TTY numbers listed above. *Contact Person For More Information:* Stephen Llewellyn, Executive Officer on (202) 663–4070.

This Notice Issued April 13, 2009.

**Stephen Llewellyn,**

*Executive Officer, Executive Secretariat.*

[FR Doc. E9–8748 Filed 4–15–09; 8:45 am]

**BILLING CODE 6570–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

April 9, 2009.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Persons wishing to comment on this information collection should submit comments June 15, 2009. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at 202–395–5167, or the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B.Herman@fcc.gov*, Federal Communications Commission (FCC). To submit your comments by email send them to: *PRA@fcc.gov*.

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review'', (3) click the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

**FOR FURTHER INFORMATION CONTACT:** For additional information, send an email to Judith B. Herman at 202–418–0214.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0936.

*Title:* Section 95.1215, Disclosure Policies and Section 95.1217, Labeling Requirements.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit and not-for-profit institutions.

*Number of Respondents:* 20 respondents; 20 responses.

*Estimated Time per Response:* 1 hour.

*Frequency of Response:* Third party disclosure requirement.

*Obligation To Respond:* Required to obtain or retain benefits. Statutory authority for these information collections are contained in 47 U.S.C. 154 and 303.

*Total Annual Burden:* 20 hours.

*Total Annual Cost:* N/A.

*Privacy Act Impact Assessment:* N/A.

*Nature and Extent of Confidentiality:* There is no need for confidentiality.

*Needs and Uses:* The Commission will submit this information collection to the Office of Management and Budget (OMB) after this 60 day comment period in order to obtain the full three year clearance from them. The Commission is requesting an extension (no change in the third party disclosure requirement) of this information collection. There is no change in the burden estimates.

The information collection contained in sections 95.1215 and 95.1217 require manufacturers of transmitters for the Medical Implant Communications Service (MICS) to include with each transmitting device a statement regarding harmful interference and to label the device in a conspicuous location on the device. The requirements will allow use of potential life-saving medical technology without causing interference to other users of the 402–405 MHz bands.

The information collection requires that MICS transmitters must include with each transmitting device the following statement: ''This transmitter is authorized by rule under the Medical Implant Communications Service (47 CFR Part 95) and must not cause harmful interference to stations operating in the 400.150–406.000 MHz in the Meteorological Aids (i.e., transmitters and receivers used to communicate weather data), the Meteorological Satellite, or the Earth Exploration Satellite Services and must accept interference that may be caused by such aids, including interference that may cause undesired operation. This transmitter shall be used only in accordance with FCC Rules governing the Medical Implant Communications Service (MICS). Analog and digital voice communications are prohibited. Although this transmitter has been approved by the Federal Communications Commission, there is no guarantee that it will not receive interference or that any particular transmission from this transmitter will be free from interference.''

Additionally, the information collection requires that medical implant programmer/controller transmitters shall be labeled in a conspicuous location with the following statement: ''This device may not interfere with stations operating in the 400.150–406.000 MHz band in the Meteorological Aids, Meteorological Satellite, and Earth Exploration Satellite Services and must accept any interference that may cause undesired operation.''

*OMB Control Number:* 3060–0222.

*Title:* Section 97.213, Telecommand of an Amateur Station.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Individuals or households.

*Number of Respondents:* 500 respondents; 500 responses.

*Estimated Time per Response:* 12 minutes.

*Frequency of Response:* Recordkeeping requirement.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151–155 and 301–609.

*Total Annual Burden:* 100 hours.

*Total Annual Cost:* N/A.

*Privacy Act Impact Assessment:* N/A.

*Nature and Extent of Confidentiality:* There is no need for confidentiality.

*Needs and Uses:* The Commission will submit this information collection to the Office of Management and Budget (OMB) after this 60 day comment period in order to obtain the full three year clearance from them. The Commission is requesting an extension (no change in the recordkeeping requirement) of this information collection. There is no change in the burden estimates.

The recordkeeping requirement in section 97.213 consists of posting a photocopy of the amateur station license, a label with the name, address and telephone number of the station licensee, and the name of at least one authorized control operator in a conspicuous place at the station location. This requirement is necessary so that quick resolution of any harmful interference problems can be identified and to ensure that the station is operating in accordance with the Communications Act of 1934, as amended.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E9–8753 Filed 4–15–09; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

April 10, 2009.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Persons wishing to comment on this information collection should submit comments June 15, 2009. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB) via fax at 202–395–5167, or the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B.Herman@fcc.gov*, Federal Communications Commission (FCC). To submit your comments by email send them to: *PRA@fcc.gov*.

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review'', (3) click the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

**FOR FURTHER INFORMATION CONTACT:** For additional information, send an email to Judith B. Herman at 202–418–0214.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0202.

*Title:* Section 87.37, Developmental License.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit; not-for-profit institutions; and state, local or tribal government.

*Number of Respondents:* 10 respondents; 10 responses.

*Estimated Time per Response:* 8 hours.

*Frequency of Response:* On occasion and annual reporting requirements.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for these information collections are contained in 47 U.S.C. 154, 303 and 307(e) of the Communications Act of 1934, as amended.

*Total Annual Burden:* 80 hours.

*Total Annual Cost:* N/A.

*Privacy Act Impact Assessment:* N/A.

*Nature and Extent of Confidentiality:* There is no need for confidentiality.

*Needs and Uses:* The Commission will submit this information collection to the Office of Management and Budget (OMB) after this 60 day comment period in order to obtain the full three year clearance from them. The Commission is requesting an extension (no change in the reporting requirement) of this information collection. The Commission is reporting a decrease of 16 total annual burden hours since this information collection was last submitted to OMB in 2006 for review and approval. The reason for the decrease is fewer respondents (now 10 respondents rather than 12 in 2006).

Each application for a developmental license must be accompanied by a showing. A report on the results of the developmental program must be filed within 60 days of the expiration of the license. A report must accompany a request for renewal of the license. Matters which the applicant does not wish to disclose publicly may be so labeled; they will be used solely for the Commission's information. However, public disclosure is governed by 47 CFR 0.467 of the Commission's rules. The report must include the following:

(1) Results of operation to date;

(2) Analysis of the results obtained;

(3) Copies of any published reports;

(4) Need for continuation of the program; and

(5) Number of hours of operation on each authorized frequency during the term of the license to the date of the report.

The information will be used by Commission personnel to determine the merits of the program for which a developmental authorization is granted.

If such information was not collected, the value of developmental programs in the Aviation Service would be severely limited. The Commission would have little, if any information available regarding the advantages and disadvantages of the subject developmental operations and, therefore, would be handicapped in determining whether developmental authorizations should be renewed or a rulemaking should be initiated to accommodate new operations in this radio service.

*OMB Control Number:* 3060–0132.

*Title:* Section 90.257, Assignment and Use of Frequencies in the 72–76 MHz Band and Supplemental Information 72–76 MHz Operational Fixed Stations.

*Form No.:* FCC Form 1068–A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Individuals or households; business or other for-profit; not-for-profit institutions; and state, local or tribal government.

*Number of Respondents:* 300 respondents; 300 responses.

*Estimated Time per Response:* .50 hours (30 minutes).

*Frequency of Response:* On occasion reporting requirements.

*Obligation to Respond:* Required to obtain or retain benefits. Authority for these information collections are contained in the Communications Act of 1934, as amended; International Treaties and 47 CFR 90.257 of the Commission's rules.

*Total Annual Burden:* 150 hours.

*Total Annual Cost:* $4,500.

*Privacy Act Impact Assessment:* Yes. The Commission has a System of Records Notice (SORN), FCC/WTB–1, ''Wireless Services Licensing Records:, to cover the personally identifiable information affected by these information collection requirements. At this time the Commission is not required to complete a Privacy Impact Assessment.

*Nature and Extent of Confidentiality:* In general, there is no need for confidentiality. On a case-by-case basis, the Commission may be required to withhold from disclosure certain information about the location, character, or ownership of a historic property, including traditional religious sites.

*Needs and Uses:* The Commission will submit this information collection to the Office of Management and Budget (OMB) after this 60 day comment period in order to obtain the full three year clearance from them. The Commission is requesting an extension (no change in the reporting requirement) of this information collection. The Commission is reporting a slight decrease of $500 in the estimated annual cost. This is because the last time this information collection was submitted to OMB in 2006, we rounded that estimate to $5,000. The Commission is now reporting actual dollar amounts.

Section 90.257 requires that an applicant agrees to eliminate any harmful interference caused by the operation to TV reception on either channel 4 or channel 5 that might develop. The FCC Form 1068A is used for that purpose. This form must be submitted along with the FCC Form 601 submission as an attachment.

The data will be used by Commission personnel to determine if the information submitted will meet the FCC rule requirements for the assignment of frequencies in the 72–76 MHz band.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E9–8754 Filed 4–15–09; 8:45 am]

**BILLING CODE 6712–01–P**

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## FEDERAL COMMUNICATIONS COMMISSION

### Federal Communications Commission Seeks Nominations by May 11, 2009 for Membership on the Communications Security, Reliability, and Interoperability Council

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The Federal Communications Commission is seeking nominations and expressions of interest for membership on the Communications Security, Reliability, and Interoperability Council. The Council is a Federal Advisory Committee that provides guidance and expertise on the nation's communication infrastructure and public safety communications.

**DATES:** Nominations and expressions of interest for membership must be submitted to the Federal Communications Commission no later than May 11, 2009.

**ADDRESSES:** Nominations should be sent to Lisa M. Fowlkes, Deputy Bureau Chief, Public Safety & Homeland Security Bureau, Federal Communications Commission, via e-mail at *lisa.fowlkes@fcc.gov*; via facsimile at 202–418–2817; or via U.S. mail at 445 12th Street, SW., Room 7–C753, Washington, DC 20554. Due to the extensive security screening of incoming mail, delivery of mail sent to the Commission may be delayed and we encourage submission by e-mail or facsimile.

**FOR FURTHER INFORMATION CONTACT:** Lisa M. Fowlkes, Deputy Chief, Public Safety & Homeland Security Bureau, (202) 418–7452 (voice) or *lisa.fowlkes@fcc.gov* (e-mail) or Jeffery Goldthorp, Chief, Communications Systems Analysis Division, Public Safety & Homeland Security Bureau, (202) 418–1096 (voice) or *Jeffery.goldthorp@fcc.gov* (e-mail).

**SUPPLEMENTARY INFORMATION:** The Federal Communications Commission (FCC or Commission) is seeking nominations and expressions of interest for membership on the Communications Security, Reliability, and Interoperability Council (CSRIC or Council). The Council is a Federal Advisory Committee that provides guidance and expertise on the nation's communications infrastructure and public safety communications. Nominations and expressions of interest for membership must be submitted to the FCC no later than May 11, 2009. Procedures for submitting nominations and expressions of interest are set forth below. On March 19, 2009, the FCC, pursuant to the Federal Advisory Committee Act (5 U.S.C. Appendix 2), renewed the charter for the CSRIC for a period of two years through March 18, 2011. *See* 74 FR 11721–11722. More specifically, the purpose of the CSRIC is to provide recommendations to the Commission to ensure optimal security, reliability, operability and interoperability of communications systems, including public safety, telecommunications, and media communications systems.

### CSRIC's Mission

Under its charter, CSRIC's duties may include:

- Recommending best practices and actions the Commission can take to ensure the security, reliability, operability, and interoperability of public safety communications systems;
- Recommending best practices and actions the Commission can take to improve the reliability and resiliency of communications infrastructure;
- Evaluating ways to strengthen the collaboration between communications service providers and public safety entities during emergencies and make recommendations for how they can be improved;
- Developing and recommending best practices and actions the FCC can take that promote reliable 911 and enhanced 911 (E911) service;
- Analyzing and recommending technical options to enable accurate and

reliable dynamic E911 location identification for interconnected Voice over Internet Protocol (VoIP) services;

• Recommending ways, including best practices, to improve Emergency Alert System (EAS) operations and testing and to ensure that all Americans, including those living in rural areas, the elderly, people with disabilities, and people who do not speak English, have access to timely EAS alerts and other emergency information;

• Recommending methods to measure reliably and accurately the extent to which key best practices are implemented both now and in the future; and

• Making recommendations with respect to such additional topics as the FCC may specify.

**Membership**

The Commission seeks nominations and expressions of interest for membership on the Council. Members of the Council will be appointed from among public safety agencies, consumer or community organizations or other non-profit entities, and the private sector to balance the expertise and viewpoints that are necessary to effectively address the issues to be considered. The Commission is particularly interested in receiving nominations and expressions of interest from individuals and organizations in the following categories:

• Public safety agencies and/or organizations as well as other state, tribal and/or local government agencies and/or organizations with expertise in communications issues;

• Federal government agencies with expertise in communications and/or homeland security issues;

• Communications service providers, including wireline and wireless communications service providers, broadcast radio and television licensees, cable television operators and other multichannel video programming distributors, satellite communications service providers, interconnected Voice over Internet Protocol and other IP-enabled service providers;

• Consumer or community organizations, such as those representing people with disabilities, the elderly and those living in rural areas; and

• Qualified representatives of other stakeholders and interested parties with relevant expertise.

Members of the CSRIC will be appointed either as Representatives or as Special Government Employees (SGEs), as necessary.

**Nominations/Expressions of Interest Procedures and Deadline**

Nominations should be received by the Commission as soon as possible, but no later than May 11, 2009. Nominations received after this date may not be considered. Organizations should nominate their Chief Executive Officer or other senior-level official in the organization. No specific nomination form is required. However, each nomination must include the following information:

• Name, title and organization of the nominee and a description of the sector or interest the nominee will represent;

• Nominee's mailing address, e-mail address, telephone number, and facsimile number; and

• A statement summarizing the nominee's qualifications and reasons why the nominee should be appointed to the CSRIC.

Please note this Notice is not intended to be the exclusive method by which the Commission will solicit nominations and expressions of interest to identify qualified candidates. However, all candidates for membership on the Council will be subject to the same evaluation criteria.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E9–8752 Filed 4–15–09; 8:45 am]

**BILLING CODE 6712–01–P**

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## FEDERAL COMMUNICATIONS COMMISSION

**[DA 09–796]**

## Requests Nominations by May 8, 2009 for Membership on the Technological Advisory Council

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The Federal Communications Commission Technological Advisory Council (TAC) is in the process of being reestablished. This will enable the Commission to receive expert advice and recommendations on critical technologies and services fundamental to the growth of telecommunications. This information is necessary for the Commission to effectively fulfill its responsibilities under the Communication Act.

**DATES:** Nominations are due by May 8, 2009.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Jon Peha, 202–418–2406.

**SUPPLEMENTARY INFORMATION:** The Federal Communications Commission Technological Advisory Council (TAC) is in the process of being reestablished. The Commission is requesting nominations for membership on the TAC for its next two year cycle.

In reestablishing the TAC, the Commission noted that rapid advances in technology have resulted in innovations in how telecommunications services are provided to, and are accessed by, users of those services. Many of these advances create challenges and opportunities for the growth of telecommunications and use of the radio spectrum. The Commission must remain abreast of new developments in technology so that it can effectively fulfill its responsibilities under the Communications Act. The purpose of the TAC is to provide technical advice to the Federal Communications Commission and to make recommendations on the issues and questions presented to it by the FCC. The TAC will address questions referred to it by the FCC Chairman, the FCC Chief Technologist, the Chief of the FCC Office of Engineering and Technology, or the TAC Designated Federal Officer. The questions referred to the TAC will be directed to technological and technical issues in the field of communications. Among the potential topics that the TAC may consider are spectrum policy, broadband technology and deployment, communications technology that enhances and supports public safety, Internet security, and communications technology required to support emerging systems such as the smart grid and tele-health applications.

The TAC will meet three to five times per year, with the possibility of more frequent meetings by informal subcommittees. Meetings of the Committee shall be open to the public. Timely notice of each meeting will be published in the **Federal Register** and will be further publicized through other appropriate vehicles.

The Commission will provide facilities necessary to conduct meetings. Members of the Council will serve without any government compensation, and will not be entitled to travel expenses, per diem or subsistence allowances. The Council will consist of recognized technical experts in telecommunications and related fields.

The Commission will accept nominations for the Council through May 8, 2009. The Commission, at its discretion, may consider nominations

received after this date, but consideration of late submissions is not guaranteed. Individuals may apply for, or nominate another individual for, membership on the Council. Each nomination or application must include:

a. The name and title of the applicant or nominee and a description of the interest the applicant or nominee will represent;

b. The applicant's or nominee's mail address, e-mail address, telephone number, and facsimile number (where available);

c. Reasons why the applicant or nominee should be appointed to the Council; and the basis for determining the applicant or nominee has achieved peer recognition as a technical expert.

Federal Communications Commission.

**Jon M. Peha,**

*Chief Technologist.*

[FR Doc. E9–8775 Filed 4–15–09; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the AIDS Research Advisory Committee, NIAID.

The meeting will be open to the public, 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.

*Name of Committee:* AIDS Research Advisory Committee, NIAID; AIDS Vaccine Research Subcommittee.

*Date:* May 19–20, 2009.

*Time:* May 19, 2009, 8:30 a.m. to 5 p.m.

*Agenda:* To review recent research advances in the B-cell immunology field as they relate to AIDS vaccine development.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Time:* May 20, 2009, 8:30 a.m. to Ajournment.

*Agenda:* To review recent research advances in the B-cell immunology field as they relate to AIDS vaccine development.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* James A. Bradac, PhD, Program Official, Preclinical Research and Development Branch, Division of AIDS, Room 5116, National Institutes of Health/NIAID, 6700B Rockledge Drive, Bethesda, MD 20892–7628. 301–435–3754. *jbradac@mail.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: April 9, 2009.

**Anna Snouffer,**

*Deputy Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–8662 Filed 4–15–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting. The meeting will be open to the public, 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.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel; ''Comparative Evaluation of Assisted Reproductive Technologies and Birth Outcomes''.

*Date:* May 6, 2009.

*Time:* 2 p.m. to 3 p.m.

*Agenda:* To provide concept review of proposed concept review.

*Place:* National Institutes of Health, 6100 Executive Boulevard Room 5B01, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–9304, (301) 435–6680, *skandasamail@.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: April 7, 2009.

**Anna Snouffer,**

*Deputy Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–8670 Filed 4–15–09; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

### Privacy Act of 1974; Notice of Modified System of Records

**AGENCY:** Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

**ACTION:** Notice of a modified system of records.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, CMS is proposing to make minor amendments to an existing system of records (SOR) titled, ''Performance Measurement and Reporting System (PMRS),'' System No. 09–70–0584, published at 72 **Federal Register** 52133 (September 12, 2007), as amended by 73 **Federal Register** 80412 (December 31, 2008). PMRS serves as a master system of records to assist in projects that provide transparency in health care on a broad-scale enabling consumers to compare the quality and price of health care services so that they can make informed choices among individual physicians, practitioners, and other providers of services. We are making minor amendments to PMRS to include an additional legal authority: Section 109 of the Tax Relief and Health Care Act of 2006 (TRHCA) (Pub. L. 109–432). Section 109 of the TRHCA amended Section 1833(t) of the Social Security Act (42 U.S.C. 1395l(t)). This section mandates the establishment of a program for quality data reporting for hospital outpatient services and allow for the establishment of a program to require quality data reporting for ambulatory surgical center services. Accordingly, CMS is adding section 109 of TRCHA (42 U.S.C. 1395l(t)) and section 1833(t) of the Act to the PMRS' legal authority section.

The primary purpose of this system is explained in 72 FR 52133 (2007) and 73 FR 80412 (2008). We have provided background information about this modified system in the **SUPPLEMENTARY INFORMATION** section below.

**DATES:** *Effective Dates:* The minor amendments contained in this notice are effective upon publication in the **Federal Register.**

**FOR FURTHER INFORMATION CONTACT:** Aucha Prachanronarong, Health Insurance Specialist, Division of Ambulatory Care and Measure Management, Quality Measurement and Health Assessment Group, Office of Clinical Standards and Quality, CMS, Room C1–23–14, 7500 Security

Boulevard, Baltimore, Maryland 21244–1850. The telephone number is (410) 786–1879 or contact *Aucha.Prachanronarong@cms.hhs.gov.* For further information on this system as it relates to Hospital Outpatient Quality Data Reporting, please contact Anita Bhatia, Health Insurance Specialist, Division of Quality Improvement Policy for Acute Care, Quality Improvement Group, Office of Clinical Standards and Quality, CMS, Room C1–23–14, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is (410) 786–7236 or contact *Anita.Bhatia@cms.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** As required by TRHCA, CMS implemented a Hospital Outpatient Quality Data Reporting Program (HOP QDRP). Under the HOP QDRP, providers who successfully submit quality data on a designated set of quality measures receive the full annual market basket update rather than an update reduced by two percent. As a part of this program, CMS or its contractors may request a limited number of physician and patient-identifiable patient records to validate the accuracy of information submitted under the program. In this notice, CMS is adding this legal authority (section 1833(t) of the Social Security Act; 109 of division B of the Tax Relief and Health Care Act of 2006) to the Authority section of the PMRS SOR notice.

## I. Description of the Modified System of Records

### *A. Statutory and Regulatory Basis for System*

The ''Authority'' section of PMRS system of records notice is amended to read: Authority for the collection, maintenance, and disclosures from this system is given under provisions of sections 1152, 1153 (c), 1153(e), 1154, 1160, 1833(t), 1848(k), 1848(m), 1851(d) and 1862(g) of the Social Security Act; sections 101 and 109 of division B of the Tax Relief and Health Care Act of 2006; section 101 of the Medicare, Medicaid, and SCHIP Extension Act of 2007, sections 131 and 132 of MIPPA, and sections 901, 912, and 914 of the Public Health Service Act.

### *B. Collection and Maintenance of Data in the System*

The system contains single and multi-payer, patient de-identified, individual physician-level performance measurement results as well as, patient identifiable clinical and claims information provided by individual physicians, practitioners and providers of services, individuals assigned to provider groups, insurance and provider associations, government agencies, accrediting and quality organizations, and others who are committed to improving the quality of physician services. This system contains the patient's or beneficiary's name, sex, health insurance claim number (HIC), Social Security Number (SSN), address, date of birth, medical record number(s), prior stay information, provider name and address, physician's name, and/or identification number, date of admission or discharge, other health insurance, diagnosis, surgical procedures, and a statement of services rendered for related charges and other data needed to substantiate claims. The system contains provider characteristics, prescriber identification number(s), assigned provider number(s) (facility, referring/servicing physician), and national drug code information, total charges, and Medicare payment amounts.

## II. Agency Policies, Procedures, and Restrictions on Routine Uses

The Privacy Act permits us to disclose information without an individual's consent/authorization if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The agency policies, procedures, and restriction on routine uses for the PMRS were published in the **Federal Register** on September 12, 2007. See 72 FR 52133 (Sept. 12, 2007) for further information.

## III. Routine Use Disclosures of Data in the System

For further information on the routine uses for the PMRS, please see 72 FR 52133 and 80 FR 80412.

## IV. Safeguards

CMS has safeguards in place for authorized users and monitors such users to ensure against unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations include but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E–Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

## V. Effects of the Modified System on the Rights of Individuals

CMS proposes to amend this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. We will only disclose the minimum personal data necessary to achieve the purpose of PMRS. Disclosure of information from the system will be approved only to the extent necessary to accomplish the purpose of the disclosure. CMS has assigned a higher level of security clearance for the information maintained in this system in an effort to provide added security and protection of data in this system.

CMS will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act. CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: April 8, 2009.

**Michelle Snyder,**

*Acting Deputy Administrator, Centers for Medicare & Medicaid Services.*

**SYSTEM NO.:**

09–70–0584.

**SYSTEM NAME:**

''Performance Measurement and Reporting System (PMRS),'' HHS/CMS/OCSQ.

**SECURITY CLASSIFICATION:**

Level Three Privacy Act Sensitive.

**SYSTEM LOCATION:**

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850 and at various contractor sites.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

The system contains single and multi-payer, patient de-identified, individual physician, practitioner or other provider-level performance measurement results as well as, clinical and claims information provided by individual physicians, practitioners and providers of services, individuals assigned to provider groups, insurance and provider associations, government agencies, accrediting and quality organizations, and others who are committed to improving the quality of physician, practitioner, and other providers services.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

This system contains the patient's or beneficiary's name, sex, health insurance claim number (HIC), Social Security Number (SSN), address, date of birth, medical record number(s), prior stay information, provider name and address, physician's name, and/or identification number, date of admission or discharge, other health insurance, diagnosis, surgical procedures, and a statement of services rendered for related charges and other data needed to substantiate claims. The system contains provider characteristics, prescriber identification number(s), assigned provider number(s) (facility, referring/servicing physician), and national drug code information, total charges, and Medicare payment amounts.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Authority for the collection, maintenance, and disclosures from this system is given under provisions of sections 1152, 1153(c), 1153(e), 1154, 1160, 1833(t), 1848(k), 1848(m), 1851(d) and 1862(g) of the Social Security Act; sections 101 and 109 of division B of the Tax Relief and Health Care Act of 2006; section 101 of the Medicare, Medicaid, and SCHIP Extension Act of 2007, sections 131 and 132 of MIPPA, and sections 901, 912, and 914 of the Public Health Service Act.

**PURPOSE (S) OF THE SYSTEM:**

The primary purpose of this system is to support the collection, maintenance, and processing of information to promote the delivery of high quality, efficient, effective and economical delivery of health care services, and promoting the quality of services of the type for which payment may be made under title XVIII by allowing for the establishment and implementation of performance measures, provision of feedback to physicians, and public reporting of performance information. Information in this system will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed for the Agency or by a contractor, consultant, or a CMS grantee; (2) assist another Federal and/or state agency, agency of a state government, or an agency established by state law; (3) promote more informed choices by Medicare beneficiaries among their Medicare group options by making physician performance measurement information available to Medicare beneficiaries through a website and other forms of data dissemination; (4) provide CVEs and data aggregators with information that will assist in generating single or multi-payer performance measurement results to promote transparency in health care to members of their community; (5) assist individual physicians, practitioners, providers of services, suppliers, laboratories, and others health care professionals who are participating in health care transparency projects; (6) assist individuals or organizations with projects that provide transparency in health care on a broad-scale enabling consumers to compare the quality and price of health care services; or for research, evaluation, and epidemiological projects related to the prevention of disease or disability; restoration or maintenance of health or for payment purposes; (7) assist Quality Improvement Organizations; (8) support litigation involving the agency; and (9) and (10) combat fraud, waste, and abuse in certain health benefits programs.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:**

A. Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the PMRS without the consent/authorization of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We propose to establish the following routine use disclosures of information maintained in the system:

1. To support Agency contractors, consultants, or CMS grantees who have been engaged by the Agency to assist in accomplishment of a CMS function relating to the purposes for this SOR and who need to have access to the records in order to assist CMS.

2. Pursuant to agreements with CMS to assist another Federal or state agency, agency of a state government, or an agency established by state law to:

a. contribute to projects that provide transparency in health care on a broad-scale enabling consumers to compare the quality and price of health care services,

b. contribute to the accuracy of CMS's proper payment of Medicare benefits,

c. enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

d. assist Federal/state Medicaid programs which may require PMRS information for purposes related to this system.

3. To assist in making the individual physician-level performance measurement results available to Medicare beneficiaries, through a website and other forms of data dissemination, in order to promote more informed choices by Medicare beneficiaries among their Medicare coverage options.

4. To provide Chartered Value Exchanges (CVE) and data aggregators with information that will assist in generating single or multi-payer performance measurement results that will assist beneficiaries in making informed choices among individual physicians, practitioners and providers of services; enable consumers to compare the quality and price of health care services; and assist in providing transparency in health care at the local level if CMS:

a. determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

b. determines that the purpose for which the disclosure is to be made:

(1) is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(2) there is reasonable probability that the objective for the use would be accomplished;

c. requires the recipient of the information to establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record,

d. make no further use or disclosure of the record except:

(1) for use in another project providing transparency in health care, under these same conditions, and with written authorization of CMS;

(2) when required by law.

e. secures a written statement attesting to the information recipient's understanding of and willingness to abide by these provisions. CVEs and data aggregators should complete a Data Use Agreement (CMS Form 0235) in accordance with current CMS policies.

5. To assist individual physicians, practitioners, providers of services, suppliers, laboratories, and others health care professionals who are participating in health care transparency projects.

6. To assist an individual or organization with projects that provide transparency in health care on a broad-scale enabling consumers to compare the quality and price of health care services; or for research, evaluation, and epidemiological projects related to the prevention of disease or disability; restoration or maintenance of health or for payment purposes if CMS:

a. determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

b. determines that the purpose for which the disclosure is to be made:

(1) cannot be reasonably accomplished unless the record is provided in individually identifiable form,

(2) is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) there is reasonable probability that the objective for the use would be accomplished;

c. requires the recipient of the information to:

(1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient presents an adequate justification of a research or health nature for retaining such information, and

(3) make no further use or disclosure of the record except:

(a) for disclosure to a properly identified person, for purposes of providing transparency in health care enabling consumers to compare the quality and price of health care services so that they can make informed choices among individual physicians, practitioners and providers of services;

(b) in emergency circumstances affecting the health or safety of any individual;

(c) for use in another research project, under these same conditions, and with written authorization of CMS;

(d) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit; or

(e) when required by law.

d. secures a written statement attesting to the information recipient's understanding of and willingness to abide by these provisions. Researchers should complete a Data Use Agreement (CMS Form 0235) in accordance with current CMS policies.

7. To support Quality Improvement Organizations (QIO) in connection with review of claims, or in connection with studies or other review activities conducted pursuant to Part B of Title XI of the Act and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

8. To support the Department of Justice (DOJ), court, or adjudicatory body when:

a. the Agency or any component thereof, or

b. any employee of the Agency in his or her official capacity, or

c. any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. the United States Government,

is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

9. To assist a CMS contractor (including, but not limited to MACs, fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste or abuse in such program.

10. To assist another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud, waste or abuse in a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste or abuse in such programs.

B. Additional Circumstances Affecting Routine Use Disclosures

To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR Parts 160 and 164, Subparts A and E) 65 FR 82462 (12–28–00). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' (See 45 CFR 164–512(a)(1).)

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are stored on both tape cartridges (magnetic storage media) and in a DB2 relational database management environment (DASD data storage media).

**RETRIEVABILITY:**

Information is most frequently retrieved by HICN, provider number (facility, physician, IDs), service dates, and beneficiary state code.

**SAFEGUARDS:**

CMS has safeguards in place for authorized users and monitors such users to ensure against unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement

appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations include but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E–Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

**RETENTION AND DISPOSAL:**

Records are maintained with identifiers for all transactions after they are entered into the system for a period of 20 years. Records are housed in both active and archival files. All claims-related records are encompassed by the document preservation order and will be retained until notification is received from the Department of Justice.

**SYSTEM MANAGER AND ADDRESS:**

Director, Quality Measurement and Health Assessment Group, Office of Clinical Standards and Quality, CMS, Room C1–23–14, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

**NOTIFICATION PROCEDURE:**

For purpose of notification, the subject individual should write to the system manager who will require the system name, and the retrieval selection criteria (e.g., HICN, Provider number, etc.).

**RECORD ACCESS PROCEDURE:**

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2).)

**CONTESTING RECORD PROCEDURES:**

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7.)

**RECORD SOURCE CATEGORIES:**

Medicare Beneficiary Database (09–70–0536), National Claims History File (09–70–0558), and private physicians, private providers, laboratories, other providers and suppliers who are participating in health care transparency projects sponsored by the Agency.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. E9–8736 Filed 4–15–09; 8:45 am]

**BILLING CODE 4120–03–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Indian Health Service

### Tribal Management Grant Program

*Announcement Type:* New and Competing Continuation Discretionary Funding Cycle for Fiscal Year 2010.

*Funding Announcement Number:* HHS–2010–IHS–TMD–0001.

*Catalog of Federal Domestic Assistance Number(s):* 93.228.

**DATES:**

**Key Dates**

*Training:* Application Requirements Session: April 29–30, May 27–28, and June 17–18, 2009.

*Grant Writing Session:* May 11–15, 2009.

*TMG WebEx:* June 25, 2009.

*Application Deadline Date:* August 7, 2009.

*Receipt Date for Final Tribal Resolution:* October 2, 2009.

*Review Date:* October 5–9, 2009.

*Application Notification Date:* November 12, 2009.

*Earliest Anticipated Start Date:* January 1, 2010.

**I. Funding Opportunity Description**

The Indian Health Service (IHS) announces competitive grant applications for the Tribal Management Grant (TMG) Program. This program is authorized under Section 103(b)(2) and Section 103(e) of the Indian Self-Determination and Education Assistance Act, Public Law (Pub. L.) 93–638, as amended. This program is described at 93.228 in the Catalog of Federal Domestic Assistance (CFDA).

The TMG Program is a national competitive discretionary grant program pursuant to 45 CFR Part 75 and 45 CFR Part 92 established to assist federally-recognized Tribes and Tribally-sanctioned Tribal organizations in assuming all or part of existing IHS programs, services, functions, and activities (PSFA) through a Title I contract and to assist established Title I contractors and Title V compactors to further develop and improve their management capability. In addition, TMGs are available to Tribes/Tribal organizations under the authority of Public Law 93–638 Section 103(e) for: (1) Obtaining technical assistance from providers designated by the Tribe/Tribal organization (including Tribes/Tribal organizations that operate mature contracts) for the purposes of program planning and evaluation, including the development of any management systems necessary for contract management and the development of cost allocation plans for indirect cost rates; and (2) planning, designing and evaluating Federal health programs serving the Tribe/Tribal organization, including Federal administrative functions.

*Funding Priorities:* The IHS has established the following funding priorities for TMG awards.

- *Priority I*—Any Indian Tribe that has received Federal recognition (restored, un-terminated, funded, or unfunded) within the past five years, specifically received during or after March 2004.
- *Priority II*—All other eligible federally-recognized Indian Tribes or Tribally-sanctioned Tribal organizations submitting a competing continuation application or a new application for the sole purpose of addressing audit material weaknesses. The audit material weaknesses are identified in Attachment A of the transmittal letter received from the Office of the Inspector General (OIG), National External Audit Review Center (NEARC), Department of Health and Human Services (HHS). Please identify the material weaknesses to be addressed by underlining the item on Attachment A. Please refer to Section III.3, ''Other Requirements,'' for more information regarding Priority II participation.

Federally-recognized Indian Tribes or Tribally-sanctioned Tribal organizations not subject to Single Audit Act requirements must provide a financial statement identifying the Federal dollars received in the footnotes. The financial statement must also identify specific weaknesses/recommendations that will

be addressed in the TMG proposal and are related to 25 CFR Part 900, Subpart F—''Standards for Tribes and Tribal Organizations.''

Priority II participation is only applicable to the Health Management Structure project type. For more information see Section II, ''Eligible Project Types, Maximum Funding and Project Periods.''

• *Priority III*—All other eligible federally-recognized Indian Tribes or Tribal organizations submitting a competing continuation application or a new application.

The funding of approved Priority I applicants will occur before the funding of approved Priority II applicants. Priority II applicants will be funded before approved Priority III applicants. Funds will be distributed until depleted.

## II. Award Information

*Type of Awards:* Grant.

*Estimated Funds Available:* Subject to the availability of funds, the estimated amount available is $2,529,000 in fiscal year (FY) 2010. There will be only one funding cycle in FY 2010. Awards under this announcement are subject to the availability of funds.

*Anticipated Number of Awards:* An estimated 20–25 awards will be made under the program.

*Project Periods:* Varies from 12 months to 36 months. Please refer to ''Eligible Project Types, Maximum Funding and Project Periods'' under this section for more detailed information.

*Estimated Award Amount:* $50,000/year–$100,000/year. Please refer to ''Eligible Project Types, Maximum Funding and Project Periods'' below for more detailed information.

### *Eligible Project Types, Maximum Funding and Project Periods*

Applications may only be submitted for one project type. Applicants must state the project type selected. The TMG Program consists of four project types: (1) Feasibility study; (2) planning; (3) evaluation study; and (4) health management structure. Applications that address more than one project type will be considered ineligible and will be returned to the applicant. The maximum funding levels noted include both direct and indirect costs. Applicant budgets may not exceed the maximum funding level or project period identified for a project type. Applicants whose budget or project period exceed the maximum funding level or project period will be considered ineligible and will not be reviewed. Please refer to Section IV.6. ''Funding Restrictions'' for further information regarding ineligible activities.

1. *Feasibility Study* (Maximum funding/project period: $70,000/12 months). A study of a specific IHS program or segment of a program to determine if Tribal management of the program is possible. The study shall present the planned approach, training, and resources required to assume Tribal management of the program. The study must include the following four components:

• Health needs and health care services assessments that identify existing health care services and delivery system, program divisibility issues, health status indicators, unmet needs, volume projections, and demand analysis.

• Management analysis of existing management structures, proposed management structures, implementation plans and requirements, and personnel staffing requirements and recruitment barriers.

• Financial analysis of historical trends data, financial projections and new resource requirements for program management costs and analysis of potential revenues from Federal/non-Federal sources.

• Decision statement/report that incorporates findings, conclusions and recommendations; the presentation of the study and recommendations to the governing body for Tribal determination regarding whether Tribal assumption of program(s) is desirable or warranted.

2. *Planning* (Maximum funding/project period: $50,000/12 months). Planning projects entail a collection of data to establish goals and performance measures for the operation of current health programs or anticipated PSFAs under a Title I contract. Planning will specify the design of health programs and the management systems (including appropriate policies and procedures) to accomplish the health priorities of the Tribe/Tribal organization. For example, planning could include the development of a Tribal Specific Health Plan or a Strategic Health Plan, etc. *Please note:* The Public Health Service urges applicants submitting strategic health plans to address specific objectives of Healthy People 2010. Interested applicants may purchase a copy of Healthy People 2010 (Summary Report in print; Stock No. 017–001–00547–9) or CD–ROM (Stock No. 107–001–00549–5) through the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7945, or (202) 512–1800. This information is available in electronic form at the following Web site: *http://www.health.gov/healthypeople/publications*.

3. *Evaluation Study* (Maximum funding/project period: $50,000/12 months). A systematic collection, analysis, and interpretation of data for the purpose of determining the value of a program. The extent of the evaluation study could relate to the goals and objectives, policies and procedures, or programs regarding targeted groups. The evaluation study could also be used to determine the effectiveness and efficiency of a Tribal program operation (*i.e.* direct services, financial management, personnel, data collection and analysis, third-party billing, etc.) as well as determine the appropriateness of new components to a Tribal program operation that will assist Tribal efforts to improve the health care delivery systems.

4. *Health Management Structure* (Average funding/project period: $100,000/12 months; maximum funding/project period: $300,000/36 months)—The first year maximum is limited to $150,000 for multi-year projects. Health Management Structure allows for implementation of systems to manage or organize PSFAs. Management structures include health department organizations, health boards, and financial management systems including systems for accounting, personnel, third-party billing, medical records, management information systems, etc. This includes the design, improvements and correction of management systems that address weaknesses identified through quality control measures, internal control reviews and audit report findings under the Office of Management and Budget (OMB) Circular No. A–133—Revised June 27, 2003, ''Audits of States, Local Governments, and Non-Profit Organizations.'' OMB Circular A–133, Audits of States, Local Governments and Non-Profit Organizations can be found at the following Web site: *http://www.whitehouse.gov/omb/circulars/a133/a133.html*.

25 CFR Part 900, ''Indian Self-Determination and Education Assistance Act Amendments,'' Subpart F—''Standards for Tribal or Tribal Organization Management Systems'' sections (900.35—900.60) is available at the following Web site locations: *http://www.access.gpo.gov/nara/cfr/waisidx_04/25cfr900_04.html*, or *http://www.ihs.gov/NonMedicalPrograms/TMG/Forms.asp.*

5. Please see Section IV ''Application and Submission Information'' for information on how to obtain a copy of the TMG application package.

**III. Eligibility Information**

1. Indian Tribes or Tribal organizations as defined by Public Law 93–638, Indian Self-Determination and Education Assistance Act, as amended. Eligible applicants include Tribal organizations that operate mature contracts that are designated by a Tribe to provide technical assistance and/or training. Only one application per Tribe or Tribal organization is allowed. This paragraph should be cross-referenced with Section IV. (Application and Submission Information/Subsection 3, Content and Form of Narrative Submission).

2. *Cost Sharing or Matching*—The TMG Program does not require matching funds or cost sharing. However, in accordance with Public Law 93–638 section 103(c), the TMG funds may be used as matching shares for any other Federal grant programs that develop Tribal capabilities to contract for the administration and operation of health programs.

3. *Other Requirements*—The following documentation is required:

A. *Tribal Resolution*—A resolution of the Indian Tribe served by the project must accompany the application submission. The IHS will accept the following as proper documentation:

• If an official signed (passed) Tribal resolution encompassing the scope of this grant application is not available for electronic submission with the application on Grants.gov by the deadline, a draft resolution must be submitted as a place holder and as evidence of the intent of the entity. However, the draft resolution must be followed up with the submission of a faxed, FedEx, or e-mailed pdf version of the final official signed Tribal resolution. The final signed resolution must be received by the Division of Grants Operations (DGO) by October 2, 2009. Otherwise, the application will be considered incomplete, ineligible for review, and returned to the applicant without consideration. It is recommended that applicants submitting the signed final resolution should ensure the information was received by the IHS by retaining documentation confirming delivery or receipt (*i.e.* fax transmittal receipt, FedEx tracking, postal return receipt, e-mail receipt, etc.).

• An Indian Tribe that is proposing a project affecting another Indian Tribe must include resolutions from all affected Tribes to be served.

• Applications by Tribal organizations will not require a specific Tribal resolution if the current Tribal resolution(s) under which they operate would encompass the proposed grant activities. A copy of that resolution must be provided for review.

• Letter of Authorization per Tribal governance requirements in lieu of a Tribal Resolution. Evidence that the Tribe has converted to this means must be provided.

• Tribal organizations applying for technical assistance and/or training grants must submit documentation that the Tribal organization is applying upon the request of the Indian Tribe/Tribes it intends to serve.

B. *Documentation for Priority I Participation*—A copy of the **Federal Register** notice or letter from the Bureau of Indian Affairs verifying establishment of Federal Tribal status within the last five years. Date must reflect that Federal recognition was received during or after March 2004.

C. *Documentation for Priority II Participation*—A copy of the transmittal letter and Attachment A from the Office of Inspector General, National External Audit Review Center (NEARC), HHS. See ''Funding Priorities'' in Section I for more information. If an applicant is unable to locate a copy of their most recent transmittal letter or needs assistance with audit issues, information or technical assistance may be obtained by contacting the IHS Division of Audit Resolution (DAR) at (301) 443–7301, or the NEARC help line at (816) 374–6714, ext. 108. The auditor may also have the information/documentation required.

Federally-recognized Indian Tribes or Tribally-sanctioned Tribal organizations not subject to Single Audit Act requirements must provide a financial statement identifying the Federal dollars in the footnotes. The financial statement must also identify specific weaknesses/recommendations that will be addressed in the TMG proposal and that are related to 25 CFR Part 900, ''Indian Self-Determination and Education Assistance Act Amendments,'' Subpart F—''Standards for Tribes and Tribal Organizations.''

• *Documentation of Consortium Participation*—If an Indian Tribe submitting an application is a member of a consortium, the Tribe must:

—Identify the consortium.
—Indicate if the consortium intends to submit a TMG application.
—Demonstrate that the Tribe's application does not duplicate or overlap any objectives of the consortium's application.

• Identify all of the consortium member Tribes.

• Identify if any of the member Tribes intend to submit a TMG application of their own.

• Demonstrate that the consortium's application does not duplicate or overlap any objectives of the other consortium members who may be submitting their own TMG application.

Please refer to Section IV. Application and Submission Information, particularly Item 6 ''Funding Restrictions'' and Section V. ''Application Review Information'' for more information regarding other application submission information and/or requirements.

**IV. Application and Submission Information**

1. The Application package may be found in Grants.gov (*http://www.grants.gov*) or at: *http://www.ihs.gov/NonMedicalPrograms/gogp/*. The entire grant application package is available at: *http://www.ihs.gov/NonMedicalPrograms/tmg/*. Detailed application instructions for this announcement are downloadable on Grants.gov.

2. *IHS Contacts:*

*Programmatic Concerns:* Ms. Patricia Spotted Horse, Program Analyst, Office of Tribal Programs, Indian Health Service, 801 Thompson Avenue, Suite 220, Rockville, Maryland 20852, (301) 443–1104 (Telephone), (301) 443–4666 (Fax), and e-mail address: *Patricia.SpottedHorse@IHS.GOV.*

*Business Concerns:*

**Note:** The Division of Grants Operations (DGO) is the official receipt point for grant applications (electronic and paper).

Mr. Pallop Chareonvootitam, Grants Management Specialist, DGO, Indian Health Service, 801 Thompson Avenue, TMP 360, Rockville, Maryland 20852, (301) 443–5204 (Telephone), (301) 443–9602 (Fax), and e-mail address: *Pallop.Chareonvootitam@IHS.GOV.*

*GRANTS.GOV Contact for IHS:* Information regarding the electronic Grants.gov process, issues, and waivers waiving the electronic process may be obtained from the following person: Ms. Michelle G. Bulls, Chief Grants Management Officer, Director, Division of Grants Policy (DGP), Indian Health Service, 801 Thompson Avenue, TMP 625, Rockville, Maryland 20852, (301) 443–6528 (Telephone) and e-mail address: *Michelle.Bulls@IHS.GOV.*

3. *Content and Form of Narrative Submission:*

• Abstract (one page) summarizing the project.

• Introduction and Need for Assistance.

• Project Objective(s), Approach and Results and Benefits.

• Project Evaluation.

• Organizational Capabilities and Qualifications.

• Be typewritten and single spaced.
• Use black type not smaller than 12 characters per one inch.
• Margins must not be less than one inch.
• Have consecutively numbered pages.
• Contain a narrative that does not exceed 14 typed pages that includes the other submission requirements below. The 14-page narrative does not include the abstract, the work plan, standard forms, Tribal resolution(s), table of contents, budget, budget justifications, multi-year narratives, multi-year budget, multi-year budget justification, and/or other appendix items.

*Public Policy Requirements:* All Federal-wide public policies apply to IHS grants with exception of Lobbying and Discrimination policy.

4. *Submission Dates and Times:* Applications must be submitted electronically through Grants.gov by 12 midnight Eastern Standard Time (EST) on Friday, August 7, 2009. **Note:** All IHS application packages are posted in Adobe. Therefore, please make sure that your entity uses a compatible version to save and submit the application or submission errors will occur. If technical challenges arise and the applicant is unable to successfully complete the electronic application process, the applicant must contact Michelle G. Bulls, DGP, fifteen calendar days prior to the application deadline and advise her of the difficulties that your organization is experiencing. The applicant must obtain written prior approval to submit a paper application. E-mail requests requesting a waiver are acceptable. If submission of a paper application is requested and approved, the manually signed original and two copies of the application must be sent to the appropriate grants contact that is listed in Section IV.2. above. Applications not submitted through Grants.gov, without an approved waiver, will be returned to the applicant without review or consideration. Late applications will not be accepted for processing, will be returned to the applicant, and will not be considered for funding.

5. *Intergovernmental Review:* Executive Order 12372 requiring intergovernmental review is not applicable to this program.

6. *Funding Restrictions:*
• Pre-award costs are not allowable.
• The available funds are inclusive of direct and indirect costs.
• Only one grant will be awarded per applicant.
• *Ineligible Project Activities:* The TMG may not be used to support recurring operational programs or to replace existing public and private resources. **Note:** The inclusion of the following projects or activities in an application will render the application ineligible and the application will be returned to the applicant:

—Planning and negotiating activities associated with the intent of a Tribe to enter the IHS Self-Governance Project. A separate grant program is administered by the IHS for this purpose. Prospective applicants interested in this program should contact Mr. Matt Johnson, Office of Tribal Self-Governance, Indian Health Service, Reyes Building, 801 Thompson Avenue, Suite 240, Rockville, Maryland 20852, (301) 443–7821, and request information concerning the ''Tribal Self-Governance Program Planning Cooperative Agreement Announcement'' or the ''Negotiation Cooperative Agreement Announcement.''
—Projects related to water, sanitation, and waste management.
—Projects that include direct patient care and/or equipment to provide those medical services to be used to establish or augment or continue direct patient clinical care are not allowable. Medical equipment that is allowable under the Special Diabetes Grant Program is not allowable under the TMG Program.
—Projects that include long-term care or provision of any direct services.
—Projects that include tuition, fees, or stipends for certification or training of staff to provide direct services.
—Projects that include pre-planning, design, and planning of construction for facilities, including activities relating to program justification documents.
—Projects that propose more than one project type. Please see Section II, ''Award Information,'' specifically ''Eligible Project Types, Maximum Funding and Project Periods'' for more information. An example of a proposal with more than one project type that would be considered ineligible may include the creation of a strategic health plan (defined by TMG as a planning project type) and improving third-party billing structures (defined by TMG as a health management structure project type). Multi-year applications that include in the first year planning, evaluation or feasibility activities with the remainder of the project years addressing management structure are also deemed ineligible.

• *Other Limitations*—A current TMG recipient cannot be awarded a new, renewal, or competing continuation grant for any of the following reasons:

—A grantee may not administer two TMGs at the same time or have overlapping project/budget periods (however, allowance will be made to accommodate the completion of one TMG grant prior to beginning a new award, if applicable);
—The current project is not progressing in a satisfactory manner;
—The current project is not in compliance with program and financial reporting requirements; or
—*Delinquent Federal Debts:* No award shall be made to an applicant who has an outstanding delinquent Federal debt until either:
—The delinquent account is paid in full; or
—A negotiated repayment schedule is established and at least one payment is received.

7. *Other Submission Requirements:*

*Electronic Submission*—The preferred method for receipt of applications is electronic submission through Grants.gov. **Note:** All IHS application packages are posted in Adobe. Therefore, please make sure that your entity uses a compatible version to save and submit the application or submission errors will occur. Should any technical challenges arise regarding the submission, please contact Grants.gov Customer Support at 1–800–518–4726 or *support@grants.gov.* The Contact Center hours of operation are Monday–Friday from 7 a.m. to 9 p.m. EST. If you require additional assistance, please call (301) 443–6290 and identify the need for assistance regarding your Grants.gov application. Your call will be transferred to the appropriate grants staff member. The applicant must seek assistance at least fifteen calendar days prior to the application deadline. Applicants that do not adhere to the timelines for Central Contractor Registry (CCR) and/or Grants.gov registration and/or requesting timely assistance with technical issues will not be candidates for paper applications.

To submit an application electronically, please use the *http://www.Grants.gov* apply site. Download a copy of the application package on the Grants.gov Web site, complete it offline and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to IHS.

Please be reminded of the following:

• Under the new IHS application submission requirements, paper applications are not the preferred method. However, if you have technical

problems submitting your application on-line, please contact directly Grants.gov Customer Support at: *http://www.Grants.gov/CustomerSupport.*

• Upon contacting Grants.gov, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver request from Grants Policy must be obtained.

• If it is determined that a formal waiver is necessary, the applicant must submit a request, in writing (e-mails are acceptable), to *Michelle.Bulls@ihs.gov* that includes a justification for the need to deviate from the standard electronic submission process. Upon receipt of approval, a hard-copy application package must be downloaded by the applicant from Grants.gov, and completed with appropriate manual signatures. An original and two copies of the application must be sent directly to the official receipt point for grant applications: DGO, 801 Thompson Avenue, TMP 360, Rockville, MD 20852 by the due date, August 7, 2009.

• Upon entering the Grants.gov site, there is information available outlining the requirements to the applicant regarding electronic submission of an application through Grants.gov, as well as the hours of operation. Applicants are strongly encouraged not to wait until the deadline date to begin the application process through Grants.gov as the registration process for CCR and Grants.gov could take up to fifteen working days.

• To use Grants.gov, you, as the applicant, must have a Data Universal Numbering System (DUNS) Number and must register in the CCR. You should allow a minimum of ten working days to complete CCR registration. See below on how to apply.

• You must submit all documents electronically, including all information typically included on the SF–424, Application for Federal Assistance, and all necessary assurances and certifications.

• Please use the optional attachment feature in Grants.gov to attach additional documentation that may be requested by IHS.

• Final signed Tribal resolutions must be submitted no later than October 2, 2009, if a draft resolution was submitted with the initial electronic or paper application.

• The narrative section of your application cannot exceed the 14-page limitation requirements described in the program announcement.

• After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The IHS DGO will retrieve your application from Grants.gov. DGO will not notify applicants that the application has been received.

• You may access the electronic application for this program on *http://www.Grants.gov*.

• You may search for the downloadable application package utilizing Grants.gov FIND to search for the CFDA number 93.228.

• The applicant must provide the Funding Opportunity Number: HHS–2010–IHS–TMD–0001.

E-mail applications will not be accepted under this announcement.

DUNS Number

Applicants are required to obtain a DUNS number from Dun and Bradstreet to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge.

To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Interested parties may wish to obtain their DUNS number by phone to expedite the process.

Applicants who intend to submit electronically must also be registered with the CCR. A DUNS number is required before CCR registration can be completed. Many organizations may already have a DUNS number. Please use the number listed above to investigate whether or not your organization has a DUNS number. Registration with the CCR is free of charge.

Applicants may register by calling 1–888–227–2423. Please review and complete the CCR Registration Worksheet located on *http://www.Grants.gov/CCRRegister*.

More detailed information regarding these registration processes can be found at *http://www.Grants.gov*.

## V. Application Review Information

The instructions for preparing the application narrative also constitute the evaluation criteria for reviewing and scoring the application. Weights assigned to each section are noted in parentheses. The 14-page narrative should include only the first year of activities; information for multi-year projects should be included as an appendix. See ''Multi-Year Project Requirements'' at the end of this section for more information.

1. *Abstract*—one page summary.

A. *Criteria.*

Introduction and Need for Assistance (20 Points)

(1) Describe the Tribe's/Tribal organization's current health operation. Include what programs and services are currently provided (*i.e.*, Federally funded, State funded, etc.), information regarding technologies currently used (*i.e.*, hardware, software, services, etc.), and identify the source(s) of technical support for those technologies (*i.e.*, Tribal staff, Area Office, vendor, etc.). Include information regarding whether the Tribe/Tribal organization has a health department and/or health board and how long it has been operating.

(2) Describe the population to be served by the proposed project. Include a description of the number of IHS eligible beneficiaries who currently use services.

(3) Describe the geographic location of the proposed project including any geographic barriers to the health care users in the area to be served.

(4) Identify all TMGs received since FY 2004, dates of funding and summary of project accomplishments. State how previous TMG funds facilitated the progression of health development relative to the current proposed project. (Copies of reports will not be accepted.)

(5) Identify the eligible project type and priority group of the applicant.

(6) Explain the reason for your proposed project by identifying specific gaps or weaknesses in services or infrastructure that will be addressed by the proposed project. Explain how these gaps/weaknesses were discovered. If proposed project includes information technology (*i.e.*, hardware, software, etc.), provide further information regarding measures taken or to be taken that ensure the proposed project will not create other gaps in services or infrastructure (*i.e.*, IHS interface capability, Government Performance and Results Act reporting requirements, contract reporting requirements, Information Technology (IT) compatibility, etc.).

(7) Describe the effect of the proposed project on current programs (*i.e.*, Federally funded, State funded, etc.) and, if applicable, on current equipment (*i.e.*, hardware, software, services, etc.). Include the effect of the proposed project on planned/anticipated programs and/or equipment.

(8) Address how the proposed project relates to the purpose of the TMG Program by addressing the appropriate description that follows:

• Identify if the Tribe/Tribal organization is an IHS Title I contractor. Address if the self-determination contract is a master contract of several

programs or if individual contracts are used for each program. Include information regarding whether or not the Tribe participates in a consortium contract (*i.e.*, more than one Tribe participating in a contract). Address what programs are currently provided through those contracts and how the proposed project will enhance the organization's capacity to manage the contracts currently in place.

- Identify if the Tribe/Tribal organization is an IHS Title V compactor. Address when the Tribe/Tribal organization entered into the compact and how the proposed project will further enhance the organization's management capabilities.
- Identify if the Tribe/Tribal organization is not a Title I or Title V organization. Address how the proposed project will enhance the organization's management capabilities, what programs and services the organization is currently seeking to contract and an anticipated date for contract.

Project Objective(s), Workplan and Consultants (40 Points)

A. Identify the proposed project objective(s) addressing the following:

- Measurable and (if applicable) quantifiable.
- Results oriented.
- Time-limited.

*Example:* By installing new software, the Tribe will increase the number of bills processed by 15 percent at the end of 12 months.

B. Address how the proposed project will result in change or improvement in program operations or processes for each proposed project objective. Also address what tangible products are expected from the project (*i.e.*, policies and procedures manual, health plan, etc.).

C. Address the extent to which the proposed project will build the local capacity to provide, improve, or expand services that address the need(s) of the target population.

D. Submit a workplan in the appendix which includes the following information:

- Provide the action steps on a timeline for accomplishing the proposed project objective(s).
- Identify who will perform the action steps.
- Identify who will supervise the action steps taken.
- Identify who will accept and/or approve work products at the end of the proposed project.
- Include any training that will take place during the proposed project and who will be attending the training.
- Include evaluation activities planned.

E. If consultants or contractors will be used during the proposed project, please include the following information in their scope of work (or note if consultants/contractors will not be used):

- Educational requirements.
- Desired qualifications and work experience.
- Expected work products to be delivered on a timeline.

If a potential consultant/contractor has already been identified, please include a resume in the Appendix.

F. Describe what updates (*i.e.*, revision of policies/procedures, upgrades, technical support, etc.) will be required for the continued success of the proposed project. Include when these updates are anticipated and where funds will come from to conduct the update and/or maintenance.

Project Evaluation (15 Points)

Describe the proposed plan to evaluate both outcomes and process. Outcome evaluation relates to the results identified in the objectives, and process evaluation relates to the workplan and activities of the project.

A. For outcome evaluation, describe:

- What will the criteria be for determining success of each objective?
- What data will be collected to determine whether the objective was met?
- At what intervals will data be collected?
- Who will collect the data and their qualifications?
- How will the data be analyzed?
- How will the results be used?

B. For process evaluation, describe:

- How will the project be monitored and assessed for potential problems and needed quality improvements?
- Who will be responsible for monitoring and managing project improvements based on results of ongoing process improvements and their qualifications?
- How will ongoing monitoring be used to improve the project?
- Any products, such as manuals or policies, that might be developed and how they might lend themselves to replication by others.
- How will the project document what is learned throughout the project period?

C. Describe any evaluation efforts that are planned to occur after the grant period ends.

D. Describe the ultimate benefit to the Tribe that is expected to result from this project. An example of this might be the ability of the Tribe to expand preventive health services because of increased billing and third party payments.

Organizational Capabilities and Qualifications (15 Points)

A. Describe the organizational structure of the Tribe/Tribal organization beyond health care activities.

B. Provide information regarding plans to obtain management systems if the Tribe/Tribal organization does not have an established management system currently in place that complies with 25 CFR 900, Subpart F, ''Standards for Tribal Management Systems.'' If management systems are already in place, simply state it and how long the systems have been in place.

C. Describe the ability of the organization to manage the proposed project. Include information regarding similarly sized projects in scope and financial assistance as well as other grants and projects successfully completed.

D. Describe what equipment (*i.e.*, fax machine, phone, computer, etc.) and facility space (*i.e.*, office space) will be available for use during the proposed project. Include information about any equipment not currently available that will be purchased through the grant.

E. List key personnel who will work on the project. Include title used in the workplan. In the appendix, include position descriptions and resumes for all key personnel. Position descriptions should clearly describe each position and duties, indicating desired qualifications and experience requirements related to the proposed project. Resumes must indicate that the proposed staff member is qualified to carry out the proposed project activities. If a position is to be filled, indicate that information on the proposed position description.

F. If the project requires additional personnel (*i.e.*, IT support, etc.), address how the Tribe/Tribal organization will sustain the position(s) after the grant expires. (If there is no need for additional personnel, simply state it.)

Categorical Budget and Budget Justification (10 Points)

A. Provide a categorical budget for each of the 12-month budget periods requested.

B. If indirect costs are claimed, indicate and apply the current negotiated rate to the budget. Include a copy of the rate agreement in the appendix.

C. Provide a narrative justification explaining why each categorical budget line item is necessary/relevant to the proposed project. Include sufficient cost and other details to facilitate the determination of cost allowability (*i.e.*, equipment specifications, etc.).

Multi-Year Project Requirements

Projects requiring a second and/or third year must include a narrative addressing the second and/or third year's project objectives, evaluation components, work plan, categorical budget and budget justification. The same weights and criteria that are used to evaluate a one-year project or the first year of a multi-year project will be applied when evaluating the second and third years of a multi-year application. Refer to Section V. Application Review Information. A weak second and/or third year submission could negatively impact the overall score of an application and result in elimination of the proposed second and/or third years with a recommendation for only a one-year award.

Appendix Items

A. Work plan for proposed objectives.
B. Position descriptions for key staff.
C. Resumes of key staff that reflect current duties.
D. Consultant proposed scope of work (if applicable).
E. Indirect Cost Rate Agreement.
F. Organizational chart (optional).
G. Multi-Year Project Requirements (if applicable).

2. *Review and Selection Process:* In addition to the above criteria/requirements, applications are considered according to the following:

A. *Application Submission* (Application Deadline: August 7, 2009). Applications received in advance of or by the deadline and verified by the tracking number will undergo a preliminary review to determine that:

- The applicant and proposed project type is eligible in accordance with this grant announcement;
- The application is not a duplication of a previously funded project; and
- The application narrative, forms, and materials submitted meet the requirements of the announcement allowing the review panel to undertake an in-depth evaluation; otherwise the application will be deemed incomplete and ineligible and will be returned. Ineligible applications are not reviewed and, therefore, receive no feedback.

B. *Competitive Review of Eligible Applications* (Objective Review: October 5–9, 2009).

Applications meeting eligibility requirements that are complete, responsive and conform to this program announcement will be reviewed for merit by the Ad Hoc Objective Review Committee (ORC) appointed by the IHS to review and make recommendations on these applications. The review will be conducted in accordance with the IHS Objective Review Guidelines. The technical review process ensures selection of quality projects in a national competition for limited funding. Applications will be evaluated and rated on the basis of the evaluation criteria listed in Section V.1. The criteria are used to evaluate the quality of a proposed project, determine the likelihood of success and to assign a numerical score to each application. The scoring of approved applications will assist the IHS in ranking the proposals and determining which proposals will be funded if the amount of TMG funding is not sufficient to support all approved applications. Applications recommended for approval, having a score of 60 or above by the ORC and scored high enough to be considered for funding will be reviewed by the DGO for cost analysis and further recommendation. The program official accepts the DGO recommendations for consideration when funding applications. The program official forwards the final approved list to the Director, Office of Tribal Programs (OTP), for final review and approval. Applications scoring below 60 points will be disapproved. Applications that are approved but not funded will not be carried over into the next cycle for funding consideration.

3. *Anticipated Announcement and Award Dates.* The IHS anticipates the earliest award start date will be January 1, 2010.

## VI. Award Administration Information

### *1. Award Notices*

*ORC Results Notification:* November 12, 2009.

The Director, OTP, or program official, will notify the contact person identified on each proposal of the results in writing via postal mail. Applicants whose applications are declared ineligible will receive written notification of the ineligibility determination. The ineligible notification will include information regarding the rationale for the ineligible decision citing specific information from the original grant application. Those applicants who are approved and recommended for funding, approved but unfunded and those who are disapproved will receive a copy of the Executive Summary which identifies the weaknesses and strengths of the application submitted. Applicants who are approved and recommended for funding will be notified through the official Notice of Award (NoA) document issued by the DGO. The NoA will be signed by the Grants Management Officer and is the authorizing document for notifying grant recipients of funding. The NoA serves as the official notification of a grant award and will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, and the budget period. Any other correspondence announcing to the Applicant's Project Director that an application was recommended for approval is not an authorization to begin performance. Pre-award costs are not allowable charges under this program grant.

### *2. Administrative Requirements*

Grants are administrated in accordance with the following documents:

- This grant announcement.
- Health and Human Services regulations governing Public Law 93–638 grants at 42 CFR 36.101 *et seq*.
- 45 CFR Part 92, ''Department of Health and Human Services, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments Including Indian Tribes,'' or 45 CFR Part 74, ''Administration of Grants to Non-Profit Recipients.''
- Public Health Service Grants Policy Statement.
- *Appropriate Cost Principles*: OMB Circular A–87, ''State and Local Governments,'' or OMB Circular A–122, ''Non-Profit Organizations.''
- OMB Circular A–133, ''Audits of States, Local Governments and Non-Profit Organizations.''
- Other Applicable OMB Circulars.

### *3. Indirect Costs*

This section applies to all grant recipients that request indirect costs in their application. In accordance with HHS Grants Policy Statement, Part II–27, IHS requires applicants to have a current indirect cost rate agreement in place prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate means the rate covering the applicable activities and the award budget period. If the current rate is not on file with the awarding office, the award shall include funds for reimbursement of indirect costs. However, the indirect cost portion will remain restricted until the current rate is provided to the DGO.

Generally, indirect costs rates for IHS are negotiated with two cognizant agencies; the Division of Cost Allocation (DCA)/HHS *http://rates.psc.gov/*and National Business Center (NBC)/

Department of the Interior *http://www.aqd.nbc.gov/indirect/indirect.asp.* If your organization has questions regarding the indirect cost policy, please contact the DGO at 301–443–5204.

*4. Reporting*

A. Progress Report

Program progress reports will be required semi-annually. Semi-annual program progress reports must be submitted within 30 days at the end of the half year. These reports will include a brief comparison of actual accomplishments to the goals established for the period, reasons for slippage (if applicable), and other pertinent information as required. A final report must be submitted within 90 days of expiration of the budget/project period.

B. Financial Status Reports

Financial status reports will be required semi-annually. Semi-annual financial status reports must be submitted within 30 days of the end of the half year. Final financial status reports are due within 90 days of expiration of the budget/project period. Standard Form 269 (long form) will be used for financial reporting.

C. Reports

Grantees are responsible and accountable for accurate reporting of the Progress Reports and Financial Status Reports which are generally due semi-annually. Financial Status Reports (SF–269) are due 90 days after each budget period and the final SF–269 must be verified from the grantee records on how the value was derived. Grantees must submit reports in a reasonable period of time.

Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports.

## VII. Agency Contact(s)

Interested parties may obtain TMG programmatic information from the TMG Program Coordinator listed under Section IV of this program announcement. Grant-related and business management information may be obtained from the Grants Management Specialist listed under Section IV of this program announcement. Grants.gov concerns submission and waiver requests may be addressed by Ms. Michelle Bulls, DGP. Contact information is noted under Section IV of this program announcement. Please note that the telephone numbers provided are not toll-free.

## VIII. Other Information

*Training*

The IHS will conduct training sessions to assist applicants in preparing their FY 2010 TMG applications. There will be three 2-day training sessions. In addition, there will be one 5-day training session on Grantsmanship. The 5-day training session will provide participants with basic grant writing skills, information regarding where to search for funding opportunities, and the opportunity to begin writing a TMG grant proposal or to finalize a draft proposal. The 2-day training sessions will focus specifically on the TMG requirements providing participants with information contained in this announcement, clarifying any issues/questions applicants may have and critiquing project ideas. In an effort to make the training sessions productive, participants are expected to bring draft proposals to these sessions.

Priority will be given to groups eligible to apply for the TMG Program. Participation is limited to two personnel from each Tribe or Tribal organization. All sessions are first come—first serve with the above limitations noted. All participants are responsible for making and paying for their own travel arrangements. Interested parties should register with the TMG staff prior to making travel arrangements to ensure space is available in selected session. There is no registration fee to attend the training session(s). The registration form may be obtained from the TMG Web site at: *http://www.ihs.gov/NonMedicalPrograms/tmg/Training.asp.* The registration form may be faxed to (301) 443–4666. **Note:** A minimum of ten attendees is required for the IHS to conduct the training sessions. The anticipated training dates and locations are listed below in chronological order:

- *April 29–30, 2009*—Oklahoma City, Oklahoma (Limit 25) (TMG Training).
- *May 11–15, 2009*—Albuquerque, New Mexico (Limit 25) (The Grantsmanship Center Training).
- *May 27–28, 2009*—Sioux Falls, South Dakota (Limit 25) (TMG Training).
- *June 17–18, 2009*—Seattle, Washington (Limit 25) (TMG Training).
- *June 25, 2009*—Two-Hour WebEx (Limit 25) (TMG Training).

*IHS Checklist*

The following IHS Checklist is included to assist applicants in proposal preparation and follow-up. Applicants are highly encouraged to employ this checklist for their benefit and to submit it as part of their proposal as an attachment in Grants.gov to allow for verification of receipt. This checklist will be utilized by the DGO during their initial screening for eligibility and will be utilized by the OTP during their programmatic review for content of the application to ensure required items requested are submitted and the application is eligible for further review via the ORC. This checklist is available on the TMG Web site at *http://www.ihs.gov/NonMedicalPrograms/tmg/.*

**IHS FY 2010 Tribal Management Grant Application Checklist**

Applicant Name: _____
Application Tracking Number: _____
Electronic Submission: _____
Signed Paper Submission: _____
Waiver Obtained: _____
Title I: _____
Title V: _____
Project Type: _____

| Item | Applicant | Grants | Programs |
|---|---|---|---|
| 1. IHS FY 2010 TMG Checklist | | | |
| 2. Eligibility: (circle) Tribe Tribal Organization | | | |
| 3. 501c(3) Non-Profit Organization | | | |
| 4. Tribal Resolution or Letter of Authorization (as defined in the announcement) | | | |
| a. Final signed Tribal Resolution is due on or October 2, 2009 | | | |
| b. Draft unsigned resolution is due August 7, 2009 (if applicable) | | | |
| 5. Priority I Documentation (if applicable) | | | |
| 6. Priority II Documentation (if applicable) | | | |
| 7. Consortium Participation Documentation (if applicable) | | | |
| 8. SF 424 Application for Federal Assistance | | | |
| 9. SF 424A Budget—Non Construction | | | |
| 10. SF 424B Assurances | | | |
| 11. Disclosure of Lobbying Activities | | | |
| 12. Abstract | | | |
| 13. Project Narrative Items a.–e. (14 pages maximum) | | | |
| a. Introduction and Need for Assistance | | | |
| b. Project Objective(s), Workplan & Consultants | | | |
| c. Project Evaluation | | | |
| d. Organizational Capabilities and Qualifications | | | |
| e. Categorical Budget & Budget Justification | | | |
| 14. Multi-year Summary & Budget Justification | | | |
| 15. Appendices | | | |
| a. Work plan for proposed objectives | | | |
| b. Position descriptions for key staff | | | |
| c. Resumes of key staff that reflect current duties | | | |
| d. Consultant proposed scope of work (if applicable) | | | |
| e. Indirect Cost Rate Agreement | | | |
| f. Organizational chart (optional) | | | |
| g. Multi-Year Project Requirements (if applicable) | | | |

Applicant Signature/Date: _____
IHS Grants Management Signature/Date: _____
IHS Program Office Signature/Date: _____
IHS Program Office Signature/Date: _____

The Public Health Service (PHS) strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Dated: April 8, 2009.

**Doni Wilder,**

*Acting Deputy Director, Indian Health Service.*

[FR Doc. E9–8641 Filed 4–15–09; 8:45 am]

**BILLING CODE 4165–16–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

### Agency Information Collection Activities: Form N–426, Revision of a Currently Approved Information Collection; Comment Request

**ACTION:** 60-day notice of information collection under review: Form N–426, Request for Certification of Military or Naval Service; OMB Control No. 1615–0053.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS), has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until June 15, 2009.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, NW., 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.* When submitting comments by e-mail please add the OMB Control Number 1615–0053 in the subject box.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the 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 agencies 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 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*: Request for Certification of Military or Naval Service.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N–426. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. This form will be used by USCIS to request a verification of the military or naval service claim by an applicant filing for naturalization on the basis of honorable service in the U.S. armed forces.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 45,000 responses at 20 minutes (.333) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 14,985 annual burden hours.

If you need a copy of the information collection instrument, please visit the USCIS Web site at: *http://www.regulations.gov/*.

We may be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210, Telephone number 202–272–8377.

Dated: April 13, 2009.

**Stephen Tarragon,**

*Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. E9–8758 Filed 4–15–09; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5300–N–01A]**

## Notice of HUD's Fiscal Year (FY) 2009 Notice of Funding Availability (NOFA) Policy Requirements and General Section to HUD's FY2009 NOFAs for Discretionary Programs; Amendment to Application Submission Requirements and Other Technical Corrections

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Notice of HUD's FY2009 NOFA Policy Requirements and General Section to HUD's FY2009 NOFAs for Discretionary Grant Programs; amendments and technical corrections.

**SUMMARY:** On December 29, 2008, HUD published its Notice of Fiscal Year (FY) 2009 Notice of Funding Availability (NOFA); Policy Requirements and General Section to HUD's FY2009 NOFAs for Discretionary Programs (General Section). As in years past, HUD's FY2009 General Section provides the policy requirements applicable to all of the NOFAs that HUD will publish in FY2009. The General Section also provides important information regarding the application submission requirements. In the December 29, 2008, General Section, HUD noted that applicants would continue to be required to submit their applications electronically through Grants.gov. Today's publication amends this requirement to provide that application submission requirements will be provided in the individual program NOFAs that HUD will publish throughout FY2009. Today's publication also amends the December 29, 2008, General Section to reflect Executive Order 13502, entitled ''Use of Project Labor Agreements for Federal Construction Projects.'' Finally, today's publication announces changes in how HUD will notify the public of the issuances of NOFAs and makes minor technical corrections to instructions regarding registration with the Central Contractor Registration (CCR).

**FOR FURTHER INFORMATION CONTACT:** For further information regarding HUD's FY2009 General Section, contact the Office of Departmental Grants Management and Oversight, Office of Administration, Department of Housing and Urban Development, 451 7th Street, SW., Room 3156, Washington, DC 20410–5000; telephone number 202–708–0667. This is not a toll-free number. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339. Questions regarding the submission of applications or specific program requirements should be directed to the agency contacts identified in each program NOFA.

**SUPPLEMENTARY INFORMATION:** On December 29, 2008, HUD published its FY2009 NOFAs General Section (73 FR 79548). HUD's FY2009 General Section outlines the threshold, civil rights, and other requirements applicable to all of the NOFAs that HUD will publish in FY2009. HUD's General Section also establishes application submission requirements.

### I. Amendment to Application Submission Requirements

In the December 29, 2008, General Section, HUD stated that, ''HUD would continue to require that applicants submit their applications electronically through Grants.gov'' (page 79548). Since publication of the FY2009 General Section, the Office of Management and Budget (OMB) has requested that agencies identify alternative methods of accepting grant applications, in order to ensure that assistance made available through the American Recovery and Reinvestment Act of 2009, (Pub. L. 111–5, enacted February 17, 2009) (the Recovery Act) can be effectively distributed with minimal disruptions. Based on this request, HUD has reviewed the application submission requirements outlined in the FY2009 General Section and has determined it will allow additional methods for applicants to submit applications. Moreover, in order to provide HUD's program offices the maximum flexibility regarding developing alternative methods of accepting grant applications, HUD has determined that application submission requirements will be stated in the individual program NOFAs that HUD will publish throughout FY2009. Potential applicants are, therefore, directed to rely on application submission instructions provided in the program NOFA for which they seek funding for information. Specifically, each program NOFA will establish deadline dates and times and advise whether applicants will be required to submit their applications electronically or in paper form. The NOFA will also establish receipt requirements, should it provide for the submission of paper applications. Accordingly, HUD is amending its FY2009 General Section by removing and reserving Section IV.C., entitled ''Receipt Dates and Times,'' beginning at page 79565, first column.

Since the establishment of the application submission requirements in each program NOFA is a significant departure from HUD's prior practice, HUD encourages applicants to carefully read the program NOFA for which they intend to apply. Questions regarding the submission of applications may be directed to the agency contacts identified in each program NOFA, with sufficient time to permit receipt of your application by the deadline date established in the NOFA.

### II. Amendment To Conform to Recent Executive Order

HUD's FY2009 General Section required compliance with Executive

Order 13202, entitled ''Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects.'' Specifically, section III.C.4.k. at page 79553, third column, provided that, ''[c]ompliance with HUD regulations at 24 CFR 5.108 that implement Executive Order 13202 is a condition of receipt of assistance under a HUD program NOFA.''

Since publication of the FY2009 General Section, the President issued Executive Order 13502, entitled ''Use of Project Labor Agreements for Federal Construction Projects.'' Executive Order 13502 specifically revokes Executive Order 13202. As a result of issuance of this Executive Order, the provision in HUD's regulations at 24 CFR 5.108 is no longer effective, and compliance with these regulations is no longer a condition of assistance. Accordingly, the provision on project labor agreements in the December 29, 2009, General Section is not applicable to HUD's FY2009 funding. HUD is, therefore, amending its FY2009 General Section by removing and reserving section III.C.4.k. at page 79553, third column.

### III. Change HUD's Issuance of NOFAs

Since 1989, HUD has notified the public regarding the availability of assistance through the publication of the NOFA in the **Federal Register**. Section 233 of Division I, Title II of the Omnibus Appropriations Act, 2009 (Pub. L. 111–8, approved March 11, 2009) authorizes HUD, at its discretion, to make its NOFAs available on HUD's official government Web site, *http://www.hud.gov*, or on other appropriate government Web sites, as determined by HUD. For FY2009, HUD intends to post the complete NOFA on the HUD Web site. For assistance made available through the Recovery Act, HUD will post funding notices at *http://www.hud.gov/recovery/*. For assistance made available through the Omnibus Appropriations Act, 2009, HUD will post NOFAs at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm*. HUD will also post a synopsis of all HUD competitive funding opportunities at *http://www07.grants.gov/applicants/find_grant_opportunities.jsp*, along with a link to the appropriate HUD Web site. In addition, HUD will publish in the **Federal Register** a brief notice announcing the availability of NOFAs on the HUD Web site. By posting its NOFAs on the HUD Web site, HUD assistance should be available more quickly, and at an Internet location more familiar to the majority of the public.

### IV. Technical Corrections Regarding Registering With CCR

Today's publication also makes minor technical amendments to instructions regarding registering with CCR. Since publication of the FY2009 General Section, CCR has changed its log-in procedures from the use of a Trading Partner Identification Number (TPIN) to the use of a USER ID and Password. Additionally, CCR has changed the telephone number and hours of operation of its Assistance Center. These corrections were made to ensure that applicants have updated information when registering with CCR.

*Corrections*

1. On page 79556, section IV.B.3.e., third column, HUD is correcting this section, to read as follows:

e. *Trading Partner Identification Number (TPIN).* A TPIN is a password that is used to access the applicant organization's Central Contractor Registration (CCR) data. Organizations that become active in CCR are issued a TPIN (password) to access their record in order to make, or request, any changes or updates to their CCR registration. Because of the sensitivity of this data, CCR recommends that CCR registrants not disclose their TPIN to anyone under any circumstances. CCR is changing from use of a TPIN to use of a USER ID and Password. CCR is notifying registrants of this change one month prior to their current registration expiration date and providing guidance. CCR registrants who are registering for the first time, or who are updating their registration information, will be required to create a USER ID and Password. Please review the User Account Guide and Frequently Asked Questions (FAQs) found at *www.ccr.gov*.

2. On page 79557, section IV.B.4.b.(2), second column, HUD is correcting the sixth sentence, to read as follows:

If you need assistance with the CCR registration process, you can contact the CCR Assistance Center, *Monday–Friday (except for Federal holidays), from 8 a.m. to 4 p.m. eastern time, at 888–227–2423 or 269–961–5757*.

Dated: *April 7, 2009.*

**Shaun Donovan,**

*Secretary.*

[FR Doc. E9–8691 Filed 4–15–09; 8:45 am]

BILLING CODE 4210–67–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Request for Nominations of Members To Serve on the Bureau of Indian Education Advisory Board for Exceptional Children

**AGENCY:** Bureau of Indian Education, Interior.

**ACTION:** Notice of request for nominations.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act and the Individuals with Disabilities Education Act, as amended by Public Law 108–446 (IDEA of 2004), the Bureau of Indian Education (BIE) requests nominations of individuals to serve on the Advisory Board for Exceptional Children (Advisory Board). The BIE will consider nominations received in response to this Request for Nominations, as well as other sources. The **SUPPLEMENTARY INFORMATION** section for this notice provides committee and membership criteria.

**DATES:** Nomination applications must be received on or before May 15, 2009.

**ADDRESSES:** Please submit nomination applications to Gloria Yepa, Supervisory Education Specialist, Bureau of Indian Education, Albuquerque Service Center, Division of Performance and Accountability, P.O. Box 1088, Albuquerque, New Mexico 87103–1088; telephone 505–563–5264.

**FOR FURTHER INFORMATION CONTACT:** Gloria Yepa, Supervisory Education Specialist, at the above listed address; telephone 505–563–5264.

**SUPPLEMENTARY INFORMATION:** The Advisory Board was established in accordance with the Federal Advisory Committee Act, Public Law 92–463. The following provides information about the Advisory Board, the membership and the nomination process.

### Objective and Duties

(a) Members of the Advisory Board will provide guidance, advice and recommendations with respect to special education and related services for children with disabilities in BIE-funded schools in accordance with the requirements of IDEA of 2004.

(b) The Advisory Board will:

(1) Provide advice and recommendations for the coordination of services within the BIE and with other local, State and Federal agencies.

(2) Provide advice and recommendations on a broad range of policy issues dealing with the provision of educational services to American Indian children with disabilities.

(3) Serve as advocates for American Indian students with special education needs by providing advice and recommendations regarding best practices, effective program coordination strategies, and recommendations for improved educational programming.

(4) Provide advice and recommendations for the preparation of information required to be submitted to the Secretary of Education under section 611(h)(2)(D).

(5) Provide advice and recommend policies concerning effective inter/intra-agency collaboration, including modifications to regulations, and the elimination of barriers to inter/intra-agency programs and activities.

(6) Report and direct all correspondence to the Assistant Secretary—Indian Affairs through the Director, BIE with a courtesy copy to the Designated Federal Official (DFO).

**Membership**

(a) As required by IDEA of 2004, section 611(h)(6), the Advisory Board shall be composed of individuals involved in or concerned with the education and provision of services to Indian infants, toddlers, children, and youth with disabilities. The Advisory Board composition will reflect a broad range of viewpoints and will include at least one (1) member representing each of the following interests: Indians with disabilities; teachers of children with disabilities; Indian parents or guardians of children with disabilities; service providers, State Education Officials; Local Education Officials; State Interagency Coordinating Councils (for States having Indian reservations); tribal representatives or tribal organization representatives; and other members representing the various divisions and entities of the BIE.

(b) The Assistant Secretary—Indian Affairs may provide the Secretary of the Interior recommendations for the chairperson; however, the chairperson and other Advisory Board members will be appointed by the Secretary of the Interior. The Advisory Board members shall serve staggered terms of 2 years or 3 years from the date of their appointment.

**Miscellaneous**

(a) Members of the Advisory Board will not receive compensation, but will be reimbursed for travel, including subsistence, and other necessary expenses incurred in the performance of their duties in the same manner as persons employed intermittently in Government Service under 5 U.S.C. 5703.

(b) A member may not participate in matters that will directly affect, or appear to affect, the financial interests of the member or the member's spouse or minor children, unless authorized by the DFO. Compensation from employment does not constitute a financial interest of the member so long as the matter before the Advisory Board will not have a special or distinct effect on the member or the member's employer, other than as part of a class. The provisions of this paragraph do not affect any other statutory or regulatory ethical obligations to which a member may be subject.

(c) The Advisory Board meets at least twice a year, budget permitting, but additional meetings may be held as deemed necessary by the Assistant Secretary—Indian Affairs or DFO.

(d) All Advisory Board meetings are open to the public in accordance with the Federal Advisory Committee Act regulations.

**Nomination Information**

(a) Nominations are requested from individuals, organizations, and federally recognized tribes, as well as from State Directors of Special Education (within the 23 States in which BIE-funded schools are located) concerned with the education of Indian children with disabilities as described above.

(b) Nominees should have expertise and knowledge of the issues and/or needs of American Indian children with disabilities. Such knowledge and expertise are needed to provide advice and recommendations to the BIE regarding the needs of American Indian children with disabilities.

(c) A summary of the candidate's qualifications (résumé or curriculum vitae) must be included with the nomination application. Nominees must have the ability to attend Advisory Board meetings, carry out Advisory Board assignments, participate in teleconference calls, and work in groups.

(d) The Department of the Interior is committed to equal opportunity in the workplace and seeks diverse Advisory Board membership, which is bound by the Indian Preference Act of 1990 (25 U.S.C. 472).

Dated: March 26, 2009.

**George T. Skibine,**

*Deputy Assistant Secretary for Policy and Economic Development.*

[FR Doc. E9–8690 Filed 4–15–09; 8:45 am]

BILLING CODE 4310–6W–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Advisory Board of Exceptional Children

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, the Bureau of Indian Education (BIE) is announcing that the Advisory Board for Exceptional Children (Advisory Board) will hold its next meeting in Albuquerque, New Mexico. The purpose of the meeting is to meet the mandates of the Individuals with Disabilities Education Act of 2004 (IDEA) on Indian children with disabilities.

**DATES:** The Advisory Board will meet on Thursday, April 30, 2009, from 8:30 a.m. to 4:45 p.m.; Friday, May 1, 2009, from 8:15 a.m. to 5 p.m.; and Saturday, May 2, 2009, from 8 a.m. to 3 p.m. Local Time.

**ADDRESSES:** The April 30th and May 1st meetings will be held at the Bureau of Indian Education, Albuquerque Service Center, Division of Performance and Accountability, 1011 Indian School Road NW., Room 277, Albuquerque, NM 87103; telephone 505–563–5274. The May 2, 2009, meeting will be held at the Marriot Hotel, 2101 Louisiana Blvd. NE., Albuquerque, NM; telephone 505–881–6800.

**FOR FURTHER INFORMATION CONTACT:** Dr. Jeff Hamley, Designated Federal Official, Bureau of Indian Education, Albuquerque Service Center, Division of Performance and Accountability, 1011 Indian School Road NW., P.O. Box 1088, Suite 332, Albuquerque, NM 87103; telephone 505–563–5260.

**SUPPLEMENTARY INFORMATION:** The Advisory Board was established to advise the Secretary of the Interior, through the Assistant Secretary-Indian Affairs, on the needs of Indian children with disabilities, as mandated by the Individuals with Disabilities Act of 2004 (Pub. L. 108–446).

The following items will be on the agenda:

- Advisory Board Workgroups address: State Performance Plan Indicators (SPP), Annual Performance Report (APR), and Office of Special Education Programs (OSEP) verification;
- Public Call 11:30–12 MT, Conference Number 1–888–387–8686, Pass code 4274201;
- Organization issues of Advisory Board;
- APR and Data Exceptions for BIE.

The meetings are open to the public.

Dated: April 8, 2009.

**Grayford Payne,**

*Acting Deputy Assistant Secretary for Policy and Economic Development.*

[FR Doc. E9–8724 Filed 4–15–09; 8:45 am]

**BILLING CODE 4310–6W–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Emergency Planning and Community Right-To-Know Act, the Clean Water Act, the Resource Conservation and Recovery Act, the Federal Insecticide, Fungicide, and Rodenticide Act, the Comprehensive Environmental Response, Compensation, and Liability Act, the Safe Drinking Water Act, and the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on April 13, 2009, a proposed Consent Decree in *United States, et al.* v. *INVISTA, S.à r.l*, Civil Action Number 1:09–cv–00244, was lodged with the United States District Court for the District of Delaware. The Consent Decree resolves claims against INVISTA S.à r.l. (''INVISTA'') brought by the United States on behalf of the U.S. Environmental Protection Agency (''EPA'') under the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. 11001 to 11050; the Clean Water Act (CWA), 42 U.S.C. 1251 to 1387; the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 to 6992k; the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 to 136y; Section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9603(a); the Safe Drinking Water Act (SDWA), 42 U.S.C. 300f to 300j–26; and the Clean Air Act (CAA), 42 U.S.C. 7401 to 7671q (hereinafter ''Environmental Requirements''). The Consent Decree also resolves the claims against INVISTA brought by the State of Delaware Department of Natural Resources and Environmental Control, the State of South Carolina Department of Health and Environmental Control, and the Chattanooga-Hamilton County Air Pollution Control Board.

In this action, the United States seeks civil penalties and injunctive relief for the violations of Environmental Requirements identified in Appendices A, B, and C to the lodged Consent Decree that INVISTA voluntarily identified to the EPA after conducting its compliance management system and a series of comprehensive audits of facilities that INVISTA acquired in April 2004 from E.I. du Pont de Nemours and Company. The facilities covered by these allegations are located at Athens, GA; Calhoun, GA; Camden, SC; Chattanooga, TN; Dalton, GA; Kinston, NC; LaPorte, TX; Martinsville, VA; Orange (also called Sabine), TX; Seaford, DE; Victoria, TX; and Waynesboro, VA.

The settlement resolves the violations that are set forth in Appendices A, B, and C to the Consent Decree. INVISTA has certified in the Decree that it has corrected the violations alleged in Appendix A. INVISTA has agreed to implement injunctive relief measures to resolve the alleged Clean Air Act violations in Appendices B and C under: the Prevention of Significant Deterioration and/or New Source Review program at the Seaford, Chattanooga, Victoria, and Camden Facilities; the Benzene National Emissions Standards for Hazardous Air Pollutants program for the Orange and Victoria Facilities; the Leak Detection and Repair program for the Orange and Victoria Facilities; and the New Source Performance Standards program for the Orange Facility.

The Department of Justice will receive, for a period of 30 days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the 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 et al.* v. *INVISTA, S.à r.l*, DOJ Ref. No. 90–5–2–1–08892.

The proposed Consent Decree along with the Appendices and relevant excerpts of the Final Audit Report referenced therein may be examined at the Enforcement and Compliance Docket Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center 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 Enforcement and Compliance Docket is (202) 566–1927. During the public comment period, the proposed Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decree.html.* A copy of the proposed Consent Decree may 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 number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the Consent Decree (without appendices) from the Consent Decree Library, please enclose a check in the amount of $6.75 (.25 cents per page reproduction costs), payable to the U.S. Treasury.

**Maureen Katz,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. E9–8755 Filed 4–15–09; 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: Certification of Qualifying State Relief from Disabilities Program.

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 June 15, 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 Barbara Terrell, Firearms Enforcement Branch, 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:* Certification of Qualifying State Relief from Disabilities Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 3210.12. 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: State, Local or Tribal Government. Other: None. The purpose of the information is to determine whether a State has certified, to the satisfaction of the Attorney General, that it has established a relief from disabilities program in accordance with the requirements of the National Instant Check System Improvement Act of 2007.

(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 50 respondents will complete a 15 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 13 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: April 13, 2009.

**Lynn Bryant,**

*Department Clearance Officer, PRA, United States Department of Justice.*

[FR Doc. E9–8761 Filed 4–15–09; 8:45 am]

**BILLING CODE 4410–FY–P**

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## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms and Explosives

**[OMB Number 1140–0061]**

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 30-day notice of information collection under review: Certificate of compliance with 18 U.S.C. 922(g)(5)(B).

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. This proposed information collection was previously published in the **Federal Register** Volume 74, Number 28, page 7076, on February 12, 2009, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until May 18, 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 The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

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) *Title of the Form/Collection:* Certificate of Compliance With 18 U.S.C. 922(g)(5)(B).

(3) *Agency Form Number, if Any, and the Applicable Component of the Department of Justice Sponsoring the Collection:* Form Number: ATF F 5330.20. 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: Business or other for-profit. Other: None. Abstract: The law of 18 U.S.C. 922(g)(5)(B) makes it unlawful for any nonimmigrant alien to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has shipped or transported in interstate or foreign commerce. ATF F 5330.20 is for the purpose of ensuring that nonimmigrant aliens certify their compliance according to the law at 18 U.S.C. 922(g)(5)(B).

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent to Respond:* There will be an estimated 3,000 respondents who will complete the form within approximately 3 minutes.

(6) *An Estimate of the Total Burden (in Hours) Associated with the Collection:* There are an estimated 150 total burden hours associated with this collection.

*If Additional Information is Required Contact:* Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: April 13, 2009.

**Lynn Bryant,**

*Department Clearance Officer, PRA, United States Department of Justice.*

[FR Doc. E9–8797 Filed 4–15–09; 8:45 am]

**BILLING CODE 4410–FY–P**

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

**[OMB Number 1121–0111]**

### Agency Information Collection Activities: Extension of a Currently Approved Collection; Comments Requested

**ACTION:** 30-day Notice of information collection under review: National Crime Victimization Survey (NCVS).

The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics 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** Volume 74, Number 19, page 5679 on January 30, 2009, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until May 18, 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 the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. 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**

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* National Crime Victimization Survey (NCVS).

(3) *Agency form number, if any, and the applicable component of the department sponsoring the collection:* NCVS. Bureau of Justice Statistics, Office of Justice Programs, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract.* Primary: Persons 12 years or older living in NCVS sampled households located throughout the United States. The National Crime Victimization Survey (NCVS) collects, analyzes, publishes, and disseminates statistics on the criminal victimization in the U.S.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* An estimate of the total number of respondents is 77,600. It will take the average interviewed respondent an estimated 23 minutes to respond, the average non-interviewed respondent an estimated 7 minutes to respond, the estimated average follow-up interview is 12 minutes, and the estimated average follow-up for a non-interview is 1 minute.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total respondent burden is approximately 53,510 hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: April 13, 2009.

**Lynn Bryant,**

*Department Clearance Officer, PRA, United States Department of Justice.*

[FR Doc. E9–8799 Filed 4–15–09; 8:45 am]

**BILLING CODE 4410–18–P**

## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms and Explosives

**[OMB Number 1140–0036]**

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 30-Day Notice of information collection under review: FFL Out-of-Business Records Request.

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. This proposed information collection was previously published in the **Federal Register** Volume 74, Number 28 page 7075, on February 12, 2009, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until May 18, 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 The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

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) *Title of the Form/Collection:* FFL Out-of-Business Records Request.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5300.3A. 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: Business or other for-profit. Other: None. Abstract: Firearms licensees are required to keep records of acquisition and disposition. These records remain with the licensee as long as he is in business. The ATF F 5300.3A, FFL Out-of-Business Records Request is used by ATF to notify licensees who go out of business. When discontinuance of the business is absolute, such records shall be delivered within thirty days following the business discontinuance to the ATF Out-of-Business Records Center.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 28,000 respondents, who will complete the form within approximately 5 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 2,324 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: April 13, 2009.

**Lynn Bryant,**

*Department Clearance Officer, PRA, United States Department of Justice.*

[FR Doc. E9–8798 Filed 4–15–09; 8:45 am]

BILLING CODE 4410–FY–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–64,360]**

### Meadwestvaco Corporation, Consumer and Office Products Division, Enfield, CT; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated April 1, 2009, the petitioner requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) applicable to workers and former workers of the subject firm. The determination was issued on February 5, 2009. The Notice of Determination was published in the **Federal Register** on March 3, 2009 (74 FR 9283).

The initial investigation resulted in a negative determination based on the finding that imports of envelopes did not contribute importantly to worker separations at the subject firm and no shift in production to a foreign country occurred.

In the request for reconsideration, the petitioner provided additional information regarding a shift in production of envelopes to Mexico and alleged that the customers might have increased imports of envelopes in the relevant period.

The Department has carefully reviewed the request for reconsideration and the existing record and has determined that the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

**Conclusion**

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 7th day of April 2009.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–8696 Filed 4–15–09; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–62,983]**

### Citation Corporation, Currently Known as Compass Automotive Group, Grand Rapids Division, Lowell, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on April 17, 2008, applicable to workers of Citation Corporation, Grand Rapids Division, Lowell, Michigan. The notice was published in the **Federal Register** on May 2, 2008 (73 FR 24317).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of precision machined aluminum castings for engine and transmission components.

New information shows that due to a change in ownership in March 2009, Citation Corporation is currently known as Compass Automotive Group.

The intent of the Department's certification is to include all workers at the subject firm who were adversely affected due to increased customer imports.

Accordingly, the Department is amending this certification to include workers of the subject firm whose Unemployment Insurance (UI) wages are reported under the successor firm, Compass Automotive Group.

The amended notice applicable to TA–W–62,983 is hereby issued as follows:

''All workers of Citation Corporation, currently known as Compass Automotive Group, Grand Rapids Division, Lowell, Michigan, who became totally or partially separated from employment on or after February 28, 2007, through April 17, 2010, are eligible to apply for adjustment assistance

under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC, this 6th day of April 2009.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–8693 Filed 4–15–09; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–65,019]**

### Delphi Corporation, Corporate Headquarters, and Product & Service Solutions Division Including On-Site Leased Workers from Aerotek, Bartech, Securitas Security and Rapid Global Business Systems, Inc. (RGBSI) Troy, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on January 30, 2009, applicable to workers of Delphi Corporation, Corporate Headquarters and Product & Service Solutions Division, Troy, Michigan. The notice was published in the **Federal Register** on February 23, 2009 (74 FR 8115). The certification was amended on April 3, 2009 to include on-site leased workers from Aerotek, Bartech and Securitas Security. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers perform administrative and support functions for prototype automotive parts.

The intent of the Department's certification is to include all workers of the subject firm adversely affected by the shift in production of prototype automotive parts to Mexico.

New information submitted to the Department shows that workers leased from Rapid Global Business Systems, Inc. (RGBSI) were employed on-site at the Troy, Michigan location of Delphi Corporation, Corporate Headquarters and Product & Service Solutions Division. The Department has determined that these workers were sufficiently under the control of Delphi Corporation, Corporate Headquarters, and Product & Service Solutions Division to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Rapid Global Business Systems, Inc. (RGBSI) working on-site at the Troy, Michigan location of the subject firm.

The amended notice applicable to TA–W–65,019 is hereby issued as follows:

All workers of Delphi Corporation, Corporate Headquarters and Product & Service Solutions Division, including on-site leased workers from Aerotek, Bartech, Securitas Security and Rapid Global Business Systems, Inc., Troy, Michigan, who became totally or partially separated from employment on or after January 27, 2008, through January 30, 2011, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 9th day of April 2009.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–8700 Filed 4–15–09; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–64,757]**

### Ferro Corporation, Inorganic Specialties Division, Including On-Site Leased Workers From Spherion, Toccoa, Georgia; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on January 15, 2009, applicable to workers of Ferro Corporation, Inorganic Specialties Division, Toccoa, Georgia. The notice was published in the **Federal Register** on February 2, 2009 (74 FR 5871).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce inorganic pigments.

New information provided by the company shows that workers leased from Spherion were employed on-site at Ferro Corporation, Inorganic Specialties Division, Toccoa, Georgia.

The intent of the Department's certification is to include all workers at the subject firm who were adversely affected by the shift in production to Mexico.

The Department has determined that these workers were sufficiently under the control of Ferro Corporation, Inorganic Specialties Division, to be considered leased workers.

Accordingly, the Department is amending this certification to include workers leased from Spherion working on-site at Ferro Corporation, Inorganic Specialties Division, Toccoa, Georgia.

The amended notice applicable to TA–W–64,757 is hereby issued as follows:

All workers of Ferro Corporation, Inorganic Specialties Division, Toccoa, Georgia, including on-site leased workers from Spherion, who became totally or partially separated from employment on or after December 18, 2007 through January 15, 2011, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 7th day of April 2009.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–8698 Filed 4–15–09; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–63,445]**

### Citation Corporation, Currently Known as Compass Automotive Group, Grand Rapids, Grand Rapids, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on June 2, 2008, applicable to workers of Citation

Corporation, Grand Rapids, Grand Rapids, Michigan. The notice was published in the **Federal Register** on February 20, 2008 (73 FR 35164).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of precision machined aluminum castings for engine and transmission components.

New information shows that due to a change in ownership in March 2009, Citation Corporation is currently known as Compass Automotive Group.

The intent of the Department's certification is to include all workers at the subject firm who were adversely affected due to increased customer imports.

Accordingly, the Department is amending this certification to include workers of the subject firm whose Unemployment Insurance (UI) wages are reported under the successor firm, Compass Automotive Group.

The amended notice applicable to TA–W–63,445 is hereby issued as follows:

All workers of Citation Corporation, currently known as Compass Automotive Group, Grand Rapids, Grand Rapids, Michigan, who became totally or partially separated from employment on or after May 28, 2007, through June 2, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 6th day of April 2009.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–8694 Filed 4–15–09; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–64,449]**

### Whirlpool Corporation, Jackson Dishwashing Products Division, Including On-Site Leased Workers From Personnel Placements, Refreshments, Inc., Murray Guard, Inc., Crossgate Janitorial, and Aerotek, Jackson, TN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on January 30, 2009, applicable to workers of Whirlpool Corporation, Jackson Dishwashing Products Division, Jackson, Tennessee including on-site leased workers from Personnel Placements, Refreshments, Inc., Murray Guard, Inc., and Crossgate Janitorial. The notice was published in the **Federal Register** on February 23, 2009 (74 FR 8115).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of dishwashing machines.

New information shows that workers leased from Aerotek were employed on-site at the Jackson, Tennessee location of Whirlpool Corporation, Jackson Dishwashing Products Division. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Aerotek working on-site at the Jackson, Tennessee location of the subject firm.

The intent of the Department's certification is to include all workers employed at Whirlpool Corporation, Jackson Dishwashing Products Division, Jackson, Tennessee who were adversely affected by increased imports of dishwashing machines.

The amended notice applicable to TA–W–64,449 is hereby issued as follows:

All workers of Whirlpool Corporation, Jackson Dishwashing Products Division, Jackson, Tennessee including on-site leased workers from Personnel Placements, Refreshments, Inc., Murray Guard, Inc., Crossgate Janitorial, and Aerotek, who became totally or partially separated from employment on or after November 14, 2007 through January 30, 2011, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 8th day of April 2009.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–8697 Filed 4–15–09; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–64,856]**

### Louisiana Pacific, Engineered Wood Products Division, Including On-Site Temporary Workers From Tempo Employment Service, New Limerick, ME; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on February 26, 2009, applicable to workers of Louisiana Pacific, Engineered Wood Products Division, New Limerick, Maine. The notice was published in the **Federal Register** on March 19, 2009 (74 FR 11757).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of laminated strand lumber (LSL).

New information shows that temporary workers from Tempo Employment Service were employed on-site at the New Limerick, Maine location of Louisiana-Pacific Corporation, Engineered Wood Products Division. The Department has determined that these workers were sufficiently under the control of Louisiana-Pacific Corporation, Engineered Wood Products Division to be considered temporary workers.

Based on these findings, the Department is amending this certification to include temporary workers from Tempo Employment Service working on-site at the New Limerick, Maine location of the subject firm.

The amended notice applicable to TA–W–64,856 is hereby issued as follows:

All workers of Louisiana-Pacific Corporation, Engineered Wood Products Division, including on-site temporary workers from Tempo Employment Service, New Limerick, Maine, who became totally or partially separated from employment on or after January 9, 2008, through February 26, 2011, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 3rd day of April 2009.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–8699 Filed 4–15–09; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–65,102]**

### Kelsey Hayes Company, North American Braking and Suspension Division, a Subsidiary of TRW Automotive, Inc., Including On-Site Leased Workers From Kelly Services and Volt Services Fenton, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on January 23, 2009, applicable to workers of Kelsey Hayes Company, North American Braking and Suspension Division, Inc., Fenton, Michigan. The notice was published in the **Federal Register** on March 10, 2009 (74 FR 10303).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of anti-skid braking systems and stability control.

New information provided by the company shows that workers leased from Volt Services were employed on-site at Kelsey Hayes Company, North American Braking and Suspension Division, Inc., Fenton, Michigan.

The intent of the Department's certification is to include all workers at the subject firm who were adversely affected due to supplying a trade certified primary firm.

The Department has determined that these workers were sufficiently under the control of Kelsey Hayes Company to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Volt Services working on-site at the Fenton, Michigan location of the subject firm.

The amended notice applicable to TA–W–65,102 is hereby issued as follows:

All workers Kelsey Hayes Company, North American Braking and Suspension Division, Inc., Fenton, Michigan, including on-site leased workers from Kelly Services and Volt Services, who became totally or partially separated from employment on or after February 3, 2008, through February 17, 2011, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 6th day of April 2009.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–8692 Filed 4–15–09; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–63,990]**

### Whirlpool Corporation, Oxford Division Including On-Site Leased Workers from Vend-A–Snack Inc., Willstaff, Inc., Cobra Security Inc., Tri-Star Companies Inc., Cross Gate Services Inc., and Impact Business Group, Oxford, MS; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on October 1, 2008, applicable to workers of Whirlpool Corporation, Oxford Division, Oxford, Mississippi, including on-site leased workers from Vend-A-Snack, Willstaff, Cobra Security, Tri-Star Companies, Inc., and Cross Gate Services, Inc. The notice was published in the **Federal Register** on October 20, 2008 (73 FR 62322).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of cooking products (household ovens, stove tops, and microwaves).

New information shows that workers leased from iMPact Business Group were employed on-site at the Oxford, Mississippi location of Whirlpool Corporation, Oxford Division. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from iMPact Business Group working on-site at the Oxford, Mississippi location of the subject firm.

The intent of the Department's certification is to include all workers employed at Whirlpool Corporation, Oxford Division, Oxford, Mississippi who were adversely affected by a shift in production of cooking products to Mexico.

The amended notice applicable to TA–W–63,990 is hereby issued as follows:

All workers of Whirlpool Corporation, Oxford Division, Oxford, Mississippi, including on-site leased workers from Vend-A-Snack, Willstaff, Cobra Security, Tri-Star Companies, Inc., Cross Gate Services, Inc., and iMPact Business Group, who became totally or partially separated from employment on or after September 4, 2007 through October 1, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 8th day of April 2009.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–8695 Filed 4–15–09; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Office of the Assistant Secretary for Veterans' Employment and Training

### The Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO); Notice of Open Meeting

The Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO) was established pursuant to Title II of the Veterans' Housing Opportunity and Benefits Improvement Act of 2006 (Pub. L. 109–233) and section 9 of the Federal Advisory Committee Act (FACA) (Pub. L. 92–462, Title 5 U.S.C. app.II). The authority of the ACVETEO is codified in Title 38 U.S. Code, section 4110.

The ACVETEO is responsible for assessing employment and training needs of veterans; determining the

extent to which the programs and activities of the U.S. Department of Labor meet these needs; and assisting to conduct outreach to employers seeking to hire veterans. The ACVETEO will conduct a business meeting on Thursday, May 28, 2009 from 8:30 a.m. to 4 p.m., at the Omni Hotel, 401 Chestnut Street, second floor meeting room, Philadelphia, PA. The ACVETEO will discuss programs to assist veterans seeking employment and to raise employer awareness as to the advantages of hiring veterans, with special emphasis on employer outreach and wounded and injured veterans.

Individuals needing special accommodations should notify Margaret Hill Watts at (202) 693–4744 by May 11, 2009.

Signed in Washington, DC, this 9th day of April 2009.

**John M. McWilliam,**

*Deputy Assistant Secretary, Veterans' Employment and Training Service.*

[FR Doc. E9–8733 Filed 4–15–09; 8:45 am]

BILLING CODE 4510–79–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Workforce Investment Act; Native American Employment and Training Council

**AGENCY:** Employment and Training Administration, U.S. Department of Labor.

**ACTION:** Notice of Meeting.

**SUMMARY:** Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463), as amended, and Section 166(h)(4) of the Workforce Investment Act (WIA) [29 U.S.C. 2911(h)(4)], notice is hereby given of the next meeting of the Native American Employment and Training Council (NAETC), as constituted under WIA.

**DATES:** The meeting will begin at 10:30 a.m. (Pacific Standard Time) on Thursday, May 21, 2009, and continue until 4:30 p.m. that day. The meeting will reconvene at 9 a.m. on Friday, May 22, 2009, and adjourn at 12 p.m. that day. The period from 2 p.m. to 4:30 p.m. on May 21, 2009, will be reserved for participation and presentations by members of the public.

**ADDRESSES:** The meetings will be held at the Double Tree Hotel Sacramento, 2001 West Point Way, Sacramento, California 95815.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public. Members of the public not present may submit a written statement on or before May 14, 2009, to be included in the record of the meeting. Statements are to be submitted to Mrs. Evangeline M. Campbell, Designated Federal Official (DFO), U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–4209, Washington, DC 20210. Persons who need special accommodations should contact Mr. Craig Lewis at (202) 693–3384, at least two business days before the meeting. The formal agenda will focus on the following topics: (1) U.S. Department of Labor, Employment and Training Administration Transition; (2) U.S. Department of Labor, Employment and Training Administration Recovery and Reinvestment Act Training and Employment Guidance; (3) Election of Committee Chair; (4) Introduction of Newly Appointed Council Members; (5) U.S. Department of Labor, Indian and Native American Program Update and Strategic Planning; (6) Native American and Employment Training Council Workgroup Reports; (7) Council Update; and (8) Council Recommendations.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Evangeline M. Campbell, DFO, Indian and Native American Programs, Employment and Training Administration, U.S. Department of Labor, Room S–4209, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone number (202) 693–3737 (VOICE) (this is not a toll-free number).

Signed at Washington, DC, this 9th day of April 2009.

**Douglas F. Small,**

*Deputy Assistant Secretary, Employment and Training Administration.*

[FR Doc. E9–8734 Filed 4–15–09; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

**[Application Number D–11363]**

### Withdrawal of the Notice of Proposed Exemption Involving the Citation Box and Paper Co. Profit Sharing Plan and Retirement Trust (the Plan) Located in Chicago, IL

In the May 9, 2008 issue of the **Federal Register**, at 73 FR 26415, the Department of Labor (the Department) published a notice of proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1986. The notice of proposed exemption concerned the proposed sale of improved real property by the Plan to a partnership to be comprised of Anthony J. Kostiuk (the Applicant and Plan Fiduciary), Anthony L. Kostiuk, Edmund Chmiel, Andre Frydl, and David Marinier, each of whom is a party in interest with respect to the Plan.

By letter dated March 16, 2009, the Applicant requested that the application for exemption be withdrawn.

Accordingly, the notice of proposed exemption is hereby withdrawn.

Signed at Washington, DC, this 10th day of April, 2009.

**Ivan L. Strasfeld,**

*Director, Office of Exemption Determinations, Employee Benefits Security Administration.*

[FR Doc. E9–8675 Filed 4–15–09; 8:45 am]

BILLING CODE 4510–29–P

## NATIONAL CREDIT UNION ADMINISTRATION

### Sunshine Act; Notice of Agency Meeting

**TIME AND DATE:** 10 a.m., Tuesday, April 21, 2009.

**PLACE:** Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** 1. Final Rule—Part 717, Subpart E, Sections 717.40–717.43, Appendix E of NCUA's Rules and Regulations, Fair Credit Reporting.

2. Advance Notice of Proposed Rulemaking—Part 717, Subpart E, Sections 717.40–717.43, Appendix E of NCUA's Rules and Regulations, Fair Credit Reporting.

3. Proposed Rule—Part 706 of NCUA's Rules and Regulations, Unfair or Deceptive Acts or Practices.

4. Delegations of Authority, Office of Small Credit Union Initiatives.

5. Creditor Claim Appeal.

6. Budget, Office of Capital Markets and Planning and Central Liquidity Facility.

7. Insurance Fund Report.

**RECESS:** 11 a.m.

**TIME AND DATE:** 11:15 a.m., Tuesday, April 21, 2009.

**PLACE:** Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** 1. Insurance Appeal. Closed pursuant to Exemption (6).

2. Creditor Claim Appeal. Closed pursuant to Exemption (6).

3. Dividend Appeal. Closed pursuant to Exemption (6).

4. Consideration of Supervisory Activities (6). Closed pursuant to Exemptions (8) and (9)(A)(ii) and 9(B).

**FOR FURTHER INFORMATION CONTACT:** Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

**Mary Rupp,**

*Board Secretary.*

[FR Doc. E9–8837 Filed 4–14–09; 4:15 pm]

**BILLING CODE 7535–01–P**

## NATIONAL TRANSPORTATION SAFETY BOARD

### Sunshine Act Meeting

**TIME AND DATE:** 9:30 a.m., April 21, 2009.

**PLACE:** NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

**STATUS:** The one item is open to the public.

**MATTER TO BE CONSIDERED:**

8024A Highway Accident Report—Single-Vehicle Accident, Motorcoach Run-Off-the-Road and Rollover, U.S. Route 163, Mexican Hat, Utah, January 6, 2008 (HWY–08–MH–012).

**NEWS MEDIA CONTACT:** Telephone: (202) 314–6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 by Friday, April 17, 2009.

The public may view the meeting via a live or archived webcast by accessing a link under ''News & Events'' on the NTSB home page at *http://www.ntsb.gov.*

**FOR FURTHER INFORMATION CONTACT:** Vicky D'Onofrio, (202) 314–6410.

Dated: April 14, 2009.

**Vicky D'Onofrio,**

*Federal Register Liaison Officer.*

[FR Doc. E9–8863 Filed 4–14–09; 4:15 pm]

**BILLING CODE 7533–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2009–0164]**

### Notice of Availability of Draft NUREG–1536, Revision 1A, ''Standard Review Plan for Spent Fuel Dry Storage Systems at a General License Facility,'' and Opportunity To Provide Comments

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability and opportunity to provide comments.

**DATES:** Comments must be provided by July 15, 2009.

**FOR FURTHER INFORMATION CONTACT:** Ron Parkhill, Senior Mechanical Engineer, Thermal and Containment Branch, Division of Spent Fuel Storage and Transportation Division, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20005–0001. Telephone: (301) 492–3324; fax number: (301) 492–3342; e-mail: *ron.parkhill@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

#### I. Introduction

The Nuclear Regulatory Commission (NRC) is issuing Draft Revision 1A to NUREG–1536, ''Standard Review Plan for Spent Fuel Dry Storage Systems at a General License Facility.'' Its previous title, ''Standard Review Plan for Dry Cask Storage Systems,'' has been changed to better reflect its applicability. This revision incorporates Interim Staff Guidance (ISG) documents 1 through 22, as applicable, as well as other current NRC staff practices (e.g., addition of a materials chapter) utilized in its review of licensee integrated safety analyses, license applications or amendment requests, or other related licensing activities for dry storage systems under 10 CFR Part 72. Additionally, the guidance contained in the Review Procedures section of each chapter of the subject document has been risk-informed to assist the NRC staff in prioritizing its review with respect to relative level of effort, and to increase efficiency.

The purpose of this notice is to provide the public with an opportunity to review and solicit comments on the Draft NUREG–1536, Revision 1A, ''Standard Review Plan for Spent Fuel Dry Storage Systems at a General License Facility.'' These comments will be considered in the final version or subsequent revisions.

#### II. Opportunity To Provide Comments

Comments and questions on Draft NUREG–1536, Revision 1A, should be directed to Ron Parkhill, Thermal and Containment Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20005–0001 by July 15, 2009. Comments received after this date will be considered if it is practical to do so, but only those comments received on or before the due date can be assured consideration. Comments can also be submitted by telephone, fax, or e-mail to the following: Telephone: (301) 492–3324; fax number: (301) 492–3331; e-mail: *Ron.Parkhill@NRC.gov*.

#### III. Further Information

Documents related to this action are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession number for the document related to this notice is [ML090400676]. If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1–800–397–4209, (301) 415–4737, or by e-mail to *pdr.resource@nrc.gov*. ISGs that have been incorporated, as appropriate, into the subject document can be viewed at *http://www.nrc.gov/reading-rm/doc-collections/isg/spent-fuel.html*. During the public comment period for this document, other ISGs could be issued separately for public comment, and may be incorporated into the final version of NUREG–1536.

This document may also be viewed electronically on the public computers located at the NRC's PDR, O–1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

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

For the Nuclear Regulatory Commission.

**Nathan Sanfilippo,**

*Acting Chief, Thermal and Containment Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Materials Safety and Safeguards.*

[FR Doc. E9–8602 Filed 4–15–09; 8:45 am]

**BILLING CODE 7590–01–P**

## POSTAL REGULATORY COMMISSION

**[Docket No. MC2009–22; Order No. 200]**

### Mail Classification Changes

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recently-filed Postal Service request to make minor modifications to the Mail Classification Schedule. The changes affect Global Express Guaranteed service. This notice addresses procedural steps associated with this filing.

**DATES:** Comments are due April 16, 2009.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov*.

**SUPPLEMENTARY INFORMATION:** On April 3, 2009, the Postal Service filed a formal notice with the Commission concerning two changes in classification for Global Express Guaranteed (GXG) service pursuant to 39 CFR 3020.90 *et seq.*[1] The Postal Service's notice states that it is changing the minimum dimensional requirements for GXG service in Mail Classification Schedule (MCS) section 2205.2 which will allow mail pieces that are smaller than the current dimensions to be accepted as long as the shipping label fits on the face of the mail piece, and it is adding Libya as a new service country destination. Libya is being assigned to country group 4.

The Postal Service asserts that these classification changes are consistent with the requirements of 39 U.S.C. 3642, and further proposes conforming language to implement these changes for incorporation into the MCS.

Pursuant to rule 3020.91 and 39 CFR 3020.92, the Commission provides notice of the Postal Service's filing, affording interested persons an opportunity to express views and offer comments on whether the planned changes are inconsistent with 39 U.S.C. 3642. Comments are due April 16, 2009.

39 CFR 3020.91 requires the Postal Service to file notice of proposed changes with the Commission no less than 15 days prior to the effective date of the proposed change. The Notice indicates that these changes are effective no sooner than 15 days after April 3, 2009, the date of the Notice.

*It is Ordered:*

1. Docket No. MC2009–22 is established to consider the Postal Service Notice referred to in the body of this Order.

2. The Commission appoints Paul L. Harrington as Public Representative to represent the interests of the general public in this proceeding.

3. Comments by interested persons in these proceedings are due no later than April 16, 2009.

4. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

**Steven W. Williams,**

*Secretary.*

[FR Doc. E9–8749 Filed 4–15–09; 8:45 am]

**BILLING CODE**

[1] *See* Notice of the United States Postal Service of Classification Change, April 3, 2009 (Notice). The Notice is available on the Commission's Web site, *http://www.prc.gov*, under Daily Listings for April 3, 2009.

## SMALL BUSINESS ADMINISTRATION

### Data Collection Available for Public Comments and Recommendations

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

**DATES:** Submit comments on or before June 15, 2009.

**ADDRESSES:** Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Carl Jordan, Program Analyst, Office of Size Standards, Small Business Administration, 409 3rd Street, 8th Floor, Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Carl Jordan, Program Analyst, Office of Size Standards, 202–205–6093, *carl.jordan@sba.gov;* Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

**SUPPLEMENTARY INFORMATION:** This form is SBA's basic tool to determine the size of a business. Small businesses complete this form when applying for certain types of SBA assistance or when their size self-certification has been challenged.

*Title:* ''Application for Small Business Size Determination''.

*Description of Respondents:* Small businesses.

*Form Number:* 355.

*Annual Responses:* 600.

*Annual Burden:* 2,400.

**Jacqueline White,**

*Chief, Administrative Information Branch.*

[FR Doc. E9–8634 Filed 4–15–09; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #11703 and #11704]**

### Texas Disaster #TX–00335

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of Texas dated 04/09/2009.

*Incident:* Live Oak County Wildfire.

*Incident Period:* 04/02/2009.

*Effective Date:* 04/09/2009.

*Physical Loan Application Deadline Date:* 06/08/2009.

*Economic Injury (EIDL) Loan Application Deadline Date:* 01/09/2009.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Live Oak.

*Contiguous Counties:*

Texas: Atascosa, Bee, Duval, Jim Wells, Karnes, McMullen, San Patricio.

The Interest Rates are:

| | Percent |
|---|---|
| Homeowners With Credit Available Elsewhere | 4.375 |
| Homeowners Without Credit Available Elsewhere | 2.187 |
| Businesses With Credit Available Elsewhere | 6.000 |
| Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere | 4.000 |
| Other (Including Non-Profit Organizations) With Credit Available Elsewhere | 4.500 |
| Businesses and Non-Profit Organizations Without Credit Available Elsewhere | 4.000 |

The number assigned to this disaster for physical damage is 11703 5 and for economic injury is 11704 0.

The States which received an EIDL Declaration # are Texas.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: April 9, 2009.

**Karen G. Mills,**

*Administrator.*

[FR Doc. E9–8791 Filed 4–15–09; 8:45 am]

**BILLING CODE 8025–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 500–1]**

## Poseidis, Inc.; Order of Suspension of Trading

April 14, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Poseidis, Inc. (''Poseidis'') because it has not filed a periodic report since its 10–QSB/A for the quarterly period ended May 31, 2006, filed on November 21, 2007.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of Poseidis.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in Poseidis securities is suspended for the period from 9:30 a.m. EDT on April 14, 2009, through 11:59 p.m. EDT on April 27, 2009.

By the Commission.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. E9–8829 Filed 4–14–09; 4:15 pm]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59753; File Nos. 4–579 and S7–04–09]**

## Roundtable on Oversight of Credit Rating Agencies

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of roundtable discussion; request for comment.

**SUMMARY:** The Credit Rating Agency Reform Act of 2006 provided the Securities and Exchange Commission for the first time with authority over credit rating agencies that register with the Commission as Nationally Recognized Statistical Rating Organizations (''NRSROs''). Most of the Act's provisions became effective in June 2007. Pursuant to the Act, the Commission has adopted two sets of rules, and Commission staff has conducted an extensive 10-month examination of the three largest credit rating agencies. In February 2009, the Commission issued a proposing release that included several proposals to further the Act's purpose of promoting accountability, transparency, and competition in the credit rating industry. The proposing release is available on the Commission's Web site at *http://www.sec.gov/rules/proposed/2009/34–59343.pdf*.

The Commission will host a roundtable discussion regarding the oversight of credit rating agencies, as it relates to both the Commission's pending proposals and more broadly. The roundtable will consist of four panels. Roundtable participants will include leaders from investor organizations, financial services associations, credit rating agencies, and academia.

The roundtable discussion will be held in the auditorium at the Commission's headquarters at 100 F Street, NE., in Washington, DC on April 15, 2009, from 10 a.m. to 4:30 p.m. The roundtable will be open to the public with seating on a first-come, first-served basis. The roundtable discussion also will be available via webcast on the Commission's Web site at *http://www.sec.gov*. The roundtable agenda and other materials related to the roundtable, including a list of participants and moderators, will be accessible at *http://www.sec.gov/spotlight/cra-oversight-roundtable.htm*. The Commission welcomes feedback regarding any of the topics to be addressed at the roundtable.

**DATES:** Comments should be received on or before May 15, 2009.

**ADDRESSES:** Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/spotlight/cra-oversight-roundtable.htm*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number 4–579 and/or File Number S7–04–09 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 4–579. For comments specifically related to the proposed amendments, such submissions also should refer to File Number S7–04–09. This file number(s) should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/spotlight/cra-oversight-roundtable.htm*). Comments are also available for public 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. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** Marlon Quintanilla Paz, Division of Trading and Markets, at (202) 551–5756, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549.

**SUPPLEMENTARY INFORMATION:** The roundtable discussion will concern the Commission's oversight of credit rating agencies. The panel discussions will focus on:

- The perspective of current NRSROs: What went wrong and what corrective steps is the industry taking?
- Competition Issues: What are current barriers to entering the credit rating agency industry?
- The perspective of users of credit ratings.
- Approaches to improve credit rating agency oversight.

The Credit Rating Agency Reform Act of 2006 was designed to improve ratings quality for the protection of investors, serving the public interest by fostering accountability, transparency, and competition in the credit rating industry. The Act grants the Commission broad authority to examine all books and records of an NRSRO with regard to compliance with substantive Commission rules applicable to NRSROs, including rules addressing conflicts of interest and rules prohibiting certain unfair, coercive, or abusive practices. The Commission issued final rules establishing a regulatory program for NRSROs in June 2007.

Since the passage of the Act and the implementation of the June 2007 final rules, the Commission has used its authority to examine the adequacy of the NRSROs' public disclosures, their recordkeeping, their procedures to prevent the misuse of material nonpublic information, their management of conflicts of interest, and their approaches to preventing unfair,

abusive or coercive practices. On July 8, 2008, the Commission released findings from a 10-month staff examination of three major credit rating agencies. The staff examinations uncovered weaknesses in ratings practices and the need for remedial action by the firms to provide meaningful ratings and the necessary levels of disclosure to investors.

In June and July of 2008, the Commission proposed a three-fold set of reforms that would address further the conflicts of interests, disclosures, internal policies, and business practices of credit rating agencies registered as NRSROs. With respect to the first set of reforms, in February 2009, the Commission issued final rule amendments to existing NRSRO rules. In conjunction with the adoption of these new measures, the Commission proposed an additional amendment that would require NRSROs to disclose ratings history information, in XBRL format, for 100% of all issuer-paid credit ratings determined after June 26, 2007 (the effective date of most of the provisions of the Credit Rating Agency Reform Act of 2006). Finally, in February 2009, the Commission issued a release proposing an amendment that would require NRSROs that are hired by arrangers to perform credit ratings for structured finance products to disclose to other NRSROs (and only other NRSROs) that they are hired to determine credit ratings for those deals and to obtain from such arrangers a representation that they will provide information given to the hired NRSRO to other NRSROs.

Dated: April 13, 2009.

By the Commission.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–8704 Filed 4–15–09; 8:45 am]

**BILLING CODE 8010–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59743; File No. SR–NYSEAmex–2009–11]**

## Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Making Available an NYSE Amex Order Imbalance Information Datafeed as a Separate, Stand-Alone Market Data Product

April 9, 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 April 2, 2009, NYSE Amex LLC (''NYSE Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by NYSE Amex. NYSE Amex filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make available an NYSE Amex Order Imbalance Information datafeed as a separate, stand-alone market data product. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com*.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NYSE Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

NYSE Amex LLC proposes to make available an NYSE Amex Order Imbalance Information datafeed as a separate, stand-alone market data product.

Currently, NYSE Amex Equities Rules 15 and 123C allow Exchange systems to make available a datafeed of real-time order imbalances that accumulate prior to the opening of trading on the Exchange and prior to the closing of trading on the Exchange. Through this instant filing, the Exchange proposes to establish the NYSE Amex Order Imbalance Information services to which NYSE Amex Equities Rules 15 and 123C refer.[5]

NYSE Amex Order Imbalance Information is a datafeed of real-time order imbalances that accumulate prior to the opening of trading on the Exchange and prior to the close of trading on the Exchange. The datafeed contains aggregate information about orders that are subject to execution at the market's opening or closing price, as the case may be, and represent issues that are likely to be of particular trading interest at the opening or closing.

*Order Imbalance Information Prior to the Opening Transaction*

The order imbalance information disseminated prior to the opening transaction, consistent with NYSE Amex Equities Rule 15, contains all interest eligible for execution in the opening transaction of the security in Exchange systems. The previous trading day's closing price on NYSE Amex in the security will serve as the reference price for the order imbalance information disseminated prior to the opening transaction. The order imbalance information disseminated prior to the opening transaction indicates to market participants the number of shares that would be required to equalize buy and sell interest (*i.e.*, flat) at the reference price. The Exchange proposes to distribute order imbalance information at specified intervals prior to the opening:

- Every five minutes between 8:30 a.m. EST and 9 a.m. EST.
- Every one minute between 9 a.m. EST and 9:20 a.m. EST.
- Every 15 seconds between 9:20 a.m. EST and the opening (or 9:35 a.m. EST if the opening is delayed).

*Order Imbalance Information Prior to the Closing Transaction*

The order imbalance information disseminated prior to the closing transaction is consistent with the provisions of subparagraphs (5) and (6) of NYSE Amex Equities Rule 123C.[6]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] NYSE Amex currently makes the NYSE Amex Order Imbalance Information datafeed available to vendors, broker-dealers and any other party that wishes to subscribe to this market data feed service. There is no fee for the service and the Exchange does not propose to establish one at this time. If the Exchange determines to establish fees for this service, it will be submit a proposed rule change to the Commission pursuant to the 19b–4 process.

[6] ''MOC'' or Market-at-the-Close orders are to be executed in their entirety at the closing price. If not executed due to a trading halt or by its terms, *e.g.*, buy minus or sell plus, the order will be cancelled. ''LOC'' or Limit-at the-Close orders are entered for execution at the closing price, provided that the closing price is at or within the limit specified. LOC

Continued

Order imbalance information disseminated prior to the close uses the last sale price in the security on NYSE Amex prior to dissemination of the order imbalance information as its reference price to indicate the number of shares required to close ''flat,'' *i.e.*, at the reference price.

Similar to the dissemination of order imbalance information prior to the open, order imbalance information disseminated prior to the close is distributed at specified intervals:

- Every fifteen seconds between 3:40 p.m. EST and 3:50 p.m. EST.
- Every five seconds between 3:50 p.m. EST and 4 p.m. EST.

On any day that the scheduled close of trading on the Exchange is earlier than 4 p.m. EST, the dissemination of order imbalance information prior to the closing transaction will commence 20 minutes before the scheduled closing time. Order imbalance information will be disseminated every 15 seconds for approximately 10 minutes. Thereafter, the order imbalance information will be disseminated every five seconds until the scheduled closing time.

NYSE Amex Order Imbalance Information includes the imbalance information that the Exchange is required to disseminate pursuant to NYSE Rule 123C(5), as well as automated real-time streaming order imbalance information at specified intervals. The datafeed containing NYSE Amex Information contains an automated real-time streaming order imbalance information at specified intervals as well as MOC Imbalances that Designated Market Makers disseminate pursuant to NYSE Amex Equities Rule 123C(5) at 3:40 p.m. and 3:50 p.m.

The Exchange proposes to offer this order imbalance information as a stand-alone market data product in order to provide all investors with an opportunity to obtain information regarding opening and closing imbalances on the Exchange. The Exchange is not imposing end-user fees, is not requiring end-users to sign contracts and is subjecting vendor receipt and use of the information to very few administrative burdens (*e.g.*, no reporting requirements and no end-user contracts).

The Exchange proposes to make the NYSE Amex Order Imbalance Information datafeed available under the same contracting arrangement that the Commission has approved for the receipt and use of market data under the CTA and CQ Plans. That arrangement contemplates that each datafeed recipient enter into the Commission-approved standard form of ''Agreement for Receipt and Use of Market Data'' that Network A uses for data redistributors and other parties that use the data for purposes other than interrogation.[7] Exhibit A to each of those agreements would need to be updated to reflect the receipt and use of NYSE Amex Order Imbalance Information. The arrangement does not require an end-user of the information (other than a data feed recipient) to enter into any agreement.

The Exchange submits that the NYSE Amex Order Imbalance Information datafeed benefits market participants by facilitating their prompt access to widespread order imbalance information.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Act'') for the proposed rule change is the requirement under Section 6(b)(5)[8] that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that this proposal is in keeping with those principles by facilitating investors' prompt access to free, widespread NYSE Amex Order Imbalance Information and providing increased transparency. Additionally, this proposal provides market participants with supplemental market information prior to the execution of the opening and closing transactions on the Exchange, which supports the system of a free and open market.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

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 if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[11] However, Rule 19b–4(f)(6)(iii)[12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change operative upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the Exchange may immediately provide increased transparency to market participants without charge by disseminating supplemental information prior to the execution of the opening and closing transactions on the Exchange. Therefore, the Commission

orders limited at the closing price are not guaranteed an execution. NYSE Amex Equities Rule 123C(5) provides in part: ''Imbalance publications will include MOC orders as well as marketable LOC orders. In that regard, LOC orders to buy at a price higher than the last sale price are to be included with the buy MOC orders; LOC orders to sell at a price lower than the last sale price are to be included with the sell MOC orders. LOC orders with a limit equal to the last sale price would not be included in the imbalance calculation. The last sale price at 3:40 p.m. is used for the first mandatory publication and 3:50 p.m. for the second.''

[7] The Participants in the CTA and CQ Plans first submitted the Consolidated Vendor Form to the Commission for immediate effectiveness in 1990. *See* Securities Exchange Act Release No. 28407 (September 6, 1990), 55 FR 37276 (September 10, 1990) (SR–CTA/CQ–4–281). The Commission approved a revised version of it in 1996 in conjunction with the participants' restatement of the CTA and CQ Plans. *See* Securities Exchange Act Release No. 37191 (May 9, 1996), 61 FR 24842 (May 16, 1996) (SR–CTA/CQ–96–1).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has complied with this requirement.

[12] *Id.*

designates the proposal operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–NYSEAmex-2009–11 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex-2009–11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex-2009–11 and should be submitted on or before May 7, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–8683 Filed 4–15–09; 8:45 am]

BILLING CODE 8010–01–P

[13] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59742; File No. SR–BX–2009–014]**

## Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Approving a Proposed Rule Change Relating to Zero Bid Orders on the Boston Options Exchange Facility

April 9, 2009.

On February 26, 2009, NASDAQ OMX BX, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to zero bid orders on the Boston Options Exchange Facility. The proposed rule change was published for comment in the **Federal Register** on March 6, 2009.[3] The Commission received no comments on the proposal. This order approves the proposal.

The proposed rule change amends Chapter V, Section 14 of the Rules of the Boston Options Exchange Group, LLC (''BOX'') to clarify the treatment of Market Orders to sell and BOX–Top Orders to sell when the highest bid on BOX is zero in the options series for a particular order (''Zero Bid Order''). Currently, Section 14 states, in part, that: ''[i]n the case where the lowest offer for any options contract is $.05, and an Options Participant enters a Market Order to sell that series, any such Market Order shall be considered a Limit Order to sell at a price of $.05.''[4]

The Exchange is amending Section 14 so that it will apply equally to Market Orders to sell and BOX–Top Orders to sell when the highest bid on BOX is zero in the options series. In this case such Zero Bid Orders will be considered Limit Orders to sell at a price, above zero, that is equal to the minimum trading increment applicable to that particular options series.

Consequently, where the BOX market displays a zero bid and the options series is subject to the Penny Pilot Program,[5] the Zero Bid Order will be considered a Limit Order to sell at a price of $.01. If the options series is not subject to the Penny Pilot Program, the Zero Bid Order will be considered a Limit Order to sell at a price of $.05 or $.10, depending upon the minimum trading increment for the specific options series of the Zero Bid Order. Further, if the resulting Limit Order would cause either a locked or crossed market, then the original Market Order or BOX–Top Order will be rejected by the Trading Host.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[6] and, in particular, the requirements of Section 6 of the Act.[7] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[8] in that the proposal has been designed to promote just and equitable principles of trade, and to protect investors and the public interest. The Commission believes that the proposed rule change will provide greater clarification to market participants regarding the handling of Zero Bid Orders on BOX. In addition, the Commission believes that the proposal will benefit the public interest by preventing locked or crossed markets in situations where the Limit Order resulting from the Zero Bid Order would cause such a lock or cross.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–BX–2009–014) is approved.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59475 (February 26, 2009), 74 FR 9830.

[4] *See* Chapter V, Section 14 of the BOX Rules.

[5] BOX may trade options contracts in one-cent increments in certain approved issues through July 3, 2009, as part of the Penny Pilot Program. *See* Securities Exchange Act Release No. 59629 (March 26, 2009), 74 FR 15021 (April 2, 2009) (SR–BX–2009–17).

[6] The Commission has considered the proposed rule change's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–8737 Filed 4–15–09; 8:45 am]

**BILLING CODE**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59746; File No. SR–NYSE–2009–08]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange LLC Rescinding NYSE Rule 110 Which Establishes the Role of Competitive Traders and Exchange Rule 107A Which Establishes the Role of the Registered Competitive Market Makers

April 10, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 6, 2009, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to rescind NYSE Rule 110 which establishes the role of Competitive Traders (''CTs'') and Exchange Rule 107A which establishes the role of the Registered Competitive Market Makers (''RCMMs''). The Exchange also proposes to make conforming amendments to NYSE Rules 36, 98, 123, 111, 476A, 800, 900 and 1600 to eliminate references to RCMMs and CTs. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com*.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to rescind NYSE Rule 110 which sets forth the role of CTs and NYSE Rule 107A which sets forth the role of RCMMs. With the rescission of NYSE Rule 110 and NYSE Rule 107A, CTs and RCMMs will no longer be recognized classes of Floor Traders on the NYSE Floor.

The Exchange also proposes to make conforming amendments to NYSE Rules 36, 98, 476A, 111, 800, 900 and 1600 to eliminate references to RCMMs and CTs.

I. Background of CTs and RCMMs

The rules establishing CTs and RCMMs were enacted to create classes of Floor Traders that would commit capital to trade in a manner that would provide additional liquidity, contribute to mitigating price fluctuations and enhance competition. CTs were the class of Floor Traders that the Exchange established first in 1964.[4] CTs were Floor Traders registered with and approved by the Exchange to trade for an account for which the CT had an interest.

Section 11(a) of the Securities and Exchange Act of 1934 (the ''Act''),[5] as amended by the 1975 Amendments, makes it unlawful, in part, for Exchange members to effect any transaction on the Floor for their own accounts. Section 11(a)(1)(A) stated that it would exempt from this general prohibition transactions made by a dealer acting in the capacity of a market maker (''market maker exception'').[6] A market maker is defined in Section 3(a)(38) of the Act as ''any dealer who, with respect to a security, holds himself out (by entering quotations in an inter-dealer communications system or otherwise) as being willing to buy and sell such security for his own account on a regular or continuous basis.''[7]

In order to maintain a class of trader that could be called in to add depth and liquidity to the markets in listed stocks, the Exchange established the RCMM class of Floor trader in 1978.[8] RCMMs functioned as proprietary traders that serve as supplemental market makers on the Floor. Historically, RCMMs were called upon to narrow the spread between bids and offers, improve the depth of the market in a given security and enter a bid or offer on the side of the market when called upon to do so by a Floor official. In their capacity as dealers, RCMMs were expected to provide a degree of competition to the specialists on the NYSE.

On February 24, 1981, the Commission adopted Rule 11a1–5[9] to exempt from the proprietary trading prohibition of Section 11(a)(1) certain transactions by RCMMs registered on the Exchange. The Commission determined that RCMMs had the potential to provide sufficient benefits to their markets to warrant an exemption from the statutory prohibition pursuant to Section 11(a)(1)(H).[10] Rule 11a1–5 set forth that ''any transaction by a New York Stock Exchange registered competitive market maker * * * effected in compliance with their respective governing rules shall be deemed to be of a kind which is consistent with the purposes of Section 11(a)(1) of the Act, the protection of investors, and the maintenance of fair and orderly markets.''[11]

II. Functions and Obligations of the RCMMs and CTs

CTs and RCMMs are classes of Floor traders that commit capital to trade in a manner that provides additional liquidity, contribute to mitigating price fluctuations and enhance competition. A member registered as an RCMM is permitted, with certain limitations, to act as both a Floor Broker and RCMM in the same trading session. However, an RCMM may not act as both Floor Broker and RCMM in the same security in the same trading session.

As a Floor Broker, the RCMM executes orders as agent for his customers, including other Floor Brokers. In his capacity as a Floor Broker, the RCMM acts solely as agent for his customer and does not commit capital or initiate on-Floor orders,

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] NYSE Rule 110 (Amended May 21, 1964 and July 16, 1964, effective August 3, 1964).

[5] 15 U.S.C. 78k(a).

[6] 15 U.S.C. 78k(a)(1)(A).

[7] 15 U.S.C. 78c(a)(38).

[8] *See* Securities Exchange Act Release No. 14718 (May 1, 1978), 43 FR 19738 (May 8, 1978) (SR–NYSE–78–24).

[9] 17 CFR 240.11a1–5.

[10] This provision has since been changed to Section 11(a)(1)(I).

[11] *See* Securities Exchange Act Release No. 17569, 46 FR 14888 (March 3, 1981).

except in the case of a trade for his error account.

As an RCMM, the RCMM may initiate on-Floor orders to commit capital on his firm's behalf, subject to certain conditions. While acting in an RCMM capacity, and subject to its dealings, an RCMM provides additional liquidity in situations in which the RCMM is requested to do so by a Floor Official, DMM, or other Floor Broker. Additionally, an RCMM may, subject to certain limitations on its dealings, provide liquidity in instances in which the dealings are reasonably calculated to contribute to maintenance of price continuity with reasonable depth, and to minimize temporary disparities between supply and demand.

RCMMs have both affirmative and negative obligations pursuant to NYSE Rule 107A(b). The RCMM's affirmative obligations require the RCMM to: (i) Make a bid or offer in a stock that contributes to the maintenance of a fair and orderly market whenever called upon; and (ii) effect all purchases and sales for the RCMM's proprietary account in a manner that contributes to the maintenance of price continuity with reasonable depth and minimizes the effects of a temporary disparity between supply and demand. The negative obligations of the RCMM require the RCMM to avoid participation as a dealer during the opening of the stock in a manner that would disrupt the public balance of supply and demand. Furthermore, RCMMs may not effect transactions for its own account or the account of its member organization that are not a part of a course of dealings reasonably calculated to contribute to the maintenance of price continuity with reasonable depth and to the minimizing of the effects of any temporary disparity between supply and demand. RCMMs must be ready to enter the market with one round lot if called upon by a Floor Official or broker to narrow the quotation spread or add liquidity to the market.

CTs likewise have these same affirmative and negative obligations pursuant to NYSE Rule 110. In addition, members acting as CTs that desire to purchase or sell stock for accounts in which they have an interest shall not congregate in a particular stock, and individually or as a group, intentionally or unintentionally, dominate the market in that stock, and shall not effect such purchases or sales except in a reasonable and orderly manner. CTs are also subject to meeting certain stabilization tests which are computed on a monthly basis. Specifically, CT trading is required to be 75% stabilizing.

NYSE Regulation Inc. is responsible for reviewing RCMM and CT trading activity in order to determine that RCMMs and CTs are complying with their negative and affirmative obligations.

III. Viability of CTs and RCMMs in Today's NYSE Market

The volume and speed of the securities markets has increased dramatically since the inception of the CTs and RCMMs. Significant changes have occurred with respect to market dynamics such as quotations, order entry and order executions. The majority of trades on the Exchange are executed electronically. When the Exchange introduced its Hybrid Market,[12] the Exchange determined that a review of the viability of RCMMs and CTs to trade in the more electronic trading environment was warranted. The Exchange undertook to assess the contributions of RCMMs and CTs to the liquidity available to the NYSE in its more electronic market model.

In October 2005, the Exchange implemented a Moratorium on the qualification and registration of new CTs and RCMMs while the Exchange conducted a study on the future viability of CTs and RCMMs.[13] At the time the Moratorium was first imposed, there were 11 registered RCMMs and one registered but inactive CT. In December 2006, the largest RCMM firm ceased its RCMM business and left the Floor, eliminating 6 RCMMs from the Floor. This reduced the number of RCMMs operating on the Exchange to five.[14] These remaining five RCMMs are associated with two member organizations.

In its study of the CT and RCMM trading in the more electronic environment, the Exchange reviewed the trading data associated with the CT and RCMM order execution. The review found that the CT class of Floor Trader had not executed any transactions on the Floor as a result of the non-usage of the CT license and therefore provided no contribution to the quality of the NYSE Market.

From May 2004 to December 2004, RCMM trading volume comprised only .018% of the total NYSE trading volume for that time period. In 2005, the year that the Moratorium was implemented, RCMM trading volume comprised only .017% of the total NYSE trading volume for the year. In 2006, the RCMM trading volume comprised .008% of the total NYSE trading volume for the year. After the largest RCMM firm ceased its business in December 2006, RCMM trading volume in 2007 and 2008 comprised only .001% of the NYSE total trading volume for each of those years.

From August 2005 through February 2008, RCMM's monthly average trading volume for that time period never exceeded .021% of the Exchange's total trading volume for that time period. On average during this time period, RCMMs comprised only .006% of the NYSE's trading volume. The Moratorium was then extended six times[15] while the Exchange continued its evaluation of CT and RCMM trading. A review of the trading volume prior to and during the Moratorium indicates that RCMM/CT trading volume was minimally impacted by the Moratorium.

On October 24, 2008, the Commission approved the Exchange's new market model filing (''Next Generation NYSE'').[16] The Next Generation NYSE rule and technology changes: (i) Provided market participants with additional abilities to post hidden liquidity on Exchange systems; (ii) created a Designated Market Maker (''DMM''), and phased out the NYSE specialist; and (iii) enhanced the speed of execution through technological enhancements and a reduction in message traffic between Exchange systems and its DMMs. In light of the implementation of the Next Generation NYSE, the Exchange requested an extension of the Moratorium to evaluate the viability of the RCMMs and CTs in the proposed New Generation NYSE.[17]

[12] *See* Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) (SR–NYSE–2004–05) (establishing the Hybrid Market).

[13] *See* Securities Exchange Act Release No. 52648 (October 21, 2005), 70 FR 62155 (October 28, 2005) (SR–NYSE–2005–63).

[14] Registration as an RCMM is applicable only to individual members, not member organizations. *See* NYSE Rule 107A(1). Accordingly, RCMM trading licenses are issued to individual members.

[15] *See* Securities Exchange Act Release Numbers 54140 (July 13, 2006), 71 FR 41491 (July 21, 2006) (SR–NYSE–2006–48); 54985 (December 21, 2006), 72 FR 171 (January 3, 2007) (SR–NYSE–2006–113); 55992 (June 29, 2007), 72 FR 37289 (July 9, 2007) (SR–NYSE–2007–57); 56556 (September 27, 2007), 72 FR 56421 (October 3, 2007) (SR–NYSE–2007–86); 57072 (December 31, 2007), 73 FR 1252 (January 7, 2008) (SR–NYSE–2007–125); 57601 (April 2, 2008), 73 FR 19123 (April 8, 2008) (SR–NYSE–2008–22). The Moratorium was also amended to grant RCMM firms the ability to replace a RCMM who relinquishes his or her registration and ceases to conduct business as a RCMM during the moratorium, with a newly qualified and registered RCMM. *See* Securities Exchange Act Release No. 53549 (March 24, 2006), 71 FR 16388 (March 31, 2006) (SR–NYSE–2006–11).

[16] *See* Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46).

[17] *See* Securities Exchange Act Release Numbers 58033 (June 26, 2008), 73 FR 38265 (July 3, 2008)

Continued

The Next Generation NYSE is currently operating as a pilot scheduled to end on October 1, 2009. For the time period of July 2008 to December 2008, RCMM and CT average trading volume did not exceed .0011% of the Exchange's total trading volume per month for that time period. On average over these six months, RCMMs comprised only .001% of the NYSE's trading volume. The review found that the CT class of Floor Trader still had not executed any transactions on the Floor as a result of the non-usage of the CT license and therefore provided no contribution to the market quality on the NYSE. In 2009, RCMM trading is reported to comprise approximately .001% of the total NYSE trading volume to date.

In light of these statistics, the Exchange has concluded that the level of participation of the RCMMs and CTs no longer serve as viable supplemental market makers because they no longer contribute significantly to the overall liquidity available on the NYSE.

In addition to reviewing the trading statistics of the RCMMs and the sole inactive CT, NYSE Market and NYSE Regulation reviewed the technology, operational and regulatory costs required to adequately support and surveil RCMM and CT trading activity in a predominantly electronic trading environment. The review included the projected costs for trading system enhancements for RCMM and CT trading, the cost of continued development of surveillance technology and procedures, and staff training and hours spent in these efforts. The NYSE's trading systems, including the hand-held devices used by Floor brokers on the NYSE, were not designed to facilitate trading by RCMMs and CTs under special supplemental market-making rules enacted when the NYSE was a manual trading center in which RCMMs and CTs traded on paper. To develop technology specifically designed to comport with the RCMM and CT trading rules in the context of Next Generation NYSE would not be cost effective in view of the minimal current trading volume of the five RCMMs and the nonexistent trading volume of the one registered CT. The fundamental changes in the securities markets generally and in the NYSE trading model in particular since the RCMM and CT rules were first enacted in the late 1970s and early 1980s have resulted in much higher trading volumes and message traffic through NYSE systems. The RCMM and CT rules were enacted for a marketplace that functioned much differently than today's high speed and high volume trading environment.

There are now new opportunities for market participants to efficiently access the NYSE market. The NYSE has developed a new class of electronic liquidity providers, Supplemental Liquidity Providers (''SLPs'')[18] that has largely supplanted the role once filled by RCMMs and CTs. SLPs are off-Floor entities that quote and trade on the NYSE electronically. The operation of SLPs is intended to provide incentives for quoting and to add competition to the existing group of Floor-based liquidity providers, the DMMs. An SLP is required to quote at the National Best Bid (''NBB'') or the National Best Offer (''NBO'') at least 5% of the trading day for each assigned security in round lots to maintain its status as an SLP. If an SLP posts liquidity in its assigned securities that results in an execution, the Exchange will pay the SLP a financial rebate per share for such executions provided that the SLP meets its monthly quoting requirement for rebates averaging 3% at the NBB or NBO in its assigned securities in round lots. The Exchange believes that this rebate program will encourage SLPs to aggressively provide liquidity to the NYSE market and will also provide customers with the premier venue for price discovery, competitive quote and price improvement.

Because of the electronic nature of SLP trading, the regulatory and technology considerations that exist with maintaining CTs and RCMMs as classes of Floor Traders on the NYSE are not present. The intent behind establishing the CT and RCMM classes of trading, *i.e.,* providing additional liquidity in the NYSE market, is now best fulfilled through the SLP process. Given all of the above, the Exchange seeks to rescind CTs and RCMMs as valid classes of Floor Traders.

The Exchange notes that while it is proposing the rescission of RCMMs and CTs as classes of traders, it is not rescinding membership to the Exchange. Those RCMMs and CTs currently trading on the Exchange will continue to be Exchange members but will not be permitted to trade for their proprietary accounts in their roles as RCMMs and CTs. RCMMs and CTs will continue to have electronic access to the market and are permitted to continue trading as a different class of trader subject to regulatory requirements to change their respective business models.

IV. Conforming Changes to NYSE Rules 36, 98, 111, 123, 476A, 800, 900 and 1600

The Exchange seeks to make conforming amendments to NYSE Rules 36, 98, 111, 123, 476A, 800, 900 and 1600 to delete references to RCMMs and CTs throughout the rule text.

V. Conclusion

RCMMs and CTs are no longer viable classes of Floor Traders due to the significant evolution of the NYSE marketplace since the enactment of the original rules establishing these classes of members. The existing RCMMs and sole CT no longer meet the objectives of adding depth and liquidity to the NYSE market and providing a degree of competition to the NYSE DMMs. The Exchange concludes that these classes of Floor Traders should be rescinded given the trading volumes associated with CTs and RCMMs and the considerable costs to regulate these classes of traders.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,[19] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to

(SR–NYSE–2008–49); 58713 (October 2, 2008), 73 FR 59024 (October 8, 2008) (SR–NYSE–2008–96); 59069 (December 8, 2008), 73 FR 76081 (December 15, 2008) (SR–NYSE–2008–124).

[18] *See* Securities Exchange Act Release No. 58877 (October 29, 2008), 73 FR 65904 (November 5, 2008) (SR–NYSE–2008–108). *See also* NYSE Rule 1600.

[19] 15 U.S.C. 78f(b)(5).

90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2009–08 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2009–08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2009–08 and should be submitted on or before May 7, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–8732 Filed 4–15–09; 8:45 am]

BILLING CODE 8010–01–P

[20] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59745; File No. SR–FINRA–2009–017]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Adopt Incorporated NYSE Rule 406 (Designation of Accounts) as a FINRA Rule in the Consolidated FINRA Rulebook

April 10, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 26, 2009, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, 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 Incorporated NYSE Rule 406 (Designation of Accounts) as a FINRA rule in the consolidated FINRA rulebook with minor changes. The proposed rule change would renumber Incorporated NYSE Rule 406 as FINRA Rule 3250 in the consolidated FINRA rulebook.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org*, at the principal office of FINRA and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

As part of the process of developing a new consolidated rulebook (''Consolidated FINRA Rulebook''),[3] FINRA is proposing to adopt Incorporated NYSE Rule 406 into the Consolidated FINRA Rulebook with minor changes, discussed below. The proposed rule change would renumber Incorporated NYSE Rule 406 as FINRA Rule 3250. Incorporated NYSE Rule 406 provides that no member organization shall carry an account on its books in the name of a person other than that of the customer, except that an account may be designated by a number or symbol, provided the member has on file a written statement signed by the customer attesting the ownership of such account. In effect, this rule establishes a general requirement that a member must hold each customer account in the customer's name, except that a member may identify a customer's account with a number or symbol, as long as the member maintains documentation identifying the customer.[4]

Currently, Incorporated NYSE Rule 406 applies only to Dual Members (i.e.,

[3] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) 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''). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see* FINRA *Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

[4] Members are subject to additional requirements regarding customer accounts. *See*, *e.g.*, Rule 17a-3(a)(9) under the Act (requiring records indicating the name and address of the beneficial owner of each cash and margin customer account). 17 CFR 240.17a–3(a)(9).

members of both FINRA and NYSE), and NYSE has enforced the rule to address, among other things, sales practice abuses such as co-mingling of funds, failure to disclose ownership interests in accounts and unauthorized trading.[5] FINRA proposes to adopt Incorporated NYSE Rule 406 as FINRA Rule 3250 as it believes that this rule will continue to be an important enforcement tool and should be expanded to apply to the entire FINRA membership. FINRA further notes that the Rule may provide members' customers with a level of anonymity within the member and with certain external relationships that they find useful, while still allowing customers' identities to be clearly known to members and available to regulators. Consequently, FINRA proposes to adopt Incorporated NYSE Rule 406 as FINRA Rule 3250 with minor changes to replace references to ''member organization'' or ''organization'' with the term ''member.''

As noted above, FINRA will announce the implementation 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,[6] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes the proposed rule change will provide FINRA with an important tool to further ensure that FINRA members appropriately designate each customer account, while also providing a reasonable means of permitting customers to maintain a certain level of anonymity, subject to appropriate documentation identifying the owner.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

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–2009–017 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2009–017. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2009–017 and should be submitted on or before May 7, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–8655 Filed 4–15–09; 8:45 am]

BILLING CODE 8010–01–P

[5] *See, e.g.*, Robert S. Bartek, Exchange Hearing Panel Decision 73–60 (August 28, 1973); Jeffrey Alan Schultz, Exchange Hearing Panel Decision 82–23 (March 18, 1982); Kery Shane Hutner, Exchange Hearing Panel Decision 02–27 (January 31, 2002). *See also* NYSE *Information Memo* 78–80, Members' Accounts and Initiating Orders on the NYSE Floor (November 10, 1978) (addressing, among other things, NYSE Rule 406(1), now Rule 406).

[6] 15 U.S.C. 78*o*–3(b)(6).

[7] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59744; File No. SR–OC–2009–01]**

## Self-Regulatory Organizations; One Chicago, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Eliminating the $3 Market Price Maintenance Standard

April 9, 2009.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–7 under the Act[2] notice is hereby given that on April 3, 2009, One Chicago, LLC (''OneChicago'' 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. OneChicago also has filed the proposed rule change with the Commodity Futures Trading Commission (''CFTC'') under Section 5c(c) of the Commodity Exchange Act[3] on February 27, 2009.

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] 7 U.S.C. 7a–2(c).

**I. Self-Regulatory Organization's Description of the Proposed Rule Change**

OneChicago is proposing to amend Rule 906(b)(1)(E) to eliminate the $3 market price per share requirement from the Exchange's requirements for continued approval for an underlying security. All other provisions and standards of the Rule will remain unchanged. A copy of this filing is available on the Exchange's Web site at *http://www.onechicago.com*, at the Exchange's principal office and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this proposed rule change is to eliminate the $3 market price per share requirement from the Exchange's requirements for maintenance standards for a security futures product (SFP) that is physically settled by removing Rule 906(b)(1)(E). OC's rules require that the market price per share of the underlying security has not closed below $3 on the previous trading day to the Expiration Day of the nearest expiring Contract on the underlying security. If the price of an underlying security falls below $3, the Exchange can continue to trade then-listed delivery months on that underlying security, but is unable to list new delivery months.

The Exchange believes that the $3 market price per share requirement is no longer necessary or appropriate, and that only those underlying securities meeting the remaining continued listing criteria set forth in Rule 906 will be eligible for continued listing and the listing of additional delivery months. The Exchange further believes that the current $3 market price per share requirement could have a negative effect on investors. For example, in the current volatile market environment in which the market price for a large number of securities has fallen below $3, the Exchange is unable to list new delivery months on underlying securities trading below $3. If there is market demand for such SFP the Exchange would be unable to accommodate such requests and investors would be unable to hedge their positions with new delivery months.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act[4] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to protect investors and the public interest, and to remove impediments to and perfect the mechanism for a free and open market and a national market system. In particular, the proposed rule change will permit the Exchange to list additional delivery months on underlying securities even if the price of the underlying security is less than $3 thus providing investors additional opportunities to hedge their positions. Further, this proposed rule change is nearly identical to one recently approved by the Commission.[5]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

OneChicago does not believe that the proposed rule change will have an impact on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Comments on the OneChicago proposed rule change have not been solicited and none have been received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The proposed rule change has become effective on April 3, 2009. At any time within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refilled in accordance with the provisions of Section 19(b)(1) of the Act.[6]

[4] 15 U.S.C. 78f (b)(5).

[5] *See* Securities Exchange Act Release No. 59336 (February 2, 2009) (Order Approving Proposal To Eliminate $3 Underlying Price Requirement for Continued Listing and Listing of Additional Series).

[6] 15 U.S.C. 78s(b)(1).

**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–OC–2009–01 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–OC–2009–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OC–2009–01 and should be submitted on or before May 7, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–8658 Filed 4–15–09; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59736; File No. SR–NYSEAmex–2009–10]**

## Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending Rule 975NY—Obvious Errors and Catastrophic Errors

April 8, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b-4 thereunder,[3] notice is hereby given that on April 1, 2009, NYSE Amex LLC (''NYSE Amex'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. NYSE Amex filed the proposed rule change as a ''non-controversial'' proposal pursuant to Section 19(b)(3)(A) of the Act[4] and Rule 19b-4(f)(6) thereunder,[5] 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 Exchange proposes to amend Exchange Rule 975NY—Obvious Errors and Catastrophic Errors. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com*, at the Exchange's principal office and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

NYSE Amex proposes to amend Rule 975NY pertaining to the nullification and adjustment of options transactions. Specifically, the Exchange proposes to adopt a new provision which provides that in the interest of maintaining a fair and orderly market and for the protection of investors, the Chief Executive Officer of NYSE Amex (''CEO'') or his/her designee (collectively ''Exchange officer''),[6] may, on his or her own motion or upon request, determine to review any transaction occurring on the Exchange that is believed to be erroneous.[7] A transaction reviewed pursuant to this new provision may be nullified or adjusted only if it is determined by the Exchange officer that the transaction is erroneous as provided in Rule 975NY(a)(1)–(5) or Commentary .04 thereof. A transaction would be adjusted or nullified in accordance with the provision under which it is deemed an erroneous transaction. The Exchange officer may be assisted by a Trading Official in reviewing a transaction.

The Exchange officer shall act pursuant to this paragraph as soon as possible after receiving notification of the transaction, and ordinarily would be expected to act on the same day as the transaction occurred. However, because a transaction under review may have occurred near the close of trading or due to unusual circumstances, the rule provides that the Exchange officer shall act no later than 9:30 a.m. (ET) on the next trading day following the date of the transaction in question. An ATP Holder affected by a determination to nullify or adjust a transaction pursuant to this new provision may appeal such determination in accordance with Rule 975NY(a)(6); however, a determination by an Exchange officer not to review a transaction, or a determination not to nullify or adjust a transaction for which a review was requested or conducted, is not appealable. NYSE Amex believes it is appropriate to limit review on appeal to only those situations in which a transaction is actually nullified or adjusted.

This new provision is not intended to replace a party's obligation to request a review, within the required time periods under Rule 975NY(a)(3), of any transaction that it believes meets the criteria for an obvious error. And, if a transaction is reviewed and a determination has been rendered pursuant to Rules 975NY(a)(1)–(5) or Commentary .04 thereof, no additional relief may be granted under this new provision. Moreover, NYSE Amex does not anticipate exercising this new authority in every situation in which a party fails to make a timely request for review of a transaction pursuant to Rule 975NY(a)(3). NYSE Amex believes this provision will help to protect the integrity of its marketplace by vesting an Exchange officer with the authority to review a transaction that may be erroneous, notwithstanding that a party failed to make a timely request for a review.

The Exchange also proposes at this time to revise Rule 975NY(a)(3)(A) in order to clarify that the time period in which a Market Maker or other ATP Holder must notify the Exchange, when requesting relief from a possible erroneous transaction, applies to all transactions that are subject to adjustment or nullification, pursuant to Rule 975NY(a)(1)–(5).

2. Statutory Basis

This proposed rule change is designed to allow an Exchange officer to review a transaction in order to provide the opportunity for potential relief to a party affected by an obvious error. The Exchange believes that for these reasons the proposed rule change is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] The Exchange represents that a CEO designee will be an officer of the Exchange, who has also been designated as a Trading Official, such as the Executive Vice President of Trading Operations or the Vice President of Trade Operations or the Vice President of Options Floor Operations. Exchange officers are employees of the Exchange, and are not affiliated with ATP Holders or ATP Firms.

[7] In the event a party to a transaction requests the review of a transaction, an Exchange officer nonetheless would need to determine, on his or her own motion, whether to review the transaction.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

system. NYSE Amex notes that the Exchange officer can adjust or nullify a transaction under the authority granted by this new provision only if the transaction meets the objective criteria for an obvious error under NYSE Amex rules.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11] Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6)(iii) thereunder.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEAmex–2009–10 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2009–10. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2009–10 and should be submitted on or before May 7, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–8657 Filed 4–15–09; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the pre-filing requirement.

[14] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59733; File No. SR–FINRA–2009–010]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Expand TRACE To Include Agency Debt Securities and Primary Market Transactions

April 8, 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 March 18, 2009, the 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 prepared by FINRA. On April 8, 2009, FINRA submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

FINRA is proposing to amend the FINRA Rule 6700 Series (except for Rules 6720 and 6740) and FINRA Rule 7730 as follows:

(1) In Rule 6710, to amend the defined terms (A) ''TRACE-eligible security'' in paragraph (a) to include securities issued or guaranteed by an agency or a government-sponsored enterprise (except securities issued by the U.S.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 was a partial amendment that: (i) Revised the definition of ''Asset-backed security'' set forth in the purpose section to accurately reflect the proposed rule text; (ii) amended the definition of ''TRACE-eligible security'' in both the purpose section and the rule text to remove a parenthetical that was inadvertently included in the original proposal; and (iii) made minor technical edits to the purposed rule text.

Treasury) as TRACE-eligible debt securities under the Rule 6700 Series (the Trade Reporting and Compliance Engine (''TRACE'') rules), to delete certain criteria for TRACE-eligibility, and to restate the definition, including incorporating technical changes; (B) ''Reportable TRACE transaction'' in paragraph (c) to include primary market transactions as reportable to TRACE and to incorporate technical changes; and (C) ''Investment Grade'' in paragraph (h) and ''Non-Investment Grade'' in paragraph (i) to classify unrated Agency debt securities, as defined herein, as Investment Grade securities for purposes of dissemination and to incorporate technical changes;

(2) in Rule 6710, to add the defined terms, ''Agency,'' ''Agency debt security,'' ''Asset-backed security,'' ''Government-sponsored enterprise,'' ''Money market instrument,'' ''U.S. Treasury security,'' ''List or fixed offering price transaction'' and ''Takedown transaction,'' as respectively, new paragraphs (k) through (r);

(3) in Rule 6710, to make technical changes to the defined terms, ''Trade Reporting and Compliance Engine,'' ''Time of execution,'' ''Party to the transaction,'' ''TRACE Participant,'' ''Introducing Broker,'' and ''Split-rated,'' in respectively, paragraphs (b), (d), (e), (f), (g) and (j);

(4) in Rule 6730, to establish end-of-day reporting requirements for primary market transactions that are List or fixed offering price transactions and Takedown transactions, to require indicators in transaction reports to distinguish secondary market transactions from primary market transactions and to further distinguish primary market transactions that are List or fixed offering price transactions and Takedown transactions from those that are not, and to incorporate other technical changes;

(5) in Rule 6750, to provide that transaction information for List or fixed offering price transactions and Takedown transactions will not be disseminated, and to incorporate other technical changes;

(6) in Rule 6760, to modify the information and notification requirements for newly issued TRACE-eligible securities to provide for more timely notice from members to FINRA and to incorporate technical and clarifying changes; and

(7) in Rule 7730, to establish reporting and market data fees for Agency debt securities transactions and primary market transactions at the same rates in effect for corporate bonds, to provide an exception for certain primary market transactions, and to incorporate technical changes.

The text of the proposed rule change is available on FINRA's Web site at (*http://www.finra.org*), at the principal office of FINRA, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of, and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

**I. Introduction**

FINRA believes that TRACE has had a positive impact on the corporate bond market and proposes to expand the scope of securities reportable to TRACE to increase transparency, enhance investor protection and foster market integrity across a larger portion of the debt market. For debt securities that currently are TRACE-eligible, TRACE has contributed to better pricing, more precise valuations and reduced investor costs. In addition, TRACE data has enhanced surveillance of the corporate bond market.

The proposed rule change will expand TRACE to include Agency debt securities, as defined herein, and primary market transactions. FINRA proposes to add such securities to provide additional transparency and to foster the development of improvements observed in corporate bonds—improved pricing, narrower bid-ask spreads, reduced investor costs, and more precise valuations—across a broader portion of the debt market. Also, FINRA believes that the proposed expansion of TRACE, including certain primary market transactions that will not be disseminated, will enhance market surveillance. Many bonds have an intense period of trading during the primary offering and shortly thereafter, and the reporting of such transactions will permit FINRA to obtain information, observe patterns of trading, and otherwise engage in more in-depth surveillance of the debt market.

The proposed rule change amends FINRA Rule 6700 Series (except for Rules 6720 and 6740) and FINRA Rule 7730. The amendments to FINRA Rule 6700 Series add to TRACE securities that are issued or guaranteed by a Government-sponsored enterprise or a U.S. government agency (except the U.S. Department of the Treasury or Asset-backed securities issued or guaranteed by an Agency or a Government-sponsored enterprise) (collectively ''Agency debt securities'') and primary market transactions. Certain primary market transactions that are defined as List or fixed offering price transactions and Takedown transactions will be subject to more flexible end-of-day reporting requirements, will not be disseminated, and will not be subject to reporting fees, if timely and accurately reported.

In connection with the proposed expansion, FINRA amends the defined term ''TRACE-eligible security'' in Rule 6710(a) to add Agency debt securities as TRACE-eligible securities, to delete certain criteria, and to restate the definition to clarify its scope and the exceptions. In addition, FINRA proposes amendments to other defined terms in Rule 6710, the most important of which are the amendments to the term ''Reportable TRACE transaction'' to permit reporting of primary market transactions to TRACE and their dissemination. Also, FINRA proposes to add several defined terms to Rule 6710 that are related to the incorporation of Agency debt securities and primary market transactions in TRACE. Finally, FINRA will amend various currently defined terms in Rule 6710 to incorporate minor technical, stylistic or conforming changes.

The proposed rule change includes amendments to Rule 6730, Rule 6750 and Rule 6760. Rule 6730 contains reporting requirements and Rule 6750 addresses the dissemination of transaction information and the exceptions thereto. Rule 6760 requires members to provide notice to FINRA of new TRACE-eligible securities. In Rule 6730 and Rule 6750, generally, the proposed amendments address issues raised by the inclusion of primary market transactions. Certain primary market transactions—List or fixed offering price transactions and Takedown transactions—will be subject to end-of-day reporting under amended Rule 6730 and not subject to dissemination under amended Rule 6750. The proposed amendments to Rule 6760 incorporate changes in the notification requirements and the notification deadlines to facilitate

members' timely reporting of TRACE-eligible securities.

Regarding market data fees, FINRA will distinguish TRACE transaction data as data sets for organizational purposes only, one comprised solely of corporate bond transaction information (the ''Corporate Bonds Data Set'') and a second comprised solely of Agency debt securities transaction information (''Agency Data Set''). The fee schedule currently in effect in Rule 7730 also will apply to Agency debt securities transactions and primary market transactions. However, members will not be charged a reporting fee when reporting a List or fixed offering price transaction or a Takedown transaction on a timely and accurate basis.

In addition to the amendments discussed above, the proposed rule change includes additional proposed technical or clarifying amendments to FINRA Rule 6700 Series (except for Rules 6720 and 6740) and FINRA Rule 7730.

## II. Agency Debt Securities

### *A. ''TRACE-Eligible Security'' and Related Rule 6710 Amendments*

Under Rule 6710(a), a ''TRACE-eligible security'' is a U.S. dollar denominated bond, note or other debt instrument that is issued by a U.S. or foreign private issuer. The definition also requires that the debt security be registered under the Securities Act (or issued pursuant to Section 4(2) and purchased or sold in a transaction in compliance with Securities Act Rule 144A transaction (''Rule 144A transaction'')); depository eligible under NASD Rule 11310(d); and Investment Grade or Non-Investment Grade as defined, respectively, in Rules 6710(h) and 6710(i).[4]

U.S. Treasury securities, foreign sovereign debt and securities issued by U.S. government agencies or similar entities, such as government corporations, are not TRACE-eligible securities. In addition, the defined term expressly excludes securities that are issued by a government-sponsored enterprise, or are asset-backed securities, mortgage-backed securities, collateralized mortgage obligations and money market instruments that at issuance have a maturity of one year or less.

FINRA proposes to amend and restate the definition of ''TRACE-eligible security'' in Rule 6710(a). The most significant amendment expands the definition to include ''Agency debt securities'' as defined below as TRACE-eligible securities. In addition, FINRA proposes to delete two criteria in the defined term as discussed below.

#### 1. Amendments to ''TRACE–Eligible Security'' To Include Agency Debt Securities

FINRA proposes to expand the scope of the defined term, ''TRACE-eligible security'' to include Agency debt securities. Specifically, restated Rule 6710(a) will include a debt security that ''is U.S. dollar denominated and issued or guaranteed by an Agency as defined in paragraph (k) or a Government-sponsored enterprise as defined in paragraph (n)'' as a TRACE-eligible security. The proposed inclusion of Agency debt securities as ''TRACE-eligible securities'' does not require that such securities be registered under the Securities Act or issued pursuant to Securities Act Section 4(2) and purchased and sold pursuant to Rule 144A.

In connection with this amendment, FINRA also proposes to add the following defined terms to Rule 6710: ''Agency debt security,'' ''Agency,'' ''Asset-backed security,'' ''Government-sponsored enterprise,'' and ''U.S. Treasury security.''

The proposed term ''Agency debt security'' is used to refer, collectively, to two types of securities that will be TRACE-eligible securities. ''Agency debt security'' as defined in proposed Rule 6710(l) means:

> a debt security (i) issued or guaranteed by an Agency as defined in paragraph (k); or (ii) issued or guaranteed by a Government-sponsored enterprise as defined in paragraph (n). The term excludes a U.S. Treasury security as defined in paragraph (p) and an Asset-backed security as defined in paragraph (m) where an Agency or a Government-sponsored enterprise is the sponsor of the trust or other entity that issues the Asset-backed security, or is the guarantor of the Asset-backed security.

The two issuers (or guarantors) referenced in the term ''Agency debt securities'' are ''Agencies'' and ''Government-sponsored enterprises.'' Under proposed Rule 6710(n), '' 'Government-sponsored enterprise' ('GSE') has the same meaning as defined in 2 U.S.C. 622(8).''[5] Some of the most well-known GSEs include the Federal National Mortgage Association (''Fannie Mae'' or ''FNMA''), the Federal Home Loan Mortgage Corporation (''FHLMC'' or ''Freddie Mac'') and the various Federal Home Loan Banks. For purposes of the TRACE rules, securities issued or guaranteed by GSEs are included under the collective term, ''Agency debt securities'' although technically GSEs are instrumentalities of the U.S. government, and not agencies.

The collective term, ''Agency debt security,'' also includes securities issued or guaranteed by an Agency. For purposes of the TRACE rules, under proposed Rule 6710(k), ''Agency'' means: a U.S. ''executive agency''[6] as

[4] On February 11, 2009, FINRA filed SR–FINRA–2009–004 to amend the definition of ''TRACE-eligible security'' to eliminate the requirement that a TRACE-eligible security be registered under the Securities Act. In addition, FINRA also proposed to eliminate, with respect to transactions in TRACE-eligible securities effected under Securities Act Rule 144A, the requirement that such securities be initially issued under Securities Act Section 4(2). *See* Securities Exchange Act Release No. 59519 (March 5, 2009), 74 FR 10630 (March 11, 2009) (notice requesting comment on SR–FINRA–2009–004).

[5] The term ''government-sponsored enterprise'' is defined in 2 U.S.C. 622(8) as: a corporate entity created by a law of the United States that—

(A) (i) has a Federal charter authorized by law;

(ii) is privately owned, as evidenced by capital stock owned by private entities or individuals;

(iii) is under the direction of a board of directors, a majority of which is elected by private owners;

(iv) is a financial institution with power to—

(I) make loans or loan guarantees for limited purposes such as to provide credit for specific borrowers or one sector; and

(II) raise funds by borrowing (which does not carry the full faith and credit of the Federal Government) or to guarantee the debt of others in unlimited amounts; and

(B) (i) does not exercise powers that are reserved to the Government as sovereign (such as the power to tax or to regulate interstate commerce);

(ii) does not have the power to commit the Government financially (but it may be a recipient of a loan guarantee commitment made by the Government); and

(iii) has employees whose salaries and expenses are paid by the enterprise and are not Federal employees subject to title 5.

Congress defined GSEs for purposes of the budgetary treatment of such entities in the Omnibus Reconciliation Act of 1990, Pub. L. No. 101–508, 104 Stat. 1388, 607; 2 U.S.C. 622(8).

[6] 5 U.S.C. 105 defines ''executive agency'' as:

For purposes of this title (5 U.S.C. 101 *et seq.*) ''Executive agency'' means an Executive department, a Government corporation, and an independent establishment.

''Executive department'' is defined in U.S.C. 101 as any of the major agencies or departments (*e.g.*, The Department of State, the Department of the Treasury, the Department of Homeland Security, etc. The Secretaries of such agencies comprise the President's Cabinet). ''Government Corporation'' is defined in 5 U.S.C. 103 as ''a corporation owned or controlled by the Government of the United States. * * *'' (*e.g.*, the Pension Benefit Guaranty Corporation is a wholly owned government corporation). ''Independent establishment'' is defined in 5 U.S.C. 104 as (1) an establishment in the executive branch (other than the United States Postal Service or the Postal Regulatory Commission) which is not an Executive department, military department, Government corporation, or part thereof, or part of an independent establishment; and (2) the General Accounting Office.'' (*e.g.*, the Federal Reserve Banks are independent establishments).

(The Departments of the Army, Navy and Air Force, which are defined as military departments, are not executive agencies, 5 U.S.C. 102.)

defined in 5 U.S.C. 105 that is authorized to issue debt directly or through a related entity, such as a government corporation, or to guarantee the repayment of principal and/or interest of a debt security issued by another. The term excludes the U.S. Department of the Treasury (''Treasury'') in the exercise of its authority to issue U.S. Treasury securities as defined in paragraph (p). Two examples of such Agencies are the Commodity Credit Corporation and the Export-Import Bank of the United States (issuing debt securities through its affiliate, the Private Export Funding Corporation, or ''PEFCO'').

As noted previously, TRACE currently does not include U.S. Treasury securities, and this is not changed by the proposal to add Agency debt securities to TRACE. For purposes of TRACE, the defined term, ''Agency,'' ''excludes the U.S. Treasury ('Treasury') in the exercise of its authority to issue U.S. Treasury securities * * * .'' In addition, the defined term, ''Agency debt security,'' specifically excludes U.S. Treasury securities.

Certain Asset-backed securities are the second type of security that is excluded explicitly from the definition of Agency debt security. For purposes of TRACE, under proposed Rule 6710(l), Agency debt securities do not include Asset-backed securities ''where an Agency or a Government-sponsored enterprise is the sponsor of the trust or other entity that issues the Asset-backed security, or is the guarantor of the Asset-backed security.'' Instead, such a security is included as an ''Asset-backed security'' as defined in proposed Rule 6710(m).[7]

For purposes of TRACE, ''Asset-backed security'' is defined broadly. Proposed Rule 6710(m) defines ''Asset-backed security'' to mean:

asset-backed security as used in Securities Act Regulation AB, Section 1101(c), and other debt securities that are structured securities, synthetic asset-backed securities and/or instruments involving or based on the securitization of mortgages or other credits or assets. The term includes but is not limited to mortgage-backed securities, collateralized mortgage obligations, collateralized debt obligations, collateralized bond obligations, collateralized debt obligations of asset-backed securities and collateralized debt obligations of collateralized debt obligations.

[7] The exclusion of such securities from the term ''Agency debt security'' is consistent with the current limitations in the definition of TRACE-eligible security, which excludes mortgage-backed, and asset-backed securities, and collateralized mortgage obligations.

2. Other Amendments to ''TRACE–Eligible Security''

FINRA also proposes two amendments to Rule 6710(a), the definition of TRACE-eligible security, which are not specifically related to the expansion of TRACE to include Agency debt securities. Currently, the definition of a ''TRACE-eligible security'' includes criteria that such securities be ''Investment Grade or Non-Investment Grade'' and ''depository eligible securities under NASD Rule 11310(d).'' When TRACE became effective in 2002, the reference to the credit quality in Rule 6710(a) made clear that TRACE applied to debt securities of any credit quality in contrast to the FIPS system, which TRACE replaced.[8] Under FIPS, members were required to report limited transaction information for transactions in Non-Investment Grade securities only. FINRA proposes to delete ''Investment Grade or Non-Investment Grade'' in Rule 6710(a) because it is no longer needed to clarify the scope of TRACE.

FINRA also required that TRACE-eligible securities be ''depository eligible securities under NASD Rule 11310(d)'' when TRACE was implemented to assure that such securities would have CUSIPs to identify them clearly and easily within the TRACE system. Operational enhancements now permit FINRA to receive, store and retrieve transaction information for securities that are not assigned CUSIPs. FINRA proposes to delete the unnecessary criterion in Rule 6710(a), which will permit FINRA to capture information on the few securities that are not assigned CUSIPs, but otherwise meet TRACE eligibility standards.

FINRA proposes to restate the definition of ''TRACE-eligible security'' to incorporate all the changes discussed above and certain technical amendments. Among other things, FINRA proposes to delete the definition of a money market instrument, which is embedded in the term, ''TRACE-eligible security,'' and add it as a separately defined term in new proposed Rule 6710(o) for stylistic consistency. The meaning of the term does not change. Proposed Rule 6710(a), as amended, will read as follows:

''TRACE-eligible security'' means a debt security that is U.S. dollar-denominated, issued by a United States (''U.S.'') or foreign private issuer, and either registered under the Securities Act or issued pursuant to Section 4(2) of the Securities Act and purchased or sold pursuant to Securities Act Rule 144A; or is a debt security that is U.S. dollar denominated and issued or guaranteed by an Agency as defined in paragraph (k) or a Government-sponsored enterprise as defined in paragraph (n). ''TRACE-eligible security'' does not include a debt security that is:

(1) Issued by a foreign sovereign or is a U.S. Treasury security as defined in paragraph (p);

(2) A restricted security as defined in Securities Act Rule 144(a)(3), except a restricted security that is issued pursuant to Section 4(2) of the Securities Act and purchased or sold in a transaction that is effected under Securities Act Rule 144A;

(3) A Money market instrument as defined in paragraph (o); or

(4) An Asset-backed security as defined in paragraph (m).[9]

[8] FIPS stands for Fixed Income Pricing System. The FIPS rules were rescinded and the FIPS system was dismantled shortly after TRACE began.

*B. Reporting and Dissemination*

Rule 6730 contains the reporting requirements, including information that must be reported, deadlines for timely reporting, certain reporting modifiers and exceptions to the reporting requirement. Agency debt securities will be subject to the reporting requirements currently set forth in Rule 6730. Under Rule 6730, members will be required to report transactions in Agency debt securities within 15 minutes of execution of the transactions, subject to the standard exceptions currently set forth in the Rule.[10]

Information on transactions in Agency debt securities will be disseminated by FINRA immediately upon receipt of transaction reports, which is the current requirement for corporate bond transactions under Rule 6750, subject to one exception for Securities Act Rule 144A transactions.[11] In addition, FINRA will continue to apply the current protocols that determine how volume information is disseminated.[12]

However, FINRA proposes to amend the defined term, ''Investment Grade,''

[9] Additional proposed amendments to Rule 6710 are discussed, *infra*, at II.B., ''Reporting and Dissemination'' (regarding dissemination protocols), III. ''Primary Market Transactions'' (regarding primary market transactions), and IV. ''Other Changes'' (regarding technical amendments).

[10] Rule 6730(a)(1) through (4) provide exceptions to the 15-minute reporting requirement if a member executes a transaction while the TRACE system is closed or less than 15 minutes before the TRACE system will close.

[11] Under Rule 6750, FINRA does not disseminate transactions in TRACE-eligible securities that are Securities Act Rule 144A transactions.

[12] Under the protocols: (1) For Investment Grade transactions in sizes less than or equal to $5 million (by par value), actual volume is disseminated; and in sizes exceeding $5 million, a ''$5 million+'' capped volume indicator is disseminated; and, (2) for Non-Investment Grade transactions in sizes less than or equal to $1 million, actual volume is disseminated; and in sizes exceeding $1 million, a ''$1 million+'' capped volume indicator is disseminated.

in Rule 6710(h) to treat unrated Agency debt securities as Investment Grade securities for purposes of the above-referenced dissemination protocols. FINRA also proposes conforming amendments regarding the treatment of such unrated securities in the term, ''Non-Investment Grade,'' as defined in Rule 6710(i), and technical, stylistic amendments in both provisions. Specifically, in Rule 6710(h), FINRA proposes to add a final sentence and amend the penultimate sentence, both as set forth below to provide:

If a TRACE-eligible security is unrated, FINRA may classify the TRACE-eligible security as an Investment Grade security. FINRA will classify an unrated Agency debt security as defined in paragraph (l) as an Investment Grade security for purposes of the dissemination of transaction volume.

The other proposed change to Rule 6710(h) is a technical, stylistic amendment to the first sentence, changing the first clause from, ''The term 'Investment Grade' shall mean a TRACE-eligible security that, * * *'' to '' 'Investment Grade' means a TRACE-eligible security that, * * * .''

The proposed amendments to the defined term, ''Non-Investment Grade,'' will cross-reference in Rule 6710(i) the amendment regarding the treatment of unrated Agency debt securities proposed to Rule 6710(h). Also, FINRA proposes: (i) to make technical stylistic amendments to the first clause of Rule 6710(i) similar to such amendments to be incorporated in Rule 6710(h) as described above; and (ii) to delete certain detailed rule text in Rule 6710(i) that is no longer necessary.[13]

FINRA recognizes that extending TRACE reporting to Agency debt securities may result in certain trading desks having to report transactions to TRACE for the first time. As has been the case since TRACE inception, FINRA plans to implement TRACE reporting requirements and dissemination of Agency debt securities in a deliberate, yet efficient manner. FINRA has worked regularly with, and will continue to work with, broker-dealers and third party vendors to ensure effective and efficient TRACE implementation.

## III. Primary Market Transactions

Currently, broker-dealers are required to report only secondary market transactions to TRACE. To provide a more comprehensive audit trail, FINRA proposes amendments to FINRA Rule 6700 Series to require broker-dealers to report all primary market transactions and designate such transactions with an identifier. FINRA proposes that all primary market transactions be reported because, for many bonds, the most active period of trading occurs during the primary offering and immediately afterward. To improve market surveillance of the debt markets, FINRA proposes that TRACE be expanded to include such transactions.

### *A. Amendments To Add Primary Market Transactions*

FINRA proposes two rule amendments that will require members to report primary market transactions to TRACE. FINRA proposes to amend Rule 6710(c) to delete the words ''secondary market'' in the defined term ''Reportable TRACE transaction'' and make technical conforming amendments. Deleting the words ''secondary market'' in Rule 6710(c) will delete the limitation that currently does not allow the reporting of primary market transactions.

The other proposed amendments to Rule 6710(c) will: (i) Incorporate technical and stylistic changes to the first clause of Rule 6710(c);[14] and (ii) conform a phrase in Rule 6710(c) with Rule 6730(e) by deleting the phrase, ''transactions exempt from reporting'' and substituting ''transactions that are not reported.''[15]

An amendment to Rule 6730(e)(1) is also required to include primary market transactions in TRACE. FINRA proposes to amend paragraph (1) of Rule 6730(e) to delete the current exclusion from reporting for ''[T]ransactions that are part of a primary distribution by an issuer.''

### *B. Reporting Requirements*

Members will be required to report primary market transactions, except primary market transactions that are ''List or fixed offering price transactions'' and ''Takedown transactions,'' within 15 minutes of the time of execution, in accordance with Rule 6730(a).[16] However, FINRA proposes to liberalize the reporting requirements for List or fixed offering price transactions and Takedown transactions.

List or fixed offering price transaction and Takedown transaction refer to two types of sale transactions that may occur during a primary offering: those executed at a previously fixed price, from a broker-dealer acting as an underwriter to a purchaser; and certain sale transactions among certain market professionals involved in the placement of the offered securities. For purposes of the TRACE rules, such transactions must occur on the first day of the offering.

The terms ''List or fixed offering price transaction'' and ''Takedown transaction'' are defined for purposes of TRACE in, respectively, proposed Rule 6710(q) and (r). ''List or fixed offering price transaction'' is defined in Rule 6710(q) to mean:

a primary market sale transaction sold on the first day of trading of a new issue: (i) by a sole underwriter, syndicate manager, syndicate member or selling group member at the published or stated list or fixed offering price, or (ii) in the case of a primary market sale transaction effected pursuant to Securities Act Rule 144A, by an initial purchaser, syndicate manager, syndicate member or selling group member at the published or stated fixed offering price.

''Takedown transaction'' is defined in Rule 6710(r) to mean:

a primary market sale transaction sold on the first day of trading of a new issue: (i) by a sole underwriter or syndicate manager to a syndicate or selling group member at a

[13] FINRA proposes to delete text in Rule 6710(i) that was used to classify certain Non-Investment Grade corporate bonds to determine when dissemination of transaction information would occur. The text is no longer necessary because transaction information on such bonds began to be disseminated several years ago. FINRA proposes to delete the following rule text, including the footnote text set forth in the second paragraph below:

and further classify it as being in one of the generic rating categories below the four highest such categories. If FINRA does not have sufficient information to make a judgment regarding the classification of an unrated TRACE-eligible security, for purposes of TRACE, FINRA will classify the TRACE-eligible security as having been rated B (or the equivalent rating of one or more NRSROs).

''B'' is a rating of Standard & Poor's, a division of the McGraw-Hill Companies, Inc. (''S&P''). S&P is a nationally recognized statistical rating organization. S&P's ratings are proprietary to S&P and are protected by copyright and other intellectual property laws. S&P's licenses ratings to FINRA. Ratings may not be copied or otherwise reproduced, repackaged, further transmitted, transferred, disseminated, redistributed or resold, or stored for subsequent use for any such purpose in whole or in part, in any form or manner or by any means whatsoever, by any person without S&P's prior written consent.

As amended, FINRA Rule 6710(i) will provide:

''Non-Investment Grade'' means a TRACE-eligible security that, if rated by only one NRSRO, is rated lower than one of the four highest generic rating categories; or if rated by more than one NRSRO, is rated lower than one of the four highest generic rating categories by all or a majority of such NRSROs. Except as provided in paragraph (h), if a TRACE-eligible security is unrated, for purposes of TRACE, FINRA may otherwise classify the TRACE-eligible security as a Non-Investment Grade security.

[14] In Rule 6710(c), the first phrase, ''The term 'reportable TRACE transaction' shall mean * * *'' will be amended to read, '''Reportable TRACE transaction' means. * * *''

[15] As amended, Rule 6710(c) will provide: '' 'Reportable TRACE transaction' means any transaction in a TRACE-eligible security except transactions that are not reported as specified in Rule 6730(e).''

[16] As noted, *supra*, at n. 9, exceptions to 15-minute reporting are provided in Rule 6730(a)(1) through (4) for trades that occur outside of TRACE system hours or immediately prior to its closing.

discount from the published or stated list or fixed offering price, or (ii) in the case of a primary market sale transaction effected pursuant to Securities Act Rule 144A, by an initial purchaser or syndicate manager to a syndicate or selling group member at a discount from the published or stated fixed offering price.

Under proposed Rule 6730(a)(5), members executing such List or fixed offering price transactions or Takedown transactions will have until the end of the business day—until the TRACE system closes—to report such transactions. If a primary offering prices after 5:00 p.m. Eastern Time and thereafter broker-dealers execute transactions that qualify as List or fixed offering price transactions or Takedown transactions, broker-dealers will have until the end of the next business day to report such transactions under Rule 6730(a)(5)(B)(i). In addition, if broker-dealers execute transactions that are List or fixed offering price transactions or Takedown transactions at any time outside of the TRACE system hours, broker-dealers will have until the close of the TRACE system on the next business day to report such transactions under Rule 6730(a)(5)(B)(ii) and (iii).[17]

Price discovery is the most significant reason underlying the TRACE requirement for the reporting of transactions within 15 minutes of execution and thereafter, the immediate dissemination of such information. FINRA proposes to liberalize the reporting requirements for List or fixed offering price transactions and Takedown transactions, because, in most cases, the prices of such transactions will be the same, or subject to only minor differences based on the underwriting structure, and will not contribute meaningfully to price discovery. FINRA proposes end-of-day reporting for the two types of primary market transactions because FINRA does not believe that price transparency will be adversely affected. Moreover, the proposed end-of-day requirement will provide broker-dealers operational flexibility and will ease compliance burdens, particularly during the implementation of the proposed changes.[18]

All other primary market transactions, such as those that are effected at prices other than a fixed (or list) offering price and those that are effected at a fixed price other than on the first day of new issue trading, will be subject to the 15-minute reporting requirements and the exceptions thereto currently set forth in Rule 6730(a)(1) through (4).

Currently, the TRACE data collected for surveillance, review, and research contains information on secondary market transactions only. With the inclusion of primary market transaction data, FINRA will require broker-dealers to assign one of three indicators in their trade reports under proposed subparagraph (D) of Rule 6730(d)(4). The indicators will distinguish primary market transactions from secondary market transactions and further distinguish List or fixed offering price transactions and Takedown transactions from other primary market transactions.

*C. Dissemination*

Generally, dissemination of transaction information for primary market transactions will be implemented at the same time FINRA implements reporting of such transactions. Dissemination will occur immediately upon receipt of transaction reports in primary market transactions as provided in Rule 6750(a), with one exception. Proposed Rule 6750(b)(2) provides that primary market transactions that are List or fixed offering price transactions or Takedown transactions will not be disseminated. FINRA will study the reported data for these primary market transactions for a period of time after reporting begins and, at a later date, determine if dissemination of the information is appropriate, and if appropriate, develop a dissemination strategy.

In contrast, primary market transactions that are not List or fixed offering price transactions or Takedown transactions will be disseminated as soon as primary market transaction reporting begins. These transactions, such as certain ''at-the-market'' transactions, provide transparency about current market pricing that is otherwise not available to the public and many market participants.

## IV. Other Changes

*A. FINRA Rule 6760*

Currently, Rule 6760 requires members to notify FINRA regarding securities that are about to be offered in a primary offering if such securities are TRACE-eligible. In most cases, members must notify FINRA Operations by 5 p.m. Eastern Time on the business day before an offering begins, although for some types of offerings, the deadlines currently extend to 5 p.m. of the business day following the first offer date. FINRA must have this information in the TRACE system to facilitate timely transaction reporting by all members that have effected transactions in a newly issued TRACE-eligible security.

FINRA proposes to amend the notice and information requirements in Rule 6760 to facilitate members' timely reporting of TRACE-eligible securities in both primary and secondary market transactions. Under Rule 6760(b), a broker-dealer providing notice will be required to include ''the time the new issue is priced,'' among other information requirements. In addition, the amendment requires that the information be provided ''prior to the commencement of primary market transactions.'' The amendment also recognizes that FINRA may require information not specifically listed in Rule 6760(b) if, among other things, a security will not be assigned a CUSIP.

FINRA also proposes a series of minor clarifying changes to the Rule. The proposed amendments require that the notice be provided to FINRA Operations by the managing underwriter, or if a managing underwriter is not appointed, an underwriter, or, if there are no underwriters, an initial purchaser. When multiple underwriters or initial purchasers participate in the offering and there is no lead, all are liable under Rule 6760 to provide notice to FINRA Operations, but the parties may agree to submit a single notice. Also, the proposed rule change includes amendments to delete the word ''secondary'' in the first line of paragraph Rule 6760 (a)(1), delete references to ''TRACE Operations Center'' in the rule and substitute the term ''FINRA Operations,'' and amend the rule title to read, ''Obligation To Provide Notice.''

*B. Technical and Conforming Amendments*

FINRA also proposes several minor technical, stylistic, or conforming changes as follows. In Rule 6710, in the first paragraph, after the sentence, ''The terms used in this Rule 6700 Series shall have the same meaning as those defined in the FINRA By-Laws and rules unless otherwise specified.,'' FINRA will add the following sentence: ''For the purposes of this Rule 6700 Series, the

[17] Under proposed Rule 6730(a)(5)(B)(iii), the reporting requirements for List or fixed price offering transactions or Takedown transactions that a broker-dealer executes on a Saturday, Sunday, or a federal or religious holiday when the TRACE system is closed include specific information requirements and have certain parallels to the reporting requirements for transactions reported under Rule 6730(a)(4).

[18] The proposed amendments will harmonize substantially the TRACE reporting rules with current requirements under Municipal Securities Rulemaking Board (''MSRB'') Rule G–14 for reporting primary market transactions in municipal securities, and should reduce operational burdens to firms. For primary market transactions, as with Agency debt securities, FINRA will work with broker-dealers and third party vendors to ensure effective and cost efficient implementation.

following terms have the following meaning:''

In Rule 6710, in paragraphs (b), (d), (e), (f), (g) and (j), which set forth various defined terms, FINRA proposes to incorporate conforming technical and stylistic changes to the first line of text of each defined term. The amendments to each defined term reflect the stylistic changes shown as follows for Rule 6710(b). The initial phrase of Rule 6710(b), which provides, ''The term 'Trade Reporting and Compliance Engine' or 'TRACE' shall mean * * *'' will be amended to read, '' 'Trade Reporting and Compliance Engine' or 'TRACE' means. * * *''[19]

In Rule 6710(e), the phrase, ''[F]or purposes of this Rule,'' will be deleted. In Rule 6730(a), FINRA will add a new first sentence providing, ''Each member that is a party to a transaction in a TRACE-eligible security must report the transaction.'' Other minor technical changes are also proposed in the same paragraph, including clarifying the term ''TRACE system hours.''[20] Paragraphs (5) and (6) of Rule 6730(a) are renumbered as paragraphs (6) and (7), and, in paragraph (7), a cross reference to new paragraph (a)(5) is added. Also, in Rule 6750, FINRA proposes minor technical changes to paragraph (b), including revising the header by deleting ''Securities Act Rule 144A Transactions'' and substituting the new header, ''Transaction Information Not Disseminated.''

## IV. Fees

FINRA proposes to amend Rule 7730 to establish reporting and market data fees for Agency debt securities transactions and primary market transactions. Generally, the fees proposed for Agency debt securities are equivalent to the fees charged for corporate bonds. Primary market transactions, whether in corporate bonds or Agency debt securities, will be subject to the same reporting fees currently in effect, with one exception.

FINRA proposes not to charge a reporting fee for the timely and accurate reporting of primary market transactions that are List or fixed offering price transactions or Takedown transactions as provided in amendments to Rule 7730(b)(1). However, the fees that are currently in effect for late reports and corrections will apply to such transactions. Eliminating the standard reporting fee for such transactions should reduce the cost of compliance for firms as they implement changes to report such transactions.

FINRA will distinguish TRACE transaction data as two data sets, one comprised solely of corporate bond transaction information (the ''Corporate Bonds Data Set'') and a second data set comprised solely of Agency debt securities transaction information (''Agency Data Set'') for organizational purposes only. Market data fees will be charged for each Data Set, as provided in amended Rule 7730(c)(1)(A), (B) and (C).[21] Each Data Set will include the relevant transaction data, including primary market transactions in such securities, provided that the primary market transactions are subject to dissemination.[22]

Generally, the proposed fees for the Agency Data Set will be set at the same rates currently in effect for corporate bond market data (to be sold in the future as the Corporate Bonds Data Set). For example, in Rule 7730(c)(1)(B), the current Vendor Real-Time Data Feed Fee is $1500 per month for receipt of continuous Real-Time TRACE transaction data for internal, non-display use for corporate bonds for persons or organizations other than qualifying Tax-Exempt Organizations. FINRA proposes to charge $1500 per month for the same data package for the Agency Data Set. A vendor that desires to obtain a real-time data feed for both Data Sets will pay $3,000 per month ($1500 for the Corporate Bonds Data Set and $1500 for the Agency Data Set).

One ''System Related Fee,'' for ''Web Browser Access,'' as set forth in FINRA Rule 7730(a)(1), provides access for reporting, but also includes an embedded charge for access to market data. FINRA proposes to amend the ''Web Browser Access'' fee in FINRA Rule 7730(a)(1) to set one fee for professionals that want a reporting system plus access to one Data Set and a second, higher fee for those desiring a reporting system plus access to both Data Sets.

FINRA proposes to continue its policy to provide Non-Professionals access at no charge to all or any portion of any data, whether from one or both Data Sets, under proposed amendments to Rule 7730(c)(2).

Finally, FINRA also proposes minor technical and clarifying amendments to Rule 7730.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 180 days following publication of the *Regulatory Notice* announcing 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,[23] 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 and Section 15(A)(b)(5) of the Act,[24] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls in that: (i) The proposed rule change will increase transparency in the debt market

[19] As noted above, FINRA proposes to incorporate the same technical and stylistic changes to paragraphs (d), (e), (f), (g) and (j) of Rule 6710. The initial phrase of Rule 6710(d), which provides, ''The term 'time of execution' for a transaction in a TRACE-eligible security shall be * * *'' will be amended to read, '' 'Time of execution' for a transaction in a TRACE-eligible security means. * * *'' The initial phrase of Rule 6710(e), which provides, ''The term 'party to a transaction' shall mean * * *'' will be amended to read, '' 'Party to a transaction' means. * * *'' The initial phrase of Rule 6710(f), which provides, ''The term 'TRACE Participant' shall mean * * *'' will be amended to read, '' 'TRACE Participant' means. * * *'' The initial phrase of Rule 6710(g) will be amended to read, ''The term 'Introducing Broker' shall mean * * *'' will be amended to read, '' 'Introducing Broker' means. * * *'' The initial phrase of Rule 6710(j), which provides, ''The term 'split-rated' shall mean * * *'' will be amended to read, '' 'Split-rated' means. * * *''

As discussed previously, FINRA proposes the same technical and stylistic amendments to paragrahs (c), (h) and (i) of Rule 6710.

[20] As amended, Rule 6730(a) will provide:

Each member that is a Party to a transaction in a TRACE-eligible security must report the transaction. A member must report transaction information within 15 minutes of the time of execution, except as otherwise provided below, or the transaction report will be ''late.'' The member must transmit the report to TRACE during the hours the TRACE system is open, which are 8 a.m. Eastern Time through 6:29:59 p.m. Eastern Time, unless otherwise announced by FINRA (''TRACE system hours''). Specific trade reporting obligations during a 24-hour cycle are set forth below.

[21] Such proposed changes will be incorporated in Rule 7730(c)(1)(A), the Bond Trade Dissemination Service (''BTDS'') Professional Real-Time Data Display Fee; Rule 7730(c)(1)(B), the Vendor Real-Time Data Feed Fee and Snapshot Real-Time TRACE Data Fee; and Rule 7730(c)(1)(C), the Vendor Real-Time Data Feed Fee (for certain Tax-Exempt Organizations).

[22] By definition, market data does not include information on transactions that are required to be reported but are not subject to dissemination. Currently, Securities Act Rule 144A transactions are accorded this treatment and under the proposed rule change, primary market transactions that are List or fixed offering price transactions and Takedown transactions also will not be disseminated, and, thus, will not be included in data packages.

[23] 15 U.S.C. 78*o*–3(b)(6).

[24] 15 U.S.C. 78*o*–3(b)(5).

significantly, will enhance the ability of institutional investors, retail investors and broker-dealers to compare and negotiate prices in Agency debt securities transactions, and will enhance FINRA's surveillance of the debt market in connection with primary market transactions and Agency debt securities generally; and (ii) the proposed fee proposal provides for reporting and market data fees that are reasonable and mirror the fees currently in effect for corporate bonds, and provides for the equitable allocation of such fees and charges among members and other professional market participants, qualifying Tax-Exempt Organizations and public data consumers.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

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–2009–010 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2009–010. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–FINRA–2009–010 and should be submitted on or before May 7, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–8656 Filed 4–15–09; 8:45 am]

**BILLING CODE 8010–01–P**

[25] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF STATE

**[Public Notice 6581]**

## Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals (RFGP): Congressionally Mandated—One-Time Grants Program—Competition B—Professional, Cultural, and Youth One-Time Grants Program

*Announcement Type:* New Grant.

*Funding Opportunity Number:* ECA/PE/C–09–One-time-Comp. B

*Catalog of Federal Domestic Assistance Number:* 00.000.

*Key Dates:*

*Application Deadline:* May 14, 2009.

*Executive Summary:* This competition is one of two competitions that the Bureau of Educational and Cultural Affairs is conducting as directed in the FY–2009 Omnibus Appropriation (Pub. L. 111–8) under Division H of the Department of State, Foreign Operations, and Related Programs Appropriations Act, under ''Educational and Cultural Exchange Programs'' in support of a $6 million ''competitive one-time grants program.'' All applications must be submitted by public or private non-profit organizations, meeting the provisions described in Internal Revenue code section 26 U.S.C. 501(c)(3). Total funding for this ''one-time grants program'' is $6 million dollars. $3.9 million will be dedicated to this competition, (Competition B—Professional, Cultural and Youth One-time Grants Program—reference number ECA/PE/C–09–One-time-Comp. B), and $2.1 million will be dedicated to and announced simultaneously in a separate RFGP, (Competition A—Academic Programs One-time Grants Program—reference number ECA/A–09–One-time-Comp. A). **Please note:** The Bureau reserves the right to reallocate funds it has initially allocated to each of these two competitions, based upon factors such as the number of applications received and responsiveness to the review criteria outlined in each of the solicitations.

Applicants may submit only one proposal (TOTAL) to one of the two competitions referenced above. In addition, applicants under this competition (either ECA/PE/C–09–One-time-Comp.B or ECA/A–09–One-time-Comp. A) may only apply to administer one of the listed activities (total). If multiple proposals are received from the same applicant, all submissions will be declared technically ineligible and will be given no further consideration in the review process. Eligible applicants are strongly encouraged to read both RFGPs

thoroughly, prior to developing and submitting proposals, to ensure that proposed activities are appropriate and responsive to the goals, objectives and criteria outlined in each of the solicitations.

As further directed by the Congress, ''The program shall be only for the actual exchange of people and should benefit a population that is not being addressed through existing authorized exchanges.''

The Bureau of Educational and Cultural Affairs announces a competition for grants that support international exchanges in order to increase mutual understanding and build relationships, through individuals and organizations, between the people of the United States and their counterparts in other countries. The Bureau welcomes proposals from organizations that have not had a previous grant from the Bureau as well as from those which have; see eligibility information below and in section III.

Organizations that received grant funding under the FY–2008 Competitive One-time Grants Program (Reference numbers: ECA/A–08–One-time-Comp. A or ECA/PE/C/–08–One-time-Comp. B) are not eligible to apply for this FY–2009 One-time Program.

**I. Funding Opportunity Description**

*Authority*

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

*Background*

The FY–2009 Omnibus Appropriation (Pub. L. 111–8) under Division H of the Department of State, Foreign Operations, and Related Programs Appropriations Act, under ''Educational and Cultural Exchange Programs'' provides $6 million for a ''competitive one-time grants program. Grants shall address issues of mutual interest to the United States and other countries, consistent with the program criteria established in Public Law 110–161. Programs shall support the actual exchange of people and should benefit a population that is not being addressed through existing authorized exchanges.''

*Purpose:* ECA anticipates awarding approximately 12–15 grants under this FY2009 Competition B Professional, Cultural, and Youth One-time Grants Program. Each grant must sponsor an exchange of approximately equal numbers of American participants traveling to the partner country(ies) and participants from the partner country(ies) traveling to the U.S. In addition, the projects should set clear learning objectives for both foreign and American participants, thereby supporting the Fulbright-Hays Act purpose of increasing mutual understanding. Also, the applicant must have the necessary capacity in the partner country through their own overseas offices or a partner institution to carry out the proposed project.

Proposals must respond to one specific theme under one of the following programs:

*Emerging Youth Leaders:* for high school students (ages 15–17) and educators

1. Democracy and Governance in Civil Society
2. Science and Environmental issues

*Emerging Young Professionals:* for young adults (ages 22–35)

1. Environmental issues
2. Entrepreneurial and business management skills
3. Post-conflict governing
4. Development of Grassroots Organizations for Women

*Emerging Cultural Leaders:* ''Rooted in the Arts'' program for U.S. performing artists (ages 25–35) and teachers

Please note each of the aforementioned programs is limited to specific countries. More detailed descriptions of these programs, themes and eligible countries are included below.

In order to emphasize ECA's interest in clarity of project purpose and, later, to track projects and to evaluate their results, all proposals must be presented in the following format:

Tab A—Application for Federal Assistance Cover Sheet

Tab B—Executive Summary

In one double-spaced page, provide the following information:

1. Names of the applicant organization and other participating institutions, both American and foreign.
2. Beginning and ending dates of the project
3. Grant theme being addressed
4. Numbers of American and foreign participants
5. Types and approximate dates of project activities and their venues
6. Total number of exchange days, including only those days when international travelers are in program status in the partnering country.

Tab C—Narrative

In no more than 20 double-spaced, single-sided pages, use the following format to describe the proposed project in detail:

A. Purpose:

1. Definition of the overall goal to be pursued through a two-way exchange project. Name the theme from those listed under Emerging Youth Leaders, Emerging Young Professionals, or Emerging Cultural Leaders into which this goal should fit.
2. Country or countries to take part, and why chosen.
3. Category of persons to participate, with explanation of why that category is chosen and how it fits the requirement that it is a population that is not being addressed through existing authorized exchanges.
4. Description of program activities to take place (*e.g.,* workshops, internships, community service, job shadowing, model site visits, cultural activities, etc).

B. Objectives: Based on the purpose described above, delineate your project's main objectives (no more than five) and outcomes you expect as a result of your project's activities. For each outcome, please state the time frame for achievement. Your objectives and outcomes should be realistic in scope. They should be guided by one or more of the following questions. (Please see section IV.3d.3. Project Monitoring and Evaluation for assistance in identifying and defining outcomes.)

1. What specifically will participants, U.S. and foreign, learn as a result of this project?
2. What new attitudes will participants, U.S. and foreign, develop, or what new ideas will they encounter as a result of this project?
3. How will the participants' behavior change as a result of this project? What new actions will they take?
4. Will participants be a catalyst for change in their schools, work-places, communities, or institutions? How so?

C. Baseline: Describe plans for baseline measurements of these outcomes at the project outset. Based on the time-frame for achievement you stipulate, what types of data will be gathered, when, by what methodology,

and what plan will be used to analyze data and draw conclusions?

D. Shorter-term Outcomes: Explain plans for measurement of shorter-term outcomes at the end of project activities. Please note any changes in measurement or data collection, since baseline data were originally collected.

E. Longer-term Outcomes: Provide plans for measurement of outcomes six months or more after the end of project activities. Explain the linkages between project activities and learning, and longer-term outcomes and achievements, in the intervening months. These outcome measurements should be the basis for evaluating the overall project and should provide the core of the final report to ECA.

Tab D—Budget

Both a summary budget for administrative and programmatic expenses and a detailed, line-item budget must be presented in the three-column format illustrated in the PSI. Eligible expenses are described in IV.3e of this RFGP and in the PSI. Enough information should be provided so that reviewers can determine how line-item totals were calculated.

Tab E—Letters of Endorsement and Resumes

Resumes should not exceed two pages each.

Tab F—Copy of IRS Notification of Current Tax-Exempt Status, SF–424B, and Other Attachments if Applicable

Please refer to the Proposal Submission Instructions (PSI) document for detailed information on proposal structuring and formatting.

*Emerging Youth Leaders*

Program Contact: Jon Crocitto, tel: 202–203–7501, e-mail *CrocittoJA@state.gov.*

The Emerging Youth Leaders program provides opportunities for high school students (ages 15–17) and educators in the United States and in multiple countries around the world to participate in two-way exchanges, each three to four weeks in duration. Each project explores a specific theme designed to develop critical leadership skills for aspiring young leaders and encourages respect for diversity, foster mutual understanding, and promote critical thinking. An essential element of all projects is to build mutual understanding and respect among the people of the United States and the people of the exchange partner countries.

The overarching goals are:

1. To develop a sense of civic responsibility and commitment to the global community;

2. To promote mutual understanding between the United States and the people of other countries around topics of common interest; and

3. To foster personal and institutional ties between participants and partner countries.

The applicant should present a program plan that allows the participants to thoroughly explore the project themes in a creative, memorable, and practical way. Activities should be designed to be replicable and provide practical knowledge and skills that the participants can apply to school and civic activities at home.

Applicants will manage the design and planning of activities that provide a substantive, educational program on leadership, critical thinking, and conflict management, as well as on one of the specified themes, through both academic and extracurricular components. Activities should take place in schools and in the community. Community service must also be included. It is crucial that programming involve the participants' peers in the host countries whenever possible. The program will also include opportunities for the educators to work with their American peers and other professionals and volunteers to help them foster youth leadership, civic education, and community service programs at home.

A successful project will be one that nurtures a cadre of students and educators to be actively engaged in addressing issues of concern in their schools and communities upon their return home. Project activities will equip youth with the knowledge, skills, and confidence to become citizen activists and ethical leaders. Participants will be engaged in a variety of activities such as workshops, community and/or school-based programs, seminars, and other activities that are designed to achieve the program's stated goals. Multiple opportunities for participants to interact with youth and educators in the host country must be included. Participants will have homestays with local families for the majority of the exchange period, although participants may spend a modest portion of their time as a group in a hotel or dormitory setting. Applicants must outline their plan for recruiting, screening and orienting host families (who will provide both food and lodging), as well as a plan for appropriate supervision of participants in other living arrangements.

Grant recipients will recruit and select the participants in the United States, as well as in the partner country(ies) through close consultation with the relevant U.S. Embassies; organize all exchange activities in the participating countries; and implement follow-on activities in which participants may apply at home what they have learned during the exchange.

Applicants must select only one of the two themes listed below. The projects will provide participants with a theoretical framework that will be underpinned by site visits that illustrate methods and strategies of practical implementation. Projects will also help the participants develop leadership skills, such as influential public speaking, team-building, and goal-setting, so that they are prepared to take action with what they have learned. They will also learn the tools of persuasion, negotiation, and mediation to effectively manage relationships and messages in a positive manner. The exchange activities will also examine diversity issues and how young people can develop skills in critical thinking and conflict management techniques.

*Themes and Eligible Partner Countries*

ECA will accept proposals in the specific themes and corresponding countries as indicated below. A single-country project is a two-way exchange between the United States and a single partner country. With a two-country project, participants from the partner countries should travel to the United States together; the American participants' exchange travel may be to just one or to both of the partner countries, depending on the applicant organization's program design and objectives. Applicants should present a rationale for their approach. Proposals that target countries or themes not listed in this solicitation will be deemed technically ineligible. No guarantee is made or implied that grants will be awarded in all themes and for all countries listed. Organizations should consider current U.S. Department of State travel advisories when selecting the countries with which they would like to work.

(1) Democracy and Governance in Civil Society: ECA welcomes proposals that will explore the issues of citizen involvement and effective management in government. Projects will demonstrate how this can benefit individual citizens, non-governmental entities, and the public sector. Proposed programs will promote a respect for transparent governance that is responsive to citizens' concerns and increase participant understanding of ways that citizens can improve

governance, fight corruption, and ensure accountability.

Projects should demonstrate the principles of fair and transparent governance and should promote dialogue among youth on this theme. Projects must be culturally sensitive and address specific needs of the partner country or countries, or regions. Individual projects might have the youth participants explore ways that a country's government, media, and NGOs can encourage and support the involvement of its citizenry, increase citizen trust, and expand the democratic process.

Geographic Regions and Eligible Countries:

- *Africa*
  - Senegal (single-country project)
- *Europe and Eurasia*
  - Armenia and Azerbaijan (mandatory two-country project)
- *Middle East and North Africa*
  - Egypt (single-country project)

(2) Science and Environmental issues:

Projects will focus on the shared scientific and environmental interests of the participating countries in either agriculture or natural resource and land management. Participants will complete projects that illustrate the issue through hands-on activities and community service. These projects will also include a review of the impact of public interest and government policies on the issue, as well as a comprehensive discussion of proposed solutions. Projects will demonstrate how this can benefit individual citizens, non-governmental entities, and the public sector. Proposed programs will promote scientifically-based and socially responsible decision-making regarding natural resources and land management that will increase participant understanding of the core issues that inform policy creation.

Projects should demonstrate objectivity and should promote dialogue among youth on the core issues. Projects must be culturally sensitive and address specific needs of the partner country or countries, or regions. Individual projects might have the youth participants explore ways that a country's government, academic institutions, and NGOs can encourage and support the involvement of its citizenry in developing scientifically-based and socially responsible environmental policies.

Geographic Regions and Eligible Countries:

- *Asia*
  - China (Beijing Municipality only)
- *South America and Caribbean*
  - Chile or Dominican Republic (single-country project)

Proposal narratives must demonstrate the applicant's capacity in the partner country through their own offices or a partner institution to successfully conduct the proposed exchange activities. The requisite capacity overseas includes the ability to organize substantive exchange activities for the American participants, provide follow-on activities, and handle the logistical and financial arrangements.

Applicants should propose the time periods of the two exchanges, but the exact timing of the project may be altered through the mutual agreement of the Department of State and the grant recipient. The program should be no less than three weeks and up to four weeks in duration.

These two-way exchanges should involve the same communities in each country, as the second reciprocal exchange will help reinforce the relationships and program content developed during the first exchange. Project staff should help facilitate regular program-oriented communication among the exchange participants between the two exchanges.

The exchange participants will be high school students between the ages of 15 and 17 who have demonstrated leadership abilities in their schools and/or communities, and have at least one year of high school remaining after the completion of the exchange. The adult participants will be high school teachers or community leaders who work with youth. They will have a demonstrated interest in youth leadership and will be expected to remain in positions where they can continue to work with youth. The ratio of youth to adults should be between 5:1 and 10:1. Participants will be proficient in the English language.

*Emerging Young Professionals*

Program Contact: Curt Huff, tel: 202–453–8159, e-mail: *HuffCE@state.gov*.

The Emerging Young Professionals program offers opportunities for young adults (approximately 22–35 years old) to participate in two-way exchanges of approximately three to four weeks or more in duration to develop their leadership skills and to increase mutual understanding between their countries and the United States. ECA is especially interested in engaging marginalized populations and women from both the U.S. and partner countries in the exchanges. Exchange projects should build participants' leadership skills, including how to conceptualize and develop projects to reach diverse citizenry, using clear objectives, solid management structures and evaluation feedback mechanisms for projects at the local level. Participants should be community leaders, political leaders, educators, and/or advocates for youth, or persons who show the capacity to become effective in those roles.

Projects should be two-way in purpose and implementation, with approximately equal numbers of participants traveling to and from the United States for approximately equal periods of time. Consistent with this approach, project plans should promote learning and teaching by participants from all countries in the project to promote mutual understanding and build individual and institutional partnerships that are likely to continue beyond the grant project. Proposals that clearly delineate salient objectives in measurable terms and plan activities in a sequence that will progressively lead to achieving those objectives, will be considered more competitive on the review criterion of ability to achieve program objectives.

Projects should be planned around one of the following themes:

(1) Environmental issues: These projects should focus on a shared environmental issue of the participating countries (*e.g.,* use of natural resources, pollution, sustainable energy, recycling, land management). Participants should jointly examine a problem or group of issues, through study of public interest and government policy statements, and then participate in experiential learning exercises to build mutual approaches to the issue, and develop their own recommendations for addressing it.

(2) Entrepreneurial and business management skills: These projects should introduce participants to the identification of business opportunities, the writing of business plans, the calculation of risks, and the management of new businesses in order to maximize the probability of success.

(3) Post-conflict governance: These projects are for countries that are emerging from regional or civil war in recent years. Projects should allow participants to experience creative approaches to governing in a post-conflict country. Developing working relationships with colleagues from opposite sides of a past conflict; breaking down barriers to implement governmental administration; and how a new post-conflict government promotes tolerance and diversity should be addressed in these projects. Participants should practice different methods and receive hands-on experiential learning.

(4) Development of Grassroots Organizations for Women: These projects should work to expand the capacity of grassroots organizations (NGOs) that advocate empowering women. Projects should work to build

NGO capacity in practice, giving NGO leaders opportunities to adopt best practices by doing. When possible, joint projects should be developed, implemented, monitored and evaluated by both the U.S. and international sides.

*Eligible Partner Countries and Regions*

ECA will consider proposals for either single-country or multi-country projects. A single-country project is a two-way exchange between the United States and a single partner country. A multi-country project involves participants from more than one country coming to the United States together, and American participants traveling to those countries. The Bureau prefers projects that will engage both Americans and international participants deeply enough that relationships will continue beyond the grant-funded activities. Competitive proposals will be those that demonstrate why any country or group of countries has been identified for a specific project and outline why the specific group of participants to be selected from that country/countries is an effective group to achieve project objectives. Proposals that target countries or themes not listed in this solicitation will be deemed technically ineligible. No guarantee is made or implied that grants will be awarded in all themes and for all countries listed. Organizations should consider current U.S. Department of State travel advisories when selecting the countries with which they would like to work.

*Eligible Countries*

*Africa:* Liberia, Sierra Leone, Ghana

*East Asia/Pacific:* China, Korea

*Europe:* Armenia, Kosovo

*South and Central Asia:* Afghanistan, Kyrgyz Republic, Tajikistan

Proposal narratives must demonstrate the applicant's capacity in the partner country through their own offices or a partner institution to successfully conduct the proposed exchange activities. The requisite capacity overseas includes the ability to organize substantive exchange activities for the American participants, provide follow-on activities, and handle the logistical and financial arrangements.

**Please note:** Because of the changing nature of the security situation, U.S. participants may not be able to travel to Afghanistan as part of a two-way exchange program. Therefore, proposals should include a contingency plan to bring U.S. and participants from Afghanistan together in a third country for those relevant program components.

*Emerging Cultural Leaders*

Program Contact: Jill Staggs, tel: 202–203–7500, e-mail: *StaggsJJ@state.gov*.

The 'Rooted in the Arts' program provides opportunities for U.S. performing artists (ages 25–35), teachers and students to build long-term sustainable linkages with their counterparts in selected countries. The project should connect economically and socially diverse populations of high school social studies, music and/or art students and their teachers in the U.S. with comparable populations in the selected countries. The project must include two-way physical exchanges of artists and teachers (but not students), each two to four weeks in duration. It must also include virtual or distance projects that will provide the high school students an opportunity to communicate with their counterparts abroad. Projects must present an opportunity for participants to explore and learn about their own and another country's history and culture through the performing arts. Activities should include artistic performances, workshops, lecture demonstrations, contextual learning, and on-going virtual (internet) dialogues and other virtual exchanges.

The overarching goals are:

1. To articulate identity through artistic expression, gain respect for the identity and artistic expression of another culture;
2. To learn about their own and another country's history through the performing arts;
3. To incorporate cultural awareness and build mutual understanding and respect for other countries;
4. To foster continuing personal and institutional ties between participants and partner countries.

A successful project will equip participating artists, teachers, and high school students with an understanding of how the performing arts opens a window into a country's history. For the teachers, it will also provide insight on how the performing arts can be used as a tool to educate students about their country and their culture. During their exchange experience, participants should engage in a variety of activities such as performances, workshops, community- and/or learning-based programs, seminars, and other activities designed to achieve the program's stated goals. We encourage exchange projects that require collaborative work across cultures, that include a public presentation, and that involve public schools in the U.S. and abroad.

Proposal narratives must demonstrate the applicant's capacity in the partner country through their own offices or a partner institution to successfully conduct the proposed exchange activities. The requisite capacity includes the ability to recruit and select participants in both the United States and the partner countries in close consultation with the relevant U.S. Embassies; organize substantive exchange activities in the participating countries; handle the logistical and financial arrangements; and implement follow-on alumni activities in which participants may locally apply what they learned during the exchange. While Bureau funds may be used to support public programming, long-standing ECA practice is that Bureau funds are not to be used for the public presentation of art works in the United States. Cost sharing provided by the grantee organization may be used for presentation costs in the United States and should be noted in the budget.

Proposals must describe a selection process for American and international participants and demonstrate how the participant group represents an under-served community. For example, an under-served community could be economically disadvantaged, geographically isolated or experience low literacy rates. Selected participants should demonstrate a commitment to leadership in their communities. If participants are not fluent in English, proposals should include provision for interpretation as necessary.

Applicants should identify which performing arts fields will be included in the exchange and demonstrate how each part of the two-way exchange will accomplish the over-arching goals of this competition. Proposals might focus exclusively on an exchange in one field, such as music. Alternatively, a more community-based project could include artists from various performing arts fields, as well as a representative of a community arts organization. All projects must include an examination of cultural diversity, history and the arts as a means of educational outreach and civic engagement.

*Proposed Partner Countries*

ECA will accept proposals for either single-country or multi-country projects. We can only accept proposals for projects with the countries listed below. A single-country project is a two-way exchange between the United States and a single partner country. With a multi-country project, participants from the partner countries should travel to the United States together; the American participants' exchange travel may be to just one or to all of the partner countries, depending on the applicant

organization's program design and objectives. Applicants should present a rationale for their approach. No guarantee is made or implied that grants will be awarded in all themes and for all countries listed. Organizations should consider current U.S. Department of State travel advisories when selecting the countries with which they would like to work.

*Eligible Countries*

*East Asia:* China, Hong Kong, Taiwan

*Western Hemisphere:* Mexico, Venezuela

Applicants should propose the period of the two exchange components and explain how together the exchange in each direction will accomplish project objectives. The exact timing of the project may be altered through the mutual agreement of the Department of State and the grant recipient. Each exchange component should be no less than two weeks and up to four weeks in duration. Program development should begin in late summer/early fall 2009. Applicants must include letters of support in their proposals.

For All Themes, Grantee Responsibilities will include:

1. Recruitment and Selection of project participants.

(a) Conduct an open, merit-based competition for exchange participants. The grantee organization and its overseas partner(s) will recruit, screen, and select participants in consultation with ECA and with the Public Affairs Section (PAS) of U.S. Embassies or consulates, using clearly identified criteria and a formal process for the selection. The grantee will also develop plans for outreach and recruitment that will generate a strong pool of qualified candidates representing diverse ethnic and socio-economic groups and geographic areas;

(b) Administer an effective English language screening process, if applicable, or provide for any interpretation services, as necessary;

(c) Recommend participants and alternates for selection (Invitations to participate may not be issued without ECA and Embassy Public Affairs clearance).

2. Preparation of participants.

(a) Contact participants before the project to provide them with project information, pre-departure materials, and any training necessary for them successfully to participate;

(b) Facilitate the visa process, working with ECA and PAS for the U.S. visas and directly with the embassy of the partner country for its visas; as indicated in IV.3.d.1 below, ECA will issue the DS–2019 forms required for J visas;

(c) Conduct a pre-departure orientation for participants, including general and project-specific information;

(d) Make all round-trip international travel arrangements, complying with the Fly America Act, and domestic travel arrangements for the participants.

3. Exchange activities.

(a) Design, plan, and implement one or more intensive and substantive projects in the U.S. on one of the stated themes, and one or more corollary projects in the partner overseas country(ies). The link of project activities to project objectives should be explained.

(b) Arrange appropriate community, cultural, social, and civic activities, and make provisions for religious observance.

(c) Engage both foreign and U.S. participants in at least one community service activity (*e.g.*, visit to a food bank, a park clean-up) during the U.S.-based project. The project should provide context for the participants, identifying community needs, volunteerism, charitable giving, etc., as well as a debriefing so that the service activity is not an isolated event and helps participants understand how they can apply their experience at home.

(d) Provide day-to-day monitoring of the project, preventing and dealing with any misunderstandings or adjustment issues that may arise.

(e) Provide a closing session to summarize the project activities, prepare participants for their return home, and to plan for the future.

4. Follow-on activities.

Conduct follow-on activities with project alumni, such as seminars and physical or virtual gatherings, to reinforce values and skills developed during the exchange program and to help alumni apply what they learned to serve their communities. Encourage participants to register in *Alumni.state.gov*.

5. Work in consultation with ECA and the Embassy PAS in the implementation of the project, provide timely reporting of progress to ECA, and comply with financial and project reporting requirements.

6. Manage all financial aspects of the project, including participant costs and transparent arrangements of sub-grant relationships with partner organizations, if applicable.

7. Design and implement an evaluation plan that assesses the impact of the project.

## II. Award Information

*Type of Award:* Grant Agreement.

*Fiscal Year Funds:* FY–2009.

*Approximate Total Funding:* $3.9 million.

*Approximate Number of Awards:* 12–15.

*Approximate Average Award:* $300,000.

*Floor of Award Range:* Depending upon an organization's length of experience in conducting international exchanges, grants could be awarded for less than $60,000. See section III.3.a., below.

*Ceiling of Award Range:* $350,000.

*Anticipated Award Date:* August 2009.

*Anticipated Project Completion Date:* No later than, *approximately 20 months after the start date of the grant.*

*Additional Information:* As stipulated in the legislation, this is a competitive one-time grants program.

## III. Eligibility Information

### *III.1. Eligible Applicants*

Applications must be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 USC 501(c)(3).

Organizations listed in the FY–2009 Omnibus Appropriation (Pub. L. 111–8) under Division H of the Department of State, Foreign Operations, and Related Programs Appropriations Act, under ''Educational and Cultural Exchange Programs'' in support of a $6 million ''competitive one-time grants program'' are encouraged to apply.

In addition, organizations listed in the Department of State, Foreign Operations, and Related Programs Appropriation Act, 2008 (Division J, Pub. L. 110–161) under ''Educational and Cultural Exchange Programs—a competitive one-time grants program'' that did not receive funding under the FY–2008 Competitive One-time Grants Program are encouraged and eligible to apply.

### *III.2. Cost Sharing or Matching Funds*

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide the highest possible levels of cost sharing and funding in support of its projects, noting that cost sharing is one of the criteria for reviewing proposals.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, written

records must be maintained to support all costs which are claimed as contributions, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event that the minimum amount of cost sharing is not provided as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

*III.3. Other Eligibility Requirements*

(a) Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. Therefore, applicants should explain, with examples, their experience in conducting international exchanges, and, if that experience is less than four years, should limit their proposed grant budgets to $60,000.

(b) Technical Eligibility: All proposals must comply with the following:

—Eligible applicants may submit only ONE proposal (TOTAL) for one of the two competitions referenced in the Executive Summary Section of this document. If multiple proposals are received from the same applicant, all submissions from that applicant will be declared technically ineligible and will be given no further consideration in the review process. In addition, applicants under this competition (ECA/PE/C–09–One-time-Comp. B) may only apply to administer one of the listed activities (total).

—Proposals requesting funding for infrastructure development activities, sometimes referred to as ''bricks and mortar support,'' are not eligible for consideration under this competition and will be declared technically ineligible and will receive no further consideration in the review process.

—The Bureau does not support proposals limited to conferences or seminars (*i.e.,* one- to fourteen-day programs with plenary sessions, main speakers, panels, and a passive audience). It will support conferences only when they are a small part of a larger project in duration that is receiving Bureau funding from this competition.

—No funding is available exclusively to send U.S. citizens to conferences or conference-type seminars overseas; nor is funding available for bringing foreign nationals to conferences or to routine professional association meetings in the United States.

—Organizations that received funding for a grant under the FY–2008 Competitive One-time Grants Program (Reference numbers: ECA/A–08–One-time-Comp. A or ECA/PE/C/–08–One-time-Comp. B) are not eligible to apply for this FY–2009 One-Time Program. In the event a proposal is received from a FY–2008, One-Time grant recipient, the proposal will be declared technically ineligible and will receive no further consideration in the review process. **Please note:** A FY–2008, One-time grant recipient, per above, is defined by the DUNS number of the organization and by the signature of the authorized representative contained on ''Application for Federal Assistance Form'' (SF–424) that was submitted under the FY–2008 Competitive One-time Grants Program.

Please refer to the Proposal Submission Instructions (PSI) document for additional requirements.

## IV. Application and Submission Information

**Note:** Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

*IV.1. Contact Information To Request an Application Package*

Please contact the Office of Citizen Exchanges, ECA/PE/C, Room 220, U.S. Department of State, SA–44, 301 Fourth Street, SW., Washington, DC 20547, tel 202–453–8176, fax 202–453–8169, *RossAR@state.gov*, to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/PE/C–09–One-time-Comp. B also located at the top of this announcement when making your request.

The Solicitation Package contains the Proposal Submission Instructions (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

Please specify Program Coordinator Alice Ross, and refer to the Funding Opportunity Number ECA/PE/C–09–One-time-Comp. B located at the top of this announcement on all other inquiries and correspondence.

*IV.2. To Download a Solicitation Package Via Internet*

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm.* Please read all information before downloading.

*IV.3. Content and Form of Submission*

Applicants must follow all instructions in the Solicitation Package. The original and seven copies of the application should be sent per the instructions under IV.3e. ''Submission Dates and Times section'' below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget. The summary and narrative must be presented in double-spaced typing.

IV.3c. You must have nonprofit status with the IRS at the time of application. **Please note:** Effective January 7, 2009, all applicants for ECA federal assistance awards must include in their application the names of directors and/or senior executives (current officers, trustees, and key employees, regardless of amount of compensation). In fulfilling this requirement, applicants must submit information in one of the following ways:

(1) Those who file Internal Revenue Service Form 990, ''Return of Organization Exempt From Income Tax,'' must include a copy of relevant portions of this form.

(2) Those who do not file IRS Form 990 must submit information above in the format of their choice.

In addition to final project reporting requirements, award recipients will also be required to submit a one-page document, derived from their project reports, listing and describing their grant activities. For award recipients, the names of directors and/or senior executives (current officers, trustees, and key employees), as well as the one-page description of grant activities, will be transmitted by the State Department to OMB, along with other information required by the Federal Funding Accountability and Transparency Act (FFATA), and will be made available to the public by the Office of Management and Budget on its USASpending.gov Web site as part of ECA's FFATA reporting requirements.

**Please Note:** If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence to All Regulations Governing the J Visa

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the ''Responsible Officer'' for the program under the terms of 22 CFR part 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR part 62, organizations receiving grants under this RFGP will be third parties ''cooperating with or assisting the sponsor in the conduct of the sponsor's program.'' The actions of grantee program organizations shall be ''imputed to the sponsor in evaluating the sponsor's compliance with'' 22 CFR part 62. Therefore, the Bureau expects that any organization receiving a grant under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 *et seq.*

The Bureau of Educational and Cultural Affairs places critically important emphases on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantee project organizations and project participants to all regulations governing the J visa program status. Therefore, proposals should explicitly state in writing that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If the applicant organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should describe their record of compliance with 22 CFR part 62 *et seq.,* including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to foreign participants in this program. A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation ECA/EC/ECD–SA–44, Room 734, 301 Fourth Street, SW., Washington, DC 20547; Telephone: (202) 203–5029; FAX: (202) 453–8640.

IV.3d.2 Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, projects must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to, ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in project administration and in project content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their project contents, to the full extent deemed feasible.

IV.3d.3 Project Monitoring and Evaluation

This section of the RFGP amplifies the direction given in section I above on proposal format, which calls for the delineation of objectives and planning for baseline, early results, and longer-term measurements. Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the project. The Bureau recommends that each proposal include a draft survey questionnaire or other instruments plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the project, learning as a result of the project, changes in behavior as a result of the project, and effects of the project on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and intended outcomes at the outset of a project. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). (Note the call for measurements at the baseline and for early results and longer-term results.) The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between project outputs and outcomes. Outputs are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. Outcomes, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the emphasis should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of impact):

1. Participant satisfaction with the project and exchange experience.
2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.
3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained;

continued contacts between participants, community members, and others.

4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

**Please note:** Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of each monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*e.g.*, surveys, interviews, tests, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular project reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing the proposal budget:

IV.3e.1. Applicants must submit SF–424A—''Budget Information—Non-Construction Programs'' along with a comprehensive budget for the entire project. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each project component, phase, location, or activity to provide clarification.

IV.3e.2. Allowable costs for the project include the following:

(1) Travel. International and domestic airfare; visas; transit costs; ground transportation costs. Please note that all air travel must be in compliance with the Fly America Act. There is no charge for J–1 visas for participants in Bureau-sponsored programs.

(2) Per Diem. For U.S.-based programming, organizations should use the published Federal per diem rates for individual U.S. cities. Domestic per diem rates may be accessed at: *http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=17943&contentType=GSA_BASIC*. Living costs during foreign-based activities must not exceed USG-approved per diem rates, which can be found at *http://aoprals.state.gov/content.asp?content_id=184&menu_id=81*.

(3) Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Submission Dates and Times

*Application Deadline Date:* May 14, 2009.

Methods of Submission: Applications may be submitted in one of two ways:

(1) In hard-copy, via a nationally recognized overnight delivery service (i.e., Federal Express, UPS, or U.S. Postal Service Express Overnight Mail, etc.), or

(2) electronically through *http://www.grants.gov*.

**Please Note:** ECA strongly encourages organizations interested in applying for this competition to submit printed, hard copy applications as outlined in section IV.3f.1 below rather than submitting electronically through Grants.gov. This recommendation is being made as a result of the anticipated high volume of grant proposals that will be submitted via the Grants.gov Web portal as part of the Recovery Act stimulus package. As stated in this RFGP, ECA bears no responsibility for data errors resulting from transmission or conversion processes for proposals submitted via Grants.gov

Along with the Project Title, all applicants must enter the competition Reference Number (ECA/PE/C–09–One-time-Comp. B) in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1 Submitting Printed Applications

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will not notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages may not be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

**Important note:** When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' and budget sections of the proposal as well as any essential attachments, in Microsoft Word and/or Excel on a PC-formatted disk. The Bureau will provide these files electronically to the appropriate Public Affairs Sections at the U.S. Embassies for their review.

The original and seven copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C–09–One-time-Comp. B, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants submitting hard-copy applications must also submit the ''Executive Summary'' and ''Proposal Narrative'' and ''Budget'' sections of the proposal in text (.txt) or Microsoft Word format on a PC-formatted disk. The Bureau will provide these files electronically to the appropriate Public Affairs Section(s) at the U.S. embassy(ies) for its(their) review.

IV.3f.2 Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system.

**Please Note:** ECA strongly encourages organizations interested in applying for this competition to submit printed, hard copy applications as outlined in section IV.3f.1. above, rather than submitting electronically through *Grants.gov*. This recommendation is being made as a result of the anticipated high volume of grant proposals that will be submitted via the *Grants.gov* webportal as part of the Recovery Act stimulus package. As stated in this RFGP, ECA bears no responsibility for data errors resulting from transmission or conversion processes for proposals submitted via *Grants.gov*.

Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their

organizations immediately after reviewing this RFGP to confirm or determine their registration status with *Grants.gov*.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through *Grants.gov*.

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an lengthy section on frequently asked questions, located under the ''For Applicants'' section of the Web site. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support, Contact Center Phone: 800–518–4726, Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time. E-mail: *support@grants.gov*.

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Please refer to the Grants.gov Web site, for definitions of various ''application statuses'' and the difference between a submission receipt and a submission validation. Applicants will receive a validation e-mail from grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov. ECA will not notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3f.3 Once again, please note that an applicant may submit only one proposal in this competition.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

## V. Application Review Information

### *V.1. Review Process*

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section of the relevant U.S. Embassy overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants) resides with the Bureau's Grants Officer.

### *Review Criteria*

Technically eligible applications will be competitively reviewed according to the criteria stated below.

1. Quality of the project idea and project planning: The project's purpose should clearly fit one of the eligible themes described above, and the proposal should clearly demonstrate how the institution plans to pursue the project's objectives. The proposed project should be creative and well developed, respond to the design outlined in the solicitation, and demonstrate originality. It should be clearly and accurately written, substantive, and with sufficient detail to ensure practical success. The project plan should adhere to the program overview and guidelines described above.

2. Ability to achieve project objectives: Objectives should be reasonable, feasible, and relevant to the proposed theme. Proposals should clearly plan activities in a sequence that will progressively lead to achieving those objectives.

3. Support of diversity: The proposal should acknowledge ECA's policy on diversity and should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity in participant selection and exchange project design and content.

4. Institutional capacity and track record: Proposed personnel and institutional resources should be adequate and appropriate to achieve the project goals. The proposal should demonstrate an institutional record, including solid programming and responsible fiscal management. The Bureau will consider past performance, including compliance with all reporting requirements for past Bureau grants.

5. Project evaluation: The proposal should include a plan to evaluate the project's success, both as the activities unfold and at the end of the program. The proposal should include a draft survey questionnaire or other data-collection technique plus description of a methodology to link outcomes to original project objectives. Please see Section IV.3d.3. of this announcement for more information.

6. Cost-effectiveness and cost sharing: The applicant should demonstrate efficient use of Bureau funds. The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. The proposal should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

## VI. Award Administration Information

### *VI.1a. Award Notices*

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive a Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

### *VI.1b. Special Provision for Performance in a Designated Combat Area (Currently Iraq and Afghanistan)*

All Recipient personnel deploying to areas of combat operations, as designated by the Secretary of Defense (currently Iraq and Afghanistan), under assistance awards over $100,000 or performance over 14 days must register in the Department of Defense maintained Synchronized Pre-

deployment and Operational Tracker (SPOT) system. Recipients of federal assistance awards shall register in SPOT before deployment, or if already in the designated operational area, register upon becoming an employee under the assistance award, and maintain current data in SPOT. Information on how to register in SPOT will be available from your Grants Officer or Grants Officer Representative during the final negotiation and approval stages in the federal assistance awards process. Recipients of federal assistance awards are advised that adherence to this policy and procedure will be a requirement of all final federal assistance awards issued by ECA.

Recipient performance may require the use of armed private security personnel. To the extent that such private security contractors (PSCs) are required, grantees are required to ensure they adhere to Chief of Mission (COM) policies and procedures regarding the operation, oversight, and accountability of PSCs.

VI.1c. Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

*VI.2 Administrative and National Policy Requirements*

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''.

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please refer to the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants. http://fa.statebuy.state.gov.*

*VI.3. Reporting Requirements*

You must provide ECA with a hard copy original plus one copy of the following reports:

1. A final project and financial report no more than 90 days after the expiration of the award;

2. A concise, one-page final project report summarizing project outcomes no more than 90 days after the expiration of the award. This one-page report will be transmitted to OMB, and be made available to the public via OMB's USAspending.gov Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

3. A SF–PPR, ''Performance Progress Report'' Cover Sheet with all project reports.

4. Interim project and financial reports after each project phase, as required in the Bureau grant agreement.

Award Recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular project reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

*VI.4. Project Data Requirements*

Organizations awarded grants will be required to maintain specific data on project participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

1. Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.

2. Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

**VII. Agency Contacts**

For questions about this announcement, please contact: Curt Huff, Professional Programs, Tel: (202) 453–8159; E-mail: *HuffCE@state.gov*.

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C–09–One-time-Comp.B.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

**VIII. Other Information**

*Notice*

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: April 8, 2009.

**C. Miller Crouch,**

*Acting Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. E9–8650 Filed 4–15–09; 8:45 am]

BILLING CODE 4710–05–P

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## DEPARTMENT OF STATE

**[Public Notice 6578]**

## Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals (RFGP): Congressionally Mandated—One-Time Grants Program for Academic Programs—Competition A

*Announcement Type:* New Grant.

*Funding Opportunity Number*: ECA/A–09–One-time-Comp. A

*Catalog of Federal Domestic Assistance Number:* 00.000

*Key Dates:*

*Application Deadline:* May 14, 2009.

*Executive Summary*: This competition is one of two competitions that the Bureau of Educational and Cultural Affairs is conducting as directed in the FY–2009 Omnibus Appropriation (Pub. L. 111–8) under Division H of the Department of State, Foreign Operations, and Related Programs Appropriations Act, under ''Educational and Cultural Exchange Programs'' in support of a $6 million ''competitive one-time grants program.'' All applications must be submitted by, public or private non-profit organizations, meeting the provisions described in Internal Revenue code section 26 U.S.C. 501(c)(3). Total funding for this ''one-time grants

program'' is $6 million. $2.1 million will be dedicated to this competition, (Competition A—Academic Programs One-time Grants Program—reference number ECA/A–09–One-time-Comp. A), and $3.9 million will be dedicated to and announced simultaneously in a separate RFGP (Competition B—Professional, Cultural and Youth One-time Grants Program– reference number ECA/PE/C–09–One-time-Comp. B). **Please note:** The Bureau reserves the right to reallocate funds it has initially allocated to each of these two competitions, based upon factors such as the number of applications received and responsiveness to the review criteria outlined in each of the solicitations.

Applicants may only submit one proposal (total) to the one-time grants program. Applicants may submit either one proposal for the Academic Programs competition or one proposal for the professional program competition, as referenced above. In addition, applicants under this competition (ECA/A–09–One-time-Comp. A) may only apply to administer one of the listed activities (total): (1) Undergraduate Intensive English Language Program, (2) Capacity Building for Undergraduate or Graduate Study Abroad, or (3) Study of the United States Institutes for Foreign Undergraduate Students. If multiple proposals are received from the same applicant, all submissions will be declared technically ineligible and will be given no further consideration in the review process. Eligible applicants are strongly encouraged to read both RFGPs thoroughly, prior to developing and submitting proposals, to ensure that proposed activities are appropriate and responsive to the goals, objectives and criteria outlined in each of the solicitations.

As further directed by the Congress, ''The program shall be only for the actual exchange of people and should benefit a population that is not being addressed through existing authorized exchanges.''

The Bureau of Educational and Cultural Affairs announces a competition for grants that support international exchanges in order to increase mutual understanding and build relationships, through individuals and organizations, between the people of the United States and their counterparts in other countries. The Bureau welcomes proposals from organizations that have not had a previous grant from the Bureau as well as from those that have; see eligibility information below and in section III.

Organizations that received grant funding under the FY–2008 Competitive One-time Grants Program (Reference numbers: ECA/A–08–One-time-Comp. A or ECA/PE/C/–08–One-time-Comp. B) are not eligible to apply for this FY–2009 One-time Program.

## I. Funding Opportunity Description

*Authority*

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

*Background*

The FY–2009 Omnibus Appropriation (Pub. L. 111–8) under Division H of the Department of State, Foreign Operations, and Related Programs Appropriations Act, under ''Educational and Cultural Exchange Programs'' provides $6 million for a ''competitive one-time grants program. Grants shall address issues of mutual interest to the United States and other countries, consistent with the program criteria established in Public Law 110–161. Programs shall support the actual exchange of people and should benefit a population that is not being addressed through existing authorized exchanges.''

ECA anticipates awarding approximately 10 grants under this Competition A—One-time Grants Program for Academic Programs.

## II. Award Information

*Type of Award:* Grant Agreement.

*Fiscal Year Funds:* FY–2009.

*Approximate Total Funding:* $2.1 Million.

*Approximate Number of Awards:* 10.

*Approximate Average Award:* $300,000.

*Floor of Award Range:* Depending upon an organization's length of experience in conducting international exchanges, grants could be awarded for less than $60,000. See section III.3.a., below.

*Ceiling of Award Range:* $700,000.

*Anticipated Award Date:* August 2009.

*Anticipated Project Completion Date:* Approximately 24 months after the start date of the grant.

*Additional Information:* As stipulated in the legislation, this is a competitive one-time grants program.

The Office of Academic Programs will accept proposals for the following one-time special initiatives. For each of the activities listed below, Bureau emphasis is given to engaging participants from select geographic regions. Further details on specific program responsibilities are included in the Program Objectives, Goals, and Implementation (POGI) document for this initiative. Interested organizations should read the entire **Federal Register** announcement for all information prior to preparing proposals. Please refer to the solicitation package for further instructions.

1. *Undergraduate Intensive English Language Program:* The U.S. Department of State is dedicated to increasing its engagement with undergraduate students worldwide who demonstrate the potential to become student leaders and who represent indigenous, disadvantaged or underrepresented communities. ECA offers exchange programs for undergraduates from underserved sectors of society that increase participants' knowledge and understanding of the United States. The Undergraduate Intensive English Program will enroll foreign undergraduate students in eight-week intensive English language courses at colleges and universities in the United States, and provide them with an introduction to American institutions, society and culture. ECA expects to fund a total of approximately 60 students. Regions of emphasis: Sub-Saharan Africa, Latin America and the Caribbean, and East Asia and the Pacific.

*Purpose:* The Undergraduate Intensive English Language Study Program will provide promising first, second, and third-year undergraduate students from underserved sectors, who would not otherwise qualify for U.S. exchange opportunities based on English language ability, an opportunity to increase their English language skills through a substantive U.S. exchange experience, and thereby make them more competitive to participate in other U.S. government-sponsored exchanges or for later graduate admission to U.S. institutions.

*Program Design:* Programs should have a duration of eight weeks. ECA anticipates a total of approximately 60

participants, who may be divided into several cohorts of students. For planning purposes, interested applicants should anticipate that programs should be planned from May-September 2010. Programs should provide participants with intensive English language training, including English for Academic Purposes, as well as the development of general reading, writing, speaking and listening skills, and the testing of those skills.

Student participants will be undergraduates and will be recruited and selected by the U.S. Embassy Public Affairs Sections or Fulbright Commissions in the students' home countries. ECA will approve nominations and make final selection. Participants will come from non-elite backgrounds, from both rural and urban sectors, and with little to no prior experience in the United States or elsewhere outside of their home country. It is anticipated that the selection of participants will reflect each region's geographic, institutional, ethnic, and gender diversity. Most of the students selected will have a basic knowledge of the English language through formal study. For applicants representing a consortium of colleges or universities, it is necessary to indicate the lead institution and produce letters of support from all institutions or organizations that will carry out activities as part of the consortia. In identifying the participating host institutions, the proposal should make clear why these institutions have been recommended, and how those institutions will specifically meet the purposes outlined above.

It is essential that participants be placed in classes with students from a variety of language backgrounds and not only in courses that contain only speakers of their native language. Applicants should design a program that will offer an academic residency component of eight weeks, the central element of which is an intensive English language training course (English for Academic Purposes), together with other instructional elements that will develop participants' general reading, writing, speaking and listening skills. Provisions should also be made for testing those skills.

The program should also provide opportunities for participants to routinely meet with U.S citizens from a variety of backgrounds, to regularly meet with their American peers, and to speak to appropriate students and civic groups about their experiences and life in their home countries. Programs should include a community service component, in which the students experience firsthand how not-for-profit organizations and volunteerism play key roles in American civil society.

A total of one grant will be awarded for the administration of the Intensive English Language Study Program. Applicant organizations should include in their proposals the pedagogical rationale for their plan to administer a program to students from multiple regions (regions: Sub-Saharan Africa, Latin America and the Caribbean, and East Asia/Pacific). ECA reserves the right to adjust the regional composition of student cohorts according to Bureau or program priorities. Participating countries within regions will be determined by ECA, in consultation with Public Affairs Sections at U.S. embassies abroad.

Proposals should demonstrate regional expertise. International travel will be arranged separately by ECA and therefore should not be included in budget requests (please see POGI for details). Please see the POGI document for detailed budget information. It is anticipated that the total amount of funding for administrative and program costs will be approximately $560,000. However, the total funding for this project will be approximately $700,000. ECA anticipates withholding approximately $140,000 for the purchase of participants' airline tickets.

*Number of Awards:* 1.

*Award Amount:* $560,000.

*Contact:* Vincent Pickett, *PickettVS@state.gov*, 202–453–8137.

2. *Capacity Building for Undergraduate or Graduate Study Abroad:*

*Purpose:* The project will encourage the development of new undergraduate and/or graduate study abroad programs.

*Program Design:* Awards will support exploratory visits of U.S. faculty and/or study abroad administrators from accredited U.S. higher education institutions, as well as a limited number of U.S. student participants. Program funds will not support any travel of representatives or students from foreign institutions to the United States.

Programs should focus on increasing the capacity of foreign institutions to host U.S. undergraduate and/or graduate students interested in pursuing quality academic work that forms an integral part of their degree programs. The Bureau especially welcomes applications focusing on non-traditional study abroad destinations and non-traditional fields of study, including critical languages.

*Regions of Emphasis:* Sub-Saharan Africa, South America, Central America, Middle East, Asia.

The Bureau anticipates funding approximately seven projects at levels not to exceed $100,000 with total Bureau funding not to exceed $700,000. Applicants that do not have four years of experience would receive awards that do not exceed $60,000.

*Approximate Number of Awards:* 7.

*Approximate Average Award:* $100,000.

*Ceiling of Award Range:* $700,000.

*Contact:* Amy Forest; *ForestAL@state.gov;* 202–453–8866.

3. *Study of the United States Institutes for Foreign Undergraduate Students:* The U.S. Department of State is dedicated to increasing its engagement with undergraduate students worldwide who demonstrate the potential to become leaders and who represent indigenous, disadvantaged, or underrepresented communities. ECA offers exchange programs for undergraduate students from underserved sectors of society that increase participants' knowledge and understanding of the United States. The Bureau is seeking detailed proposals for two different Study of the United States Institutes for Foreign Undergraduate Students under the topics of: (1) Energy and the Environment and (2) Social Entrepreneurship. Applicants should demonstrate the expertise and regional knowledge, if applicable, to provide participants with a program that provides them information and know-how that they can implement when they return home.

*Purpose:* The purpose of the Study of the United States Institutes for Foreign Undergraduate Students is to provide outstanding first, second, and third-year undergraduate students with intensive and collaborative six-week academic programs on current developments in their respective fields of study, as well as broad exposure to U.S. society. Each program will include 20–24 undergraduates whose major course of study or demonstrated interests are appropriate for the thematic focus of the institute.

*Program Design:* Each institute should be a specially designed intensive academic program that combines seminars, discussions, readings, debates, site visits, and educational travel into a coherent whole. The institutes must not simply replicate existing or previous lectures, workshops, or group activities designed for American or other students.

Each institute should provide academic study in the specific discipline as well as the development of practical skills. Sessions should include lectures, group discussions, and exercises, and should promote leadership, team-building, and problem-

solving skills. In addition, these institutes are intended to promote a better understanding of the United States and its people. Participants should gain a deeper understanding of the history and evolution of U.S. society, culture, values, and institutions.

During each program, participants should spend approximately four weeks at the host institution for the academic residency component, and approximately two weeks on an educational study tour, including two to three days in Washington, DC, at the conclusion of the institute. The educational travel component should directly complement the academic program, and should allow participants to observe varied aspects of American life in cities and other sites of interest.

The program should provide opportunities for participants to meet American citizens from a variety of backgrounds, to interact with their American peers, and to speak to appropriate student and civic groups about their experiences and life in their home countries. Schedules should include a community service component, comprised of three to four volunteering sessions directly related to the institute theme, in which the students gain hands-on experience with the key roles of not-for-profit organizations and volunteerism in American civil society.

U.S. Embassy Public Affairs Sections or Fulbright Commissions in the students' home countries will recruit and select the undergraduate student participants based on academic merit and leadership potential. Participants will come from non-elite backgrounds, from both rural and urban sectors, and should have little or no prior experience in the United States or elsewhere outside their home country. It is anticipated that the selection of participants will reflect each region's geographic, institutional, ethnic, and gender diversity.

**Institute Themes**

*(1) Study of the United States Institute on Energy and the Environment*

Study of the United States Institute on Energy and the Environment should provide participants with historical insight into the role that energy and environmental policy has played in the economic and political development of the United States. The Institute should examine various aspects of energy and environmental management, from local grassroots activism and civic initiatives, to market-oriented approaches, to Federal Government policies and regulation. The Institute also should explore international aspects of the subject, including collaboration among governments and the private sector, joint ventures among countries, and U.S. involvement in negotiated international agreements. Topics may include, (but are not limited to): The development and transfer of new technologies; the effects of U.S. Government policies related to energy conservation, investment, and production on the economy and environment; and the future possibilities for green technology and renewable energy to address global climate change.

Participants will be drawn from majors that include business and management, public administration, political science, and the natural sciences. *Regions of emphasis*: Global.

*(2) Study of the United States Institute on Social Entrepreneurship*

Study of the United States Institute on Social Entrepreneurship should provide participants with an overview of how to employ business techniques and entrepreneurial skills to address social issues (*i.e.* community or economic development, civil society development, education, environment, healthcare, youth employment, or cultural arts programs). The institute should review the development, history, challenges, and successes of social entrepreneurs and social enterprises, in the United States and globally. Case studies and local site visits should highlight the different business skills and techniques employed such as: Organizational development and management; strategy development; fundraising; grant writing; financial management; marketing; public relations; project management; emerging markets and risk analysis; corporate social responsibility; human resource and volunteer management; training; and sustainability issues. The program should be comparative in nature, explaining how the United States may differ globally in terms of government regulation, access to credit, support networks, funding, primary and tertiary education, and entrepreneurial history.

Participants will be drawn from fields that include business and management, public administration, social science, and non-profit management. Regions of emphasis: Eurasia, Near East, South and Central Asia, or sub-Saharan Africa.

The Bureau anticipates funding the two institutes at levels not to exceed $350,000 each with total Bureau funding not to exceed $700,000. Applicant organizations may propose to administer both institutes utilizing separate host institutions with sub-grant agreements. However, applicant institutions may not host more than one undergraduate student leader institute.

*Approximate Number of Awards:* 2.

*Approximate Average Award (1 institute):* $350,000.

*Ceiling of Award Range (2 institutes):* $700,000.

*Contact:* Brendan M. Walsh, *WalshBM@state.gov,* 202–453–8532.

**III. Eligibility Information**

*III.1. Eligible Applicants*

Applications must be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

Organizations listed in the FY–2009 Omnibus Appropriation (Pub. L. 111–8) under Division H of the Department of State, Foreign Operations, and Related Programs Appropriations Act, under ''Educational and Cultural Exchange Programs'' in support of a $6 million ''competitive one-time grants program'' are encouraged to apply.

In addition, organizations listed in the Department of State, Foreign Operations, and Related Programs Appropriation Act, 2008 (Division J, Pub. L. 110–161) under ''Educational and Cultural Exchange Programs—a competitive one-time grants program'' that did not receive funding under the FY–2008 Competitive One-time Grants Program are encouraged and/or eligible to apply.

*III.2. Cost Sharing or Matching Funds*

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal Government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

*III.3. Other Eligibility Requirements*

a. Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. Therefore, applicants should explain their experience in conducting international exchanges, and, if that experience is less than four years, should limit their proposed grant budgets to $60,000.

As directed by the Congress, ''The program shall be only for the actual exchange of people and should benefit a population that is not being addressed through existing authorized exchanges.''

b. *Technical Eligibility*: All proposals must comply with the following:

—Eligible applicants may only submit one proposal (total) for one of the two competitions referenced in the Executive Summary Section of this document. If multiple proposals are received from the same applicant, all submissions will be declared technically ineligible and will be given no further consideration in the review process. Applicants under this competition (ECA/A–09-One-time-Comp. A) may only apply to administer one of the three listed activities (total).

—Proposals requesting funding for infrastructure development activities, sometimes referred to as ''bricks and mortar support'' are not eligible for consideration under this competition and will be declared technically ineligible and will receive no further consideration in the review process.

—The Bureau does not support proposals limited to conferences or seminars (*i.e.*, one- to fourteen-day programs with plenary sessions, main speakers, panels, and an audience). It will support conferences only when they are a small part of a larger project in duration that is receiving Bureau funding from this competition.

—No funding is available exclusively to send U.S. citizens to conferences or conference type seminars overseas; nor is funding available for bringing foreign nationals to conferences or to routine professional association meetings in the United States.

—Organizations that received grant funding under the FY–2008 Competitive One-time Grants Program (Reference numbers: ECA/A–08-One-time-Comp. A or ECA/PE/C/–08-One-time-Comp. B) are not eligible to apply for this FY–2009 one-time program. In the event a proposal is received from a FY–2008, One-time grant recipient, the proposal will be declared technically ineligible and will receive no further consideration in the review process. **Please note:** A FY–2008, One-time grant recipient, per above, is defined by the DUNS number of the organization and by the signature of the authorized representative contained on ''Application for Federal Assistance Form'' (SF–424) that was submitted under the FY–2008 Competitive One-time Grants Program.

Please refer to the Proposal Submission Instruction (PSI) document for additional requirements.

## IV. Application and Submission Information

**Note:** Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

*IV.1. Contact Information To Request an Application Package*

Please contact the Office of Academic Exchanges, ECA/A/E, Room 234, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, tel: 202–453–8137, fax: 202–453–8125, *PickettVS@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/A–09-One-time-Comp. A located at the top of this announcement when making your request.

Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Program Officer Vincent Pickett, and refer to the Funding Opportunity Number ECA/A–09-One-time-Comp. A located at the top of this announcement on all other inquiries and correspondence.

*IV.2. To Download a Solicitation Package Via Internet*

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm*.

Please read all information before downloading.

*IV.3. Content and Form of Submission*

Applicants must follow all instructions in the Solicitation Package. The original and seven copies of the application should be sent per the instructions under IV.3e. ''Submission Dates and Times section'' below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF—424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

IV.3c. You must have nonprofit status with the IRS at the time of application. **Please note:** Effective January 7, 2009, all applicants for ECA federal assistance awards must include in their application the names of directors and/or senior executives (current officers, trustees, and key employees, regardless of amount of compensation). In fulfilling this requirement, applicants must submit information in one of the following ways:

(1) Those who file Internal Revenue Service Form 990, ''Return of Organization Exempt From Income Tax,'' must include a copy of relevant portions of this form.

(2) Those who do not file IRS Form 990 must submit information above in the format of their choice.

In addition to final program reporting requirements, award recipients will also be required to submit a one-page document, derived from their program reports, listing and describing their grant activities. For award recipients, the names of directors and/or senior executives (current officers, trustees, and key employees), as well as the one-page description of grant activities, will be transmitted by the State Department to OMB, along with other information required by the Federal Funding Accountability and Transparency Act (FFATA), and will be made available to the public by the Office of Management and Budget on its USASpending.gov Web site as part of ECA's FFATA reporting requirements.

If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in

the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1. Adherence to All Regulations Governing the J Visa: The Office of Academic Exchange Programs of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the ''Responsible Officer'' for the program under the terms of 22 CFR part 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR part 62, organizations receiving grants under this RFGP will be third parties ''cooperating with or assisting the sponsor in the conduct of the sponsor's program.'' The actions of grantee program organizations shall be ''imputed to the sponsor in evaluating the sponsor's compliance with'' 22 CFR part 62. Therefore, the Bureau expects that any organization receiving a grant under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 *et seq*.

The Bureau of Educational and Cultural Affairs places critically important emphases on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantee program organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should explicitly state in writing that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR part 62 *et seq*., including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Academic Exchange Programs of ECA will be responsible for issuing DS–2019 forms to participants in this program. A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation ECA/EC/ECD—SA–44, Room 734, 301 Fourth Street, SW., Washington, DC 20547; Telephone: (202) 203–5029; FAX: (202) 453–8640.

IV.3d.2. Diversity, Freedom and Democracy Guidelines: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation: Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other instrument plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable timeframe), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program outputs and outcomes. Outputs are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. Outcomes, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of impact):

1. Participant satisfaction with the program and exchange experience.

2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

**Please note:** Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.*, surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit SF–424A—''Budget Information—Non-Construction Programs'' along with a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.3e.2. Allowable costs for the program include the following:

(1) Travel. International and domestic airfare; visas; transit costs; ground transportation costs. Except in the case of Undergraduate Intensive English Language Program; please see POGI for further information. Please note that all air travel must be in compliance with the Fly America Act. There is no charge for J–1 visas for participants in Bureau-sponsored programs.

(2) Per Diem. For U.S.-based programming, organizations should use the published Federal per diem rates for individual U.S. cities. Domestic per diem rates may be accessed at: *http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=17943&contentType=GSA_BASIC.*

(3) Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3F. *Application Deadline and Methods of Submission:*

*Application Deadline Date:* Thursday, May 14, 2009.

*Reference Number:* ECA/A–09–One-time-Comp. A.

*Methods of Submission:* Applications may be submitted in one of two ways:

1. In hard-copy, via a nationally recognized overnight delivery service (*i.e.*, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, *etc.*), or

2. Electronically through *http://www.grants.gov.*

**Please Note:** ECA strongly encourages organizations interested in applying for this competition to submit printed, hard copy applications as outlined in section IV.3f.1., below rather than submitting electronically through Grants.gov. This recommendation is being made as a result of the anticipated high volume of grant proposals that will be submitted via the Grants.gov Web portal as part of the Recovery Act stimulus package. As stated in this RFGP, ECA bears no responsibility for data errors resulting from transmission or conversion processes for proposals submitted via Grants.gov.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1 Submitting Printed Applications: Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages may not be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

**Important note:** When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' and budget sections of the proposal as well as any essential attachments, in Microsoft Word and/or Excel on a PC-formatted disk. As appropriate, the Bureau will provide these files electronically to Public Affairs Sections at the U.S. Embassies for their review.

The original and eight copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: Ref.: ECA/A–09–One-time-Comp. A Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.2. Submitting Electronic Applications: Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system.

**Please Note:** ECA strongly encourages organizations interested in applying for this competition to submit printed, hard copy applications as outlined in section IV.3f.1. above, rather than submitting electronically through *Grants.gov.* This recommendation is being made as a result of the anticipated high volume of grant proposals that will be submitted via the *Grants.gov* Web portal as part of the Recovery Act stimulus package. As stated in this RFGP, ECA bears no responsibility for data errors resulting from transmission or conversion processes for proposals submitted via *Grants.gov.*

Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the ''For Applicants'' section of the Web site. ECA strongly recommends

that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support. Contact Center Phone: 800 -518–4726. Business Hours: Monday—Friday, 7 a.m.—9 p.m. Eastern Time. E-mail: *support@grants.gov*.

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Please refer to the Grants.gov Web site, for definitions of various ''application statuses'' and the difference between a submission receipt and a submission validation. Applicants will receive a validation e-mail from grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov. ECA will not notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal the Executive Summary, Proposal Narrative, and Budget sections of the proposal, as well as any essential attachments, in Microsoft Word and/or Excel on a PC-formatted disk. The Bureau will provide these files electronically to the appropriate Public Affairs Sections at the U.S. Embassies for their review.

## V. Application Review Information

### *V.1. Review Process*

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below.

1. Quality of the Program Idea and Program Planning: Objectives should be reasonable, feasible, and flexible. The proposal should clearly demonstrate how the institution will meet the program's objectives and plan. The proposed program should be creative and well developed, respond to the design outlined in the solicitation, and demonstrate originality. It should be clearly and accurately written, substantive, and with sufficient detail. The program plan should adhere to the program overview and guidelines described above.

2. Ability to Achieve Program Objectives: Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

3. Support of Diversity: The proposal should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity in participant selection and exchange program design and content.

4. Institutional Capacity and Track Record: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program goals. The proposal should demonstrate an institutional record, including solid programming and responsible fiscal management. The Bureau will consider the past performance, including compliance with all reporting requirements for past Bureau grants.

5. Program Evaluation: The proposal should include a plan to evaluate the program's success, both as the activities unfold and at the end of the program. The proposal should include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives. Please see Section IV.3d.3. of this announcement for more information.

6. Cost-effectiveness and Cost Sharing: The applicant should demonstrate efficient use of Bureau funds. The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. The proposal should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

## VI. Award Administration Information

VI.1a. Award Notices: Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive a Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.1b. The following additional requirements apply for exchanges involving the Palestinian Authority, West Bank, and Gaza:

All awards made under this competition must be executed according to all relevant U.S. laws and policies regarding assistance to the Palestinian Authority, and to the West Bank and Gaza. Organizations must consult with relevant Public Affairs Offices before entering into any formal arrangements or agreements with Palestinian organizations or institutions.

**Note:** To assure that planning for the inclusion of the Palestinian Authority complies with requirements, please contact Amy Forest in the Office of Global Education Programs (e-mail: *ForestAL@state.gov*; phone: 202–453–8866) for additional information.

VI.2. Administrative and National Policy Requirements: Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations'';

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions'';
OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments'';
OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations;
OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments;
OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information:

*http://www.whitehouse.gov/omb/grants.*

*http://fa.statebuy.state.gov.*

VI.3. Reporting Requirements: You must provide ECA with a hard copy original plus one copy of the following reports:

1. A final program and financial report no more than 90 days after the expiration of the award.

2. A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will be transmitted to OMB, and be made available to the public via OMB's USAspending.gov Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

3. A SF–PPR, ''Performance Progress Report'' Cover Sheet with all program reports.

4. Interim program and financial reports after each program phase, as required in the Bureau grant agreement.

Award Recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.)

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VI.4. Program Data Requirements: Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

**VII. Agency Contacts**

For questions about this announcement, please contact: Undergraduate Intensive English Language Program, Vincent Pickett, Academic Programs, Tel: (202) 453–8137; E-mail: *PickettVS@state.gov.*

Capacity Building for Undergraduate or Graduate Study Abroad, Amy Forest, Global Educational Programs, Tel: (202) 453–8137; E-mail: *ForestAL@state.gov.*

Study of the United States Institutes for Foreign Undergraduate Students, Brendan M. Walsh, Study of the United States, Tel: (202) 453–8532; E-mail: *WalshBM@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A–09–One-time-Comp. A.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

**VIII. Other Information**

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: April 8, 2009.

**C. Miller Crouch,**

*Acting Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. E9–8642 Filed 4–15–09; 8:45 am]

BILLING CODE 4710–05–P

## DEPARTMENT OF STATE

**[Public Notice 6580]**

## Bureau of Educational and Cultural Affairs (ECA); Request for Grant Proposals: International Visitor Leadership Program Assistance Awards

*Announcement Type:* New Cooperative Agreement.

*Funding Opportunity Number:* ECA/PE/V–10–01.

*Catalog of Federal Domestic Assistance Number:* 19.402.

*Key Dates:* October 1, 2009–September 30, 2010 (pending availability of funds).

*Application Deadline:* June 5, 2009.

*Executive Summary:* The Office of International Visitors, Division of Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs (ECA/PE/V), United States Department of State (DoS) announces an open competition for two assistance awards to develop and implement International Visitor Leadership Programs (IVLP). The IVLP seeks to increase mutual understanding between the U.S. and foreign publics through carefully designed professional programs for approximately 4,500 foreign visitors per year from all regions of the world. The two awards will fund programming for a minimum of 251 and a maximum of 712 International Visitors (IVs). Subject to availability of funds, Award A will fund: (1) Up to approximately 593 visitors ($1,939,113), of which approximately 75 visitors will be funded, if required, through seasonal administrative funding for one 7-month and one 4-month program team included in this total or (2) up to approximately 712 visitors ($2,326,936), of which 75 visitors will be funded, if required, through seasonal administrative funding for one 7-month and one 4-month program team included in this total. Award B will fund: (1) Up to approximately 251 visitors ($684,657) or (2) up to approximately 301 visitors ($821,588). Applicant organizations must include two separate proposed budgets at the two different projected funding levels described above for each award for which they apply. For Award A, each of the proposed budgets should also

include a separate budget spreadsheet for the one 7-month and one 4-month supplemental program team described above. Applicant organizations may bid on one or both awards. Pending availability of funds, one assistance award will be made for each category described above. If an organization is interested in bidding on more than one award, a separate proposal and budget is required for each award. See Project Objectives, Goals, and Implementation (POGI) for definitions of program-related terminology.

The intent of this announcement is to provide the opportunity for organizations to develop and implement a variety of programs for International Visitors from multiple regions of the world. Please refer to the POGI for a breakdown of regions. The award recipients will function as national program agencies (NPAs) and will work closely with Department of State (DoS) Bureau staff, who will guide them through programmatic, procedural, and budgetary issues for the full range of IVL programs. (Hereafter, the terms ''award recipient'' and ''national program agency'' will be used interchangeably to refer to the grantee organization[s].)

**I. Funding Opportunity Description**

*Authority*

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

*Purpose:* Program Information.

*Overview:* The International Visitor Leadership Program seeks to increase mutual understanding between the U.S. and foreign publics through carefully designed professional programs. IVL programs support U.S. foreign policy objectives. Participants are current or potential foreign leaders in government, politics, media, education, science, labor relations, non-government organizations (NGOs), the arts, and other key fields. They are selected by officers of U.S. embassies overseas and are approved by the DoS staff in Washington, DC. Since the program's inception in 1940, there have been over 140,000 distinguished participants in the program. Over 290 program alumni subsequently became heads of state or government in their home countries. All IVL programs must maintain a non-partisan character.

The Bureau seeks proposals from nonprofit organizations for development and implementation of professional programs for Bureau-sponsored International Visitors to the U.S. Once the awards are made, separate proposals will be required for each group project [Single Country (SCP), Sub-Regional (SRP), Regional (RP), and Multi-Regional (MRP)] as well as less formal proposals for Individual and Individuals Traveling Together (ITT) and Voluntary Visitors (Volvis) programs. Each program will be focused on a substantive theme. Some typical IVL program themes are: (1) U.S. foreign policy; (2) U.S. government and political system; (3) economic development; (4) education; (5) media; (6) interfaith dialogue; (7) freedom of information; (8) NGO management; (9) women's issues; (10) tolerance and diversity; (11) counterterrorism; (12) democracy and human rights; (13) rule of law; (14) international crime; and (15) environmental issues. IVL programs must conform to all Bureau requirements and guidelines. Please refer to the Program Objectives, Goals, and Implementation (POGI) document for a more detailed description of each type of IVL program.

*Guidelines*: Goals and objectives for each specific IVL program will be shared with the award recipients at an appropriate time following the announcement of the assistance awards. DoS will provide close coordination and guidance throughout the duration of the awards. Award recipients will consult closely with the responsible ECA/PE/V program officer throughout the development, implementation, and evaluation of each IVL program. Prospective program agencies should demonstrate the potential to develop the following types of programs.

1. Programs must contain substantive meetings that focus on foreign policy goals and program objectives and are presented by experts. Meetings, site visits, and other program activities should promote dialogue between participants and their U.S. professional counterparts. Programs must be balanced to show different sides of an issue.

2. Most programs will be three weeks long and will begin in Washington, DC, with an orientation and overview of the issues and a central examination of Federal policies regarding these issues. Well-paced program itineraries usually include visits to four or five communities. Program itineraries ideally include urban and rural small communities in diverse geographical and cultural regions of the U.S., as appropriate to the program theme.

3. Programs should provide opportunities for participants to experience the diversity of American society and culture. Participants in RPs or MRPs are divided into smaller sub-groups for simultaneous visits to different communities, with subsequent opportunities to share their experiences with the full group once it is reunited.

4. Programs should provide opportunities for the participants to share a meal or similar experience (home hospitality) in the homes of Americans of diverse occupational, age, gender, and ethnic groups. Some individual and group programs might include an opportunity for an overnight stay (home stay) in an American home.

5. Programs should provide opportunities for participants to address student, civic and professional groups in relaxed and informal settings.

6. Participants should have appropriate opportunities for site visits and hands-on experiences that are relevant to program themes. The award recipients may propose professional ''shadowing'' experiences with U.S. professional colleagues for some programs (a typical shadowing experience means spending a half- or full-workday with a professional counterpart.)

7. Programs should also allow time for participants to reflect on their experiences and, in group programs, to share observations with program colleagues. Participants should have opportunities to visit cultural and tourist sites.

8. The award recipients must make arrangements for community visits through affiliates of the National Council for International Visitors (NCIV). In cities where there is no such council, the award recipients will arrange for coordination of local programs.

*Qualifications*

1. Proposals must demonstrate a minimum of four years of successful experience in coordinating international exchanges.

2. Proposals must demonstrate the ability to develop and administer IVL programs.

3. Proposals must demonstrate an applicant's broad knowledge of international relations and U.S. foreign policy issues.

4. Proposals must demonstrate an applicant's broad knowledge of the United States and U.S. domestic issues.

5. Award recipients must have a Washington, DC presence. Applicants who do not currently have a Washington, DC presence must include a detailed plan in their proposal for establishing such a presence by October 1, 2009. The costs related to establishing such a presence must be borne by the award recipient. No such costs may be included in the budget submission in this proposal. The award recipient must have e-mail capability, access to Internet resources, and the ability to exchange data electronically with all partners involved in the International Visitor Leadership Program.

6. Proposals must demonstrate that an applicant has an established resource base of programming contacts and the ability to keep this resource base continuously updated. This resource base should include speakers, thematic specialists, or practitioners in a wide range of professional fields in both the private and public sectors.

7. All proposals must demonstrate sound financial management.

8. All proposals must contain a sound management plan to carry out the volume of work outlined in the Project Objectives, Goals, and Implementation guidelines (POGI). This plan should include an appropriate staffing pattern and a work plan/timeframe.

9. Applicant organizations must include two separate proposed budgets at the two different projected funding levels for each award for which they apply.

10. Proposals must describe capacity to employ additional staff during particularly busy months of the IVLP cycle and to assume additional projects, if requested. For Award A, each of the proposed budgets should also include a separate budget spreadsheet for the one 7-month and one 4-month supplemental program team described above.

11. Applicants must include in their proposal narrative a discussion of ''lessons learned'' from past exchange coordination experiences, and how these will be applied in implementing the International Visitor Leadership Program.

12. Award recipients must have the capability to utilize the world wide Web for the electronic retrieval of program data from the Department of State's IVLP Web site. The award recipient's office technology must be capable of exchanging information with all partners involved in the International Visitor Leadership Program. The award recipient must have the capability to electronically communicate through eNPA (Electronic National Program Agency), the software application that allows award recipients to share information and data electronically through the Department of State's Exchange Visitor Database (EVDB-e) and with the Councils for International Visitors (CIVs), as well as to produce a national program book and other supporting documents (*e.g.*, appointment requests and confirmations, participant welcome letters, and mailing labels) generated directly into Microsoft Word.

13. Applicants must include as a separate attachment under TAB G of their proposals the following:

a. Samples of at least two schedules for international exchange or training programs that they have coordinated within the past four years that they are particularly proud of and that they feel demonstrate their organization's competence and abilities to conduct the activities outlined in the RFGP;

b. Samples of orientation and NPA self-evaluation materials used in past international exchange or training programs.

*Requirements for Past Performance References*

Instead of Letters of Endorsement, DoS will use past performance as an indicator of an applicant's ability to successfully perform the work. TAB E of the proposal must contain between three and five references who may be called upon to discuss recently completed or ongoing work performed for professional exchange programs (which may include the IVL Program). The reference must contain the information outlined below. Please note that the requirements for submission of past performance information also apply to all proposed sub-recipients when the total estimated cost of the sub-award is over $100,000.

At a minimum, the applicant must provide the following information for each reference:

- Name of the reference organization.
- Project name.
- Project description.
- Performance period of the contract/grant.
- Amount of the contract/grant.
- Technical contact person and telephone number for referenced organization.
- Administrative contact person and telephone number for referenced organization.

DoS may contact representatives from the organizations cited in the examples to obtain information on the applicant's past performance. DoS also may obtain past performance information from sources other than those identified by the applicant.

*Personnel*: Applicants must include complete and current resumes of the key personnel who will be involved in the program management, design, and implementation of IVL programs. Each resume is limited to two pages per person.

*Budget Guidelines*

Applicants are required to submit a comprehensive line-item administrative budget in accordance with the instructions in the Solicitation Package (Proposal Submission Instructions.) The submission must include a summary budget and a detailed budget showing all administrative costs. Proposed staffing and costs associated with staffing must be appropriate to the requirements outlined in the RFGP and in the Solicitation Package. Cost sharing is encouraged and should be shown in the budget presentation.

The Department of State is seeking proposals from public and private nonprofit organizations that are not already in communication with DoS regarding an FY–2010 assistance award from ECA/PE/V. All applicants must have a minimum of four years' experience conducting international exchanges, an ability to closely consult with DoS staff throughout program administration, and proven fiscal management integrity. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

The Bureau of Educational and Cultural Affairs, as sponsor and manager of the International Visitor Leadership Program, plays a significant role in the planning, implementation, and evaluation of all types of International Visitor Leadership Programs and is responsible for all communication with overseas missions. The Bureau will provide close coordination and guidance throughout the duration of the awards. Award recipients will consult closely with the responsible ECA/PE/V program officer throughout the development, implementation, and evaluation of each IVL program.

All liaison shall be with the designated elements of the DoS relative to the following responsibilities incurred by the recipient under this agreement:

A. *Program Administration*—Bureau of Educational and Cultural Affairs,

Office of International Visitors, Community Resources Division, ECA/PE/V/C.

B. *Financial*—Bureau of Educational and Cultural Affairs, Grants Division, ECA–IIP/EX/G.

## II. Award Information

*Type of Award*: Cooperative Agreement. ECA's level of involvement in this program is listed under number I above.

*Fiscal Year Funds*: FY–2010 (pending availability of funds).

*Approximate Total Funding*: $2,623,770 or $3,148,524. Administrative funding only; program funds provided as needed.

*Number of Awards:* Two.

*Approximate Average Award:* $1,443,074.

*Floor of Award Range*: $684,657 (251 visitors).

*Ceiling of Award Range*: $2,326,936 (712 visitors).

*Anticipated Award Date*: Pending availability of funds, October 1, 2009.

*Anticipated Project Completion Date:* September 30, 2010.

*Additional Information*: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew these cooperative agreements for five additional fiscal years, before openly competing them again.

## III. Eligibility Information

### *III.1. Eligible Applicants*

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 USC 501(c)(3).

### *III.2. Cost Sharing or Matching Funds*

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, award recipients must maintain written records to support all costs which are claimed as its contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event the recipient organization does not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

### *III.3. Other Eligibility Requirements*

(a) Bureau cooperative agreement guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates awarding two cooperative agreements of which the minimum award is $684,657. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. Program costs will be transferred directly to the award recipient based upon International Visitor workload, and should not be included in the proposal. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

(b) *Technical Eligibility*: All proposals must comply with the technical eligibility requirements specified in the Proposal Submission Instructions (PSI) and the Project Objectives, Goals, and Implementation (POGI) documents. Failure to do so will result in proposals being declared technically ineligible and given no further consideration in the review process.

## IV. Application and Submission Information

**Note:** Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

### *IV.1. Contact Information to Request an Application Package*

Please contact the Office of International Visitors, Community Relations Division (ECA/PE/V/C), Room 247, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone (202) 453–8624, fax (202) 453–8631 number, or e-mail *JohnsonPA2@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number (ECA/PE/V–10–01) located at the top of this announcement when making your request.

Alternatively, an electronic application package may be obtained from *http://grants.gov*. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Patricia Johnson and refer to the Funding Opportunity Number (ECA/PE/V–10–01) located at the top of this announcement on all other inquiries and correspondence.

### *IV.2. To Download a Solicitation Package Via Internet*

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm* or from the Grants.gov Web site at *http://www.grants.gov*.

Please read all information before downloading.

### *IV.3. Content and Form of Submission*

Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. ''Application Deadline and Methods of Submission'' section below.

IV.3a.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b.

All proposals must contain an executive summary, proposal narrative and budget.

Please refer to the solicitation package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c.

You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or

cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d.

Please take into consideration the following information when preparing the proposal narrative:

IV.3d.1. Adherence to all regulations governing the J Visa: The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR part 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of International Visitors (ECA/PE/V) will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547. *Telephone*: (202) 203–5029. *FAX*: (202) 453–8640.

Please refer to Solicitation Package for further information.

IV.3d.2. Diversity, Freedom and Democracy Guidelines: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106—113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation: Successful monitoring and evaluation depend heavily on setting clear objectives and outcomes at the outset of a program. In support of the Bureau's evaluation goals, the Office of International Visitors will administer a post-program evaluation for International Visitors upon conclusion of Regional and Multi-Regional programs.

In addition, applicants must monitor and evaluate the program's success, both as activities unfold and at the end of each program. (*See* Project Objectives, Goals and Implementation (POGI) document.) Proposal submissions should include a monitoring and evaluation plan that demonstrates: An understanding of overall IVLP goals, as well as the objectives of assigned projects; the anticipated results and outcomes, including specific changes in International Visitors' behavior, knowledge, skills, and status resulting from the program activities; and the link between the outcomes and the original project objectives.

Proposals should further demonstrate how applicants will obtain an understanding of the goals and objectives of each assigned IVL program, and how applicants will review and analyze the outcomes and results upon conclusion of each IVL program. For regional and multi-regional programs, participation at a final oral evaluation session is expected and a final program report is required. (*See* Project Objectives, Goals and Implementation (POGI) document.) Proposal submissions should demonstrate how award recipients will apply the feedback provided by International Visitors to strengthen the overall goals and objectives of the International Visitor Leadership Program.

IV.3d.4. Alumni Outreach Follow on Programming: No alumni outreach follow-on programming is expected or will be funded. However, the Bureau expects that all recipient organization(s) will encourage and assist participants in registering and using the State Alumni Web site (*http://alumni.state.gov*) and the Exchanges Connect Web site (*http://connect.state.gov*) at multiple points during their exchange experience, at a minimum during program orientations and pre-departure briefings as well as at the end of programs to encourage participants to create groups and/or forums on exchanges connect. Proposals should detail how the Web sites will be promoted to exchange participants and how the recipient organization(s) will facilitate participant registration. The Bureau expects that all recipient organization(s) will place a link to both State Alumni and Exchanges Connect on their own Web sites.

IV.3d.5. Program Management: Proposals should describe the applicant's plans for: overall program management, staffing, coordination with ECA or any other requirements, sustainability, etc.

IV.3e. Please Take the Following Information Into Consideration When Preparing the Proposed Budget

IV.3e.1. Applicants must submit comprehensive budgets for the entire program. Funding levels are listed under Section II of this announcement. There must be summary budgets as well as breakdowns reflecting the administrative budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.3e.2. Allowable costs for the program include the following:

(1) Staff Salaries and Benefits;

(2) Office and Program Supplies;

(3) Telephone and Communications;

(4) Staff Travel and Per Diem;

(5) ADP Equipment Maintenance and IT Costs;

(6) Indirect Costs.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission

*Application Deadline Date:* June 05, 2009.

*Reference Number:* ECA/PE/V–10–01.

*Methods of Submission:* Applications may be submitted in one of two ways:

(1) In hard-copy, via a nationally recognized overnight delivery service (*i.e.*, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2) Electronically through *http://www.grants.gov.*

**Please Note:** ECA strongly encourages organizations interested in applying for this competition to submit printed, hard copy applications as outlined in section IV.3f.1., below rather than submitting electronically through Grants.gov. This recommendation is being made as a result of the anticipated high volume of grant proposals that will be submitted via the Grants.gov Web portal as part of the Recovery Act stimulus package. As stated in this RFGP, ECA bears no responsibility for data errors resulting from transmission or conversion processes for proposals submitted via Grants.gov.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1. Submitting Printed Applications: Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will not notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages may not be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

**Important Note:** When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and 10 number of copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, *Ref.*: ECA/PE/V–10–01, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

IV.3f.2. Submitting Electronic Applications: Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system.

**Please Note:** ECA strongly encourages organizations interested in applying for this competition to submit printed, hard copy applications as outlined in section IV.3f.1. above, rather than submitting electronically through *Grants.gov.* This recommendation is being made as a result of the anticipated high volume of grant proposals that will be submitted via the *Grants.gov* Web portal as part of the Recovery Act stimulus package. As stated in this RFGP, ECA bears no responsibility for data errors resulting from transmission or conversion processes for proposals submitted via *Grants.gov.*

Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the ''For Applicants'' section of the Web site. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support. *Contact Center Phone:* 800–518–4726. *Business Hours*: Monday–Friday, 7 a.m.–9 p.m. Eastern Time. *E-mail: support@grants.gov.*

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the Grants.gov system, and will be technically ineligible.

Please refer to the Grants.gov Web site, for definitions of various ''application statuses'' and the difference between a submission receipt and a submission validation. Applicants will receive a validation e-mail from Grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov. ECA will *not* notify you upon receipt of electronic applications.

It is responsibility of all applicants submitting proposals via the Grants.gov Web portal to ensure that proposals have been received by Grants.gov in their entirety and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

## V. Application Review Information

### *V.1. Review Process*

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards or cooperative agreements resides with the Bureau's Grants Officer.

### *V.2. Review Criteria*

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Evidence of Understanding/Program Planning*: The proposal should convey that the applicant has a good understanding of the overall goals and objectives of the IVL Program. It should

exhibit originality, substance, and precision, and be responsive to the requirements stated in the RFGP and the Solicitation Package. The proposal should contain a detailed and relevant work plan that demonstrates substantive intent and logistical capacity. The agenda and plan should adhere to the program overview and guidelines described in the RFGP and the POGI.

2. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of program resources and interlocutors, program venue, etc.) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

3. *Institutional Capacity:* The award recipient must have a Washington, DC presence. Applicants who do not currently have a Washington, DC presence must include a detailed plan in their proposal for establishing such a presence by October 1, 2009. The costs related to establishing such a presence must be borne by the award recipient. No such costs may be included in the budget submission in this proposal. The proposal should clearly demonstrate the applicant's capability for performing the type of work required by the IVL Program and how the institution will execute its program activities to meet the goals of the IVL Program. It should reflect the applicant's ability to design and implement, in a timely and creative manner, professional exchange programs which encompass a variety of project themes. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program goals. The proposal must demonstrate that the applicant has or can recruit adequate and well-trained staff. All recipients must submit their IVL Program and national itinerary data electronically to the DoS by utilizing either the eNPA tool provided by the Department or the mandated standard data format submission that has been established as an interface to existing legacy systems.

4. *Institution's Record/Ability:* The proposal should demonstrate an institutional record of a minimum of four years of successful experience in conducting IVL or other professional exchange programs, which are similar in nature and magnitude to the scope of work outlined in this solicitation. The applicant must demonstrate the potential for programming IVL participants from multiple regions of the world. Applicants should demonstrate that their organizations would consult with DoS program officers on a regular basis to ensure that the assigned visitor projects would consistently meet program objectives. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau cooperative agreements as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

5. *Project Evaluation:* While program agencies do not have sole responsibility for program evaluation, proposals should describe how program agency will evaluate the activity's success, both as the activities unfold and through required reporting at the conclusion of group program, and address how lessons learned will be incorporated in future program planning. A description of the methodology to be used to link outcomes to original project objectives is recommended.

6. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. This includes acquiring and retaining capable staff. All other costs, such as building maintenance, should be necessary and appropriate.

7. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

## VI. Award Administration Information

### *VI.1a. Award Notices*

Final awards cannot be made until funds have been appropriated by Congress, and allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

### *VI.1b. Optional—The Following Additional Requirements Apply to This Project*

For Assistance Awards Involving Iran

A critical component of current U.S. government Iran policy is the support for indigenous Iranian voices. The State Department has made the awarding of grants for this purpose a key component of its Iran policy. As a condition of licensing these activities, the Office of Foreign Assets Control (OFAC) has requested the Department of State to follow certain procedures to effectuate the goals of Sections 481(b), 531(a), 571, 582, and 635(b) of the Foreign Assistance Act of 1961 (as amended); 18 U.S.C. 2339A and 2339B; Executive Order 13224; and Homeland Security Presidential Directive 6. These licensing conditions mandate that the Department conduct a vetting of potential Iran grantees and sub-grantees for counter-terrorism purposes. To conduct this vetting the Department will collect information from grantees and sub-grantees regarding the identity and background of their key employees and Boards of Directors.

**Note:** To assure that planning for the inclusion of Iran complies with requirements, please contact Patricia Johnson (ECA/PE/V/C), Office of International Visitors, by e-mail *JohnsonPA2@state.gov* for additional information.

Prohibition on the Use of Federal Funds To Promote, Support, or Advocate for the Legalization or Practice of Prostitution

The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons. None of the funds made available under this agreement may be used to promote, support, or advocate the legalization or practice of prostitution. Nothing in the preceding sentence shall be construed to preclude assistance designed to ameliorate the suffering of, or health risks to, victims while they are being trafficked or after they are out of the situation that resulted from such victims being trafficked.

The recipient shall insert the foregoing provision in all sub-agreements under this award.

This provision includes express terms and conditions of the agreement and any violation of it shall be grounds for unilateral termination of the agreement by the Department of State prior to the end of its term.

For Assistance Awards Involving the Palestinian Authority, West Bank, and Gaza

All awards made under this competition must be executed according to all relevant U.S. laws and policies regarding assistance to the Palestinian Authority, and to the West Bank and Gaza. Organizations must consult with relevant Public Affairs Offices before entering into any formal arrangements or agreements with Palestinian organizations or institutions.

**Note:** To assure that planning for the inclusion of the Palestinian Authority complies with requirements, please contact Patricia Johnson (ECA/PE/V/C), Office of International Visitors, by e-mail *JohnsonPA2@state.gov* for additional information.

*VI.2. Administrative and National Policy Requirements*

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, Cost Principles for Nonprofit Organizations.

Office of Management and Budget Circular A–21, Cost Principles for Educational Institutions.

OMB Circular A–87, Cost Principles for State, Local and Indian Governments.

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information:
*http://www.whitehouse.gov/omb/grants*
*http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.*

*VI.3. Mandatory Reporting Requirements*

Award recipients must provide ECA with a hard copy original plus one copy of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award. This report must disclose cost sharing and be certified by the award recipient's chief financial officer or an officer of comparable rank.

(2) Quarterly financial reports within thirty (30) days following the end of the calendar year quarter. These reports should itemize separately International Visitor costs, Voluntary Visitor costs, English Language Officer/Interpreter costs for International Visitors, English Language Officer/Interpreter costs for Voluntary Visitors, special project costs by projects, and administrative costs for the previous quarter on a cash basis. These reports should also list separately the number of English Language Officers/Interpreters accompanying International Visitors, and the number of English Language Officers/Interpreters accompanying Voluntary Visitors for whom funds are expended. Quarterly financial reports must be certified by the award recipient's chief financial officer or an officer of comparable rank. For further information, please refer to the Project Objectives, Goals, and Implementation (POGI) document.

(3) Providing ECA with *Quarterly Projected Expenditure Reports*: Due by the 15th day of the 3rd month of each quarter. These reports should indicate projections for the next quarter in the following categories: *Grant Benefits*: Regional Program Visitor Benefits (plus group enhancements, per diem and ground transportation), Voluntary Visitor Benefits (plus group enhancements, per diem and ground transportation), English Language Office/Interpreter Benefits (plus per diem and ground transportation), and Multi-Regional Projects (MRP group enhancements). *Travel Manager Company (TMC)*: Regional/MRP Program domestic air travel, Voluntary Visitor domestic air travel and English Language Officers/Interpreter domestic air travel. *Number of Visitors*: Number of Regional/MRP Program Visitors, number of Voluntary Visitors, and number of English Language Officers/Interpreters. The original hard copy of the reports should be sent to ECA/PE/V/C—Patricia Johnson, who is responsible for Cooperative Agreement administration. The report should also be sent to *JOHNSONPA2@state.gov*.

(4) Such operating, statistical, and financial information relating to the program as may be requested by the DoS to meet its reporting requirements and answer inquiries concerning the operation of the IVL Program, as stipulated in the FY 2010 Project Objectives, Goals, and Implementation.

(5) Reports analyzing evaluation findings should be provided to the Bureau in award recipient's regular program reports. Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information. All data collected must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

**VII. Agency Contacts**

For questions about this announcement, contact: Patricia Johnson, Office of International Visitors, Community Relations Division, Room 247, Reference Number ECA/PE/V–08–01, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone 202–494–8714, fax 202–453–8631, or e-mail *JohnsonPA2@state.gov*.

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/V–10–01. Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

**VIII. Other Information**

*Notice*

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: April 9, 2009.

**C. Miller Crouch,**

*Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. E9–8640 Filed 4–15–09; 8:45 am]

BILLING CODE 4710–05–P

## DEPARTMENT OF STATE

**[Public Notice 6585]**

## Bureau of Educational and Cultural Affairs (ECA)

Request for Grant Proposals: Youth Ambassadors Program With South America and Mexico

*Announcement Type:* New Grants.

*Funding Opportunity Number:* ECA/PE/C/PY–09–51.

*Catalog of Federal Domestic Assistance Number:* 19.415.

*Application Deadline:* May 28, 2009.

*Executive Summary*: The Office of Citizen Exchanges, Youth Programs Division, of the Bureau of Educational and Cultural Affairs (ECA) announces an open competition for the Youth Ambassadors Program with Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Guyana, Mexico, Paraguay, Peru, Suriname, Uruguay, Venezuela, and the United States. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to recruit and select youth and adult participants and to provide the participants with three-week exchanges focused on civic education, community service, and leadership along with follow-on projects in their home communities. For planning purposes, it is anticipated that exchange delegations will travel from all 13 countries to the United States, and U.S. exchange delegations will travel to six South American countries.

## I. Funding Opportunity Description

*Authority*

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87–256, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

*Overview:* This Youth Ambassadors Program enables youth (ages 15–18) and adult educators to participate in intensive, thematic, three-week exchange projects that are designed to promote high-quality leadership, civic responsibility, and civic activism among future leaders of their communities. Projects involve a practical examination of the principles of democracy and civil society and provide participants with training that allows them to develop their leadership skills. Participants engage in a variety of activities such as workshops, community and school-based programs, seminars, and other activities that are designed to achieve the program's stated goals. Multiple opportunities for participants to interact with American youth and educators are included.

The goals of the program are:

1. To promote mutual understanding between the people of the United States and the people of South America and Mexico;

2. To prepare youth leaders to become responsible citizens and contributing members of their communities;

3. To significantly influence the attitudes of the leaders of a new generation; and

4. To foster relationships among youth from different ethnic, religious, and national groups and create networks of hemispheric youth leaders, both within the participating countries and internationally.

With the specific focus of this program, the following outcomes will indicate a successful project:

- Participants will demonstrate a better understanding of the elements of a participatory democracy as practiced in the United States.
- Participants will demonstrate critical thinking and leadership skills.
- Participants will demonstrate skill at developing project ideas and planning a course of action to bring the projects to fruition.

For each project, applicant organizations must focus on the primary themes of civic education (grassroots democracy and rule of law), leadership development, and community service. Secondary themes are the environment, drug and alcohol abuse prevention, business and entrepreneurship, or alternatives to violence. Secondary themes will be used as a tool to illustrate the more abstract concepts of the primary themes. For instance, the secondary theme of care for the environment can be used to examine youth leadership and community service through sessions with students who have founded a recycling club in their school or to examine grassroots democracy by meeting with citizens who have sought to have a county commission block development on environmentally sensitive land.

Using the goals and the themes above, applicant organizations should identify their own specific objectives and measurable outcomes based on these program goals and the project specifications provided in this solicitation.

*Projects and Application Options*

The total amount of funding available is $3,000,000. ECA anticipates awarding approximately three grants. The Bureau intends to have exchange activity with all of 13 countries. The Bureau reserves the right to reduce, revise, or increase proposal project configurations and budgets in accordance with the needs of the program and the availability of funds.

Organizations may submit only one proposal under this competition. If multiple proposals are received from the same applicant, all submissions will be declared technically ineligible and will be given no further consideration in the review process.

Applicant organizations may apply for one, two, or all three of the options outlined below. These options will allow applicants the flexibility to propose working with the countries in which they have the best infrastructure. The Bureau strongly urges organizations to limit their applications to the option(s) where they have the strongest institutional capacity in every country; this capacity must be thoroughly described in the proposal. Please note the funding range for each option.

*Option One:* Southern Cone regional project (Project A). $900,000–$1,000,000.

*Option Two:* Andean regional project (Project B) PLUS a single-country or joint project (one of Projects C through F below). $850,000–$1,000,000.

*Option Three:* Three or four single-country projects or joint project (Projects C through G below). $750,000–$1,000,000.

If an organization chooses Option Two or Option Three, please note that our intention is to have these projects conducted separately and distinctly from one another. If, however, an applicant proposes to conduct two or more projects at the same time, or connect them in some way, it should provide justification for doing so.

The list below identifies the project name, the language in which the exchange will be conducted, the requested secondary themes (of which applicants choose one), and whether an exchange to the partner country by U.S. students and teachers is requested.

*Project A: Southern Cone (Argentina, Chile, Paraguay, Uruguay).* Regional project. English. Secondary theme: Environment, Drug and alcohol abuse prevention, Business and entrepreneurship, or Alternatives to violence. U.S.-to-Chile and U.S.-to-Paraguay exchanges.

*Project B: Andean (Bolivia, Ecuador, and Peru).* Regional project. Spanish.

Secondary theme: Environment, Business and entrepreneurship, or Drug and alcohol abuse prevention. U.S.-to-Ecuador exchange.

*Project C: Colombia.* Single-country project. English. Secondary theme: Drug and alcohol abuse prevention.

*Project D: Venezuela.* Single-country project. English. Secondary theme: Environment, Drug and alcohol abuse prevention, or Business and entrepreneurship.

*Project E: Suriname and Guyana.* Joint project. English. Secondary theme: Environment, Business and entrepreneurship, or Drug and alcohol abuse prevention. U.S.-to-Suriname/Guyana exchange.

*Project F: Mexico.* Single-country project. Spanish. Secondary theme: Alternatives to violence.

*Project G: Brazil.* Single-country project. English. Secondary theme: Business and entrepreneurship. U.S.-to-Brazil exchange [Note: Please see details on the Brazil project below.]

The grant period will span two or more years. Each project will have at least two delegations of exchange participants to the United States over those two years. In the case of two regional projects, there will be four exchange delegations. For some specified countries, the grant will also support two U.S. exchange delegations to the partner country in South America.

*Exchanges to the United States:* For a single-country project and the Suriname/Guyana project, an exchange delegation may range from 12–15 participants. For Brazil only, the delegation will be 37 participants. For a regional project (Southern Cone and Andean), an exchange delegation may range from 20–30 participants.

*Exchanges to South America:* Approximately 15% of the total amount of funding is to be dedicated to the exchange of U.S. students and teachers to the following countries: Brazil, Chile, Ecuador, Suriname and Guyana, and Paraguay. U.S. delegations may range from 10 to 14 participants, though larger delegations may be possible if funding allows, including supplemental funding from private sources. Participants traveling to Chile, Ecuador, and Paraguay should be able to communicate in Spanish. Those traveling to Brazil and Suriname/Guyana do not have any language requirements.

The successful applicant organization will present a program plan that allows the participants to thoroughly explore civic education, leadership and community service in creative, memorable, and practical ways. Activities should be designed to be replicable and provide practical knowledge and skills that the participants can apply to school and civic activities at home. These projects will offer bright and ambitious youth and teachers who work with youth the opportunity to develop their personal skills in a positive and productive way.

Proposals must clearly indicate the project names specifying the country or countries with which the applicant plans to work and budgets should be appropriately scaled to the projects. Since cost effectiveness is one of the proposal review criteria, the number of participants that can be accommodated in each project will be a factor in the proposal review process, though this will be balanced with program quality and a realistic budget.

*Special Instructions for ''Project G: Brazil''*: The project with Brazil is structured differently than the other projects. The U.S. Embassy in Brasilia will serve as the in-country partner and will manage the recruitment and selection of the Brazilian participants, their follow-on activities, and the Brazil-based exchange activities for the U.S. participants. The total number of participants each year will be 37 (35 high school students plus 2 educators). For the Brazilians, the grant recipient for this project will be organizing and funding the U.S. domestic program only; the Embassy will cover in-country expenses and will arrange and purchase the international airline tickets. These exchanges to the U.S. will take place in January 2010 and January 2011. For the U.S. exchange participants, who do not have to speak Portuguese, the grant recipient will cover all costs, except the administrative costs necessary to organize the activities in Brazil.

*Organizational Capacity*

Applicant organizations must demonstrate their capacity for doing projects of this nature, focusing on three areas of competency: (1) Provision of programs that address the goals and themes outlined in this document; (2) age-appropriate programming for youth; and (3) previous experience working on programs with Mexico or South America.

With the exception of Brazil, applicant organizations must have an established presence and the administrative capacity in each of the partner countries necessary to implement the in-country activities. This may be a branch office of the U.S. applicant organization, a non-governmental partner organization, or other associates with demonstrated experience in educational exchange that can coordinate the program nationally. Grant recipients will be responsible for their partners' activities under the grant, both programmatically and financially. The partners must have the requisite capacity to recruit and select participants for the program, to provide follow-on activities, and to organize a program for the U.S. participants, if specified.

Organizations must convincingly demonstrate their capacity to manage a complex, multi-phase program with several separate projects. Their proposals must also thoroughly demonstrate their institutional capacity (infrastructure and experiences); if necessary, applicants may insert supplemental information that demonstrates their capacity and experience under TAB E of their proposal submission to elaborate. ECA is interested in proposals that demonstrate in the narrative and supporting documentation the organization's capacity and ability to sustain and expand the Youth Ambassador Program in future years.

*Guidelines*

The grants will begin on or about September 15, 2009. The grant period will be 24 to 34 months in duration, as appropriate for the applicant's program design. Each U.S. applicant organization must work with its partner organizations in the participating countries to propose appropriate dates for the exchanges, which may take place throughout 2010 and 2011 and into 2012. The exact timing of the project may be adjusted through the mutual agreement of the Department of State and the grant recipient.

The grant recipients will be responsible for the following, and therefore applicant organizations should describe these components in detail in their proposals:

- Recruitment and selection of youth and adult educators from diverse geographic regions in the partner countries, with the exception of Brazil. The Public Affairs Section of the U.S. Embassy in the partner country will have a key role in developing a recruitment strategy and deciding how finalists are chosen. Activities for some projects may also include the recruitment and selection of U.S. youth and educators for exchanges to South America.
- Providing orientations for exchange participants and for those participating in the host communities.
- Designing and planning of activities that provide a substantive project on the theme of civic education, leadership

development, and community service, plus a secondary theme. Some activities should be school and community-based and the projects will involve as much sustained interaction with the exchange participants' peers as possible.

- Arranging homestays with properly screened and selected host families.
- Logistical arrangements, including visa applications, interpretation services, international and domestic travel, accommodations, and disbursement of stipends.
- Follow-on activities for exchange alumni that reinforce the ideas, values and skills imparted during the exchange through community projects.

*Recruitment and Selection:* In all of the partner countries except Brazil, the grant recipients must manage the recruitment and merit-based selection of participants in cooperation with the Public Affairs Sections of the U.S. Embassies in the participating countries. Once a grant is awarded, the grant recipient must consult with the Public Affairs Section at the U.S. Embassy to review a recruitment and participant selection plan and to determine the degree of Embassy involvement in the process. For those implementing projects with a U.S. to South American exchange component, the grant recipients must manage the recruitment and open, merit-based selection of U.S. participants as well.

Organizers must strive for regional, socio-economic, and ethnic diversity, as well as gender balance. Collaboration with Bi-National Centers (BNCs) is suggested, if possible. The Department of State and/or its overseas representatives are responsible for final approval of all selected delegations.

*Participants:* The youth participants must be high school students aged 15 to 18 years old who have demonstrated leadership aptitude and a commitment to their communities. Participants will be sought primarily through public high schools in order to reach beyond the elite. Geographic and ethnic diversity is important, including outreach to indigenous, Afro-descendents, and rural populations. The exchange participants will also include adults who are teachers, school administrators, and/or community leaders who work with youth; they will have the dual role of both exchange participant and chaperone. The ratio of youth to adults should be between 5:1 and 10:1.

For those projects that will be conducted in English, the South American and Mexican participants must have sufficient language proficiency to participate fully in interactions with their host families and their peers and in educational activities. A similar level of Spanish language ability is required for the American participants traveling to Chile, Ecuador, and Paraguay. For the U.S. projects that will be conducted in Spanish, the grant recipient will provide interpretation and will place the participants with host families with someone who speaks Spanish.

*Exchange Program:* High schools students and educators will spend three weeks on an intensive program that is designed to develop the participants' knowledge and skill base in civic education and community service as well as in youth leadership development. The exchange will take place in the capital city and in one or two other communities.

The exchanges will focus primarily on interactive activities, practical experiences, and other hands-on opportunities related to the program themes. All programming should include substantive interaction with teenagers of the host country whenever possible. The program will also provide opportunities for the adult educators to work with their peers. Cultural, social, and recreational activities will balance the schedule. In the United States, participants will live with host families in homestays for at least half of the exchange period. In South America, homestays are desired, but not required.

*Follow-on Activities and In-Country Programming:* Exchange participants should go home from the exchange prepared to conduct projects that serve a need in their schools or communities. The design, planning, and implementation of these projects will allow participants to apply what they have learned and enable to them to instigate community action on a modest scale. Applicant organizations should plan follow-on activities that focus on reinvigorating and inspiring the alumni group and assist them in furthering their action plans. In South America, these activities may be implemented by U.S. staff or trainers who travel there several months after the exchange and/or by staff or educators in the partner country (in Brazil, the U.S. Embassy will play this role). The activities will involve some practical skills training in addition to reinforcing the topics of the exchange. ECA strongly recommends additional in-country programming on the project themes for not only the program participants who travel but also their peers at home. Alumni will also be encouraged to make presentations to share their experience with their peers.

Grant recipients will retain the name ''Youth Ambassadors Program'' to identify their program. Materials produced for grant activities need to acknowledge the Department of State as the sponsor and reflect the Department of State's goals for the program.

Proposals must demonstrate how the stated objectives will be met. The proposal narrative should provide detailed information on the major program activities, and applicants should explain and justify their programmatic choices. Programs must comply with J–1 visa regulations for the International Visitor category. Please be sure to refer to the complete Solicitation Package—this RFGP, the Project Objectives, Goals, and Implementation (POGI), and the Proposal Submission Instructions (PSI)—for further information.

## II. Award Information

*Type of Award*: Grant Agreement.

*Fiscal Year Funds:* 2009.

*Approximate Total Funding:* $3,000,000.

*Approximate Number of Awards:* Three.

*Floor of Award Range:* $750,000.

*Ceiling of Award Range:* $3,000,000.

*Anticipated Award Date:* September 15, 2009.

*Anticipated Project Completion Date*: 24–34 months after start date, to be specified by applicant based on project plan.

## III. Eligibility Information

### *III.1. Eligible Applicants*

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

### *III.2. Cost Sharing or Matching Funds*

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs. Cost-sharing from private sources may be used to augment the ECA funding, including increasing the number of exchange participants.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs that are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and

in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

*III.3. Other Eligibility Requirements*

III.3.a. Bureau grant guidelines require that applicant organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates making an award in an amount exceeding $60,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges at the time of application are not eligible to apply under this competition.

III.3.b. Proposed sub-award recipients are also limited to grant funding of $60,000 or less if they do not have four years of experience in conducting international exchanges.

III.3.c. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

III.3.d. Organizations may submit only one proposal (total) under this competition. If multiple proposals are received from the same applicant, all submissions will be declared technically ineligible and will be given no further consideration in the review process.

## IV. Application and Submission Information

**Note:** Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

*IV.1. Contact Information To Request an Application Package*

Please contact the Youth Programs Division, Office of Citizen Exchanges, ECA/PE/C/PY, Room 568, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547. Telephone (202) 453–8171, Fax (202) 453–8169; E-mail: *PiersonCompeauHM@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/PE/C/PY–09–51 when making your request.

Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document, which consists of required application forms, and standard guidelines for proposal preparation. It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria, and budget instructions tailored to this competition.

Please specify Program Officer Carolyn Lantz and refer to the Funding Opportunity Number ECA/PE/C/PY–09–51 on all other inquiries and correspondence.

*IV.2. To Download a Solicitation Package Via Internet*

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/grants/open2.html*, or from the Grants.gov Web site at *http://www.grants.gov*.

Please read all information before downloading.

*IV.3. Content and Form of Submission*

Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. ''Application Deadline and Methods of Submission'' section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. **Please note:** Effective January 7, 2009, all applicants for ECA federal assistance awards must include in their application the names of directors and/or senior executives (current officers, trustees, and key employees, regardless of amount of compensation). In fulfilling this requirement, applicants must submit information in one of the following ways:

1. Those who file Internal Revenue Service Form 990, ''Return of Organization Exempt From Income Tax,'' must include a copy of relevant portions of this form.

2. Those who do not file IRS Form 990 must submit information above in the format of their choice.

In addition to final program reporting requirements, the award recipient will also be required to submit a one-page document, derived from program reports, listing and describing grant activities. For the award recipient, the names of directors and/or senior executives (current officers, trustees, and key employees), as well as the one-page description of grant activities, will be transmitted by the State Department to OMB, along with other information required by the Federal Funding Accountability and Transparency Act (FFATA), and will be made available to the public by the Office of Management and Budget on its USASpending.gov Web site as part of ECA's FFATA reporting requirements.

If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

*IV.3d.1. Adherence to All Regulations Governing the J Visa*

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the ''Responsible Officer'' for the program under the terms of 22 CFR part 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR part 62, organizations receiving awards (either a grant or cooperative agreement) under this RFGP will be third parties ''cooperating with or assisting the sponsor in the conduct of the sponsor's program.'' The actions of recipient organizations shall be ''imputed to the sponsor in evaluating the sponsor's compliance with'' 22 CFR part 62. Therefore, the Bureau expects that any organization receiving an award under

this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 *et seq.*

The Bureau of Educational and Cultural Affairs places critically important emphases on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by recipient organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should explicitly state in writing that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR 62 *et seq.*, including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 203–5029, FAX: (202) 453–8640.

*IV.3d.2. Diversity, Freedom and Democracy Guidelines*

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106—113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

*IV.3d.3. Program Monitoring and Evaluation*

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the recipient organization will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program outputs and outcomes. Outputs are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. Outcomes, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.
2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.
3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.
4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

**Please note:** Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.,* surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

The Recipient organization will be required to provide reports analyzing evaluation findings to the Bureau in regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget:

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting

both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Please refer to the POGI and PSI for complete budget guidelines and formatting instructions.

*IV.3f. Application Deadline and Methods of Submission*

*Application Deadline Date*: Thursday, May 28, 2009.

*Reference Number*: ECA/PE/C/PY–09–51.

*Methods of Submission:* Applications may be submitted in one of two ways:

(1) In hard-copy, via a nationally recognized overnight delivery service (*i.e.,* Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2) Electronically through *http://www.grants.gov.*

**Please Note:** ECA strongly encourages organizations interested in applying for this competition to submit printed, hard copy applications as outlined in section IV.3f.1., below rather than submitting electronically through Grants.gov. This recommendation is being made as a result of the anticipated high volume of grant proposals that will be submitted via the Grants.gov webportal as part of the Recovery Act stimulus package. As stated in these RFGPs, ECA bears no responsibility for data errors resulting from transmission or conversion processes for proposals submitted via Grants.gov

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1. Submitting Printed Applications

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will not notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages may not be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

**Important note:** When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original, one fully-tabbed copy, and six (6) copies with Tabs A–E and appendices (no Tab F) should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/PY–09–51, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

With the submission of the proposal package, please also e-mail the Executive Summary, Proposal Narrative, and Budget sections of the proposal, as well as any attachments essential to understanding the program, in Microsoft Word and/or Excel to the program officer at *LantzCS@state.gov.* The Bureau will provide these files electronically to the Public Affairs Section at the U.S. Embassies for their review.

IV.3f.2. Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system.

**Please Note:** ECA strongly encourages organizations interested in applying for this competition to submit printed, hard copy applications as outlined in section IV.3f.1. above, rather than submitting electronically through *Grants.gov.* This recommendation is being made as a result of the anticipated high volume of grant proposals that will be submitted via the *Grants.gov* webportal as part of the Recovery Act stimulus package. As stated in these RFGPs, ECA bears no responsibility for data errors resulting from transmission or conversion processes for proposals submitted via *Grants.gov.*

Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the ''For Applicants'' section of the Web site. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support, Contact Center Phone: 800–518–4726, Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time, E-mail: *support@grants.gov.*

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Please refer to the Grants.gov Web site, for definitions of various ''application statuses'' and the difference between a submission receipt and a submission validation. Applicants will receive a validation e-mail from grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov. ECA will not notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

## V. Application Review Information

*V.1. Review Process*

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants) resides with the Bureau's Grants Officer.

*Review Criteria*

Technically eligible applications will be competitively reviewed according to the criteria stated below.

1. *Quality of the program idea:* Objectives should be reasonable, feasible, and flexible. The proposal should clearly demonstrate how the institution will meet the program's objectives and plan. The proposed program should be creative, age-appropriate, respond to the design outlined in the solicitation, and demonstrate originality. It should be clearly and accurately written, substantive, and with sufficient detail. Proposals should also include a plan to support participants' community activities upon their return home.

2. *Program planning:* A detailed agenda and work plan should clearly demonstrate how project objectives would be achieved. The agenda and plan should adhere to the program overview and guidelines described above. The substance of workshops, seminars, presentations, school-based activities, and/or site visits should be described in detail.

3. *Support of diversity:* The proposal should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity in participant recruitment and selection and in program content. Applicants should demonstrate readiness to accommodate participants with physical disabilities.

4. *Institutional capacity and track record:* Proposed personnel and institutional resources in both the United States and in the partner countries should be adequate and appropriate to achieve the program goals. The proposal should demonstrate an institutional record, including responsible fiscal management and full compliance with all reporting requirements for any past Bureau grants as determined by the Bureau's Office of Contracts. The Bureau will consider the past performance.

5. *Program evaluation:* The proposal should include a plan to evaluate the program's success in meeting its goals, both as the activities unfold and after they have been completed. The proposal should include a draft survey questionnaire or other technique, plus a description of a methodology to link outcomes to original project objectives. The grant recipient will be expected to submit intermediate reports after each project component is concluded.

6. *Cost-effectiveness and cost sharing:* The applicant should demonstrate efficient use of Bureau funds. The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. The proposal should maximize cost-sharing through other private sector support as well as institutional direct funding contributions, which demonstrates institutional and community commitment.

## VI. Award Administration Information

*VI.1a. Award Notices*

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive a Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

*VI.2. Administrative and National Policy Requirements*

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''.

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information:

*http://www.whitehouse.gov/omb/grants*. *http://fa.statebuy.state.gov*.

*VI.3. Reporting Requirements*

You must provide ECA with a hard copy original plus one copy of the following reports:

1. Interim reports, as required in the Bureau grant agreement.

2. A final program and financial report no more than 90 days after the expiration of the award;

3. A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will be transmitted to OMB, and be made available to the public via OMB's USAspending.gov Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

4. A SF–PPR, ''Performance Progress Report'' Cover Sheet with all program reports.

Award recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.)

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

## VII. Agency Contacts

For questions about this announcement, contact: Carolyn Lantz, Program Officer, Youth Programs

Division, ECA/PE/C/PY, Room 568, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547. Telephone (202) 203–7505. Fax (202) 203–7529. E-mail: *LantzCS@state.gov*.

All correspondence with the Bureau concerning this RFGP should reference the above title and the reference number ECA/PE/C/PY–09–51.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

**VIII. Other Information**

*Notice*

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: April 9, 2009.

**C. Miller Crouch,**

*Acting Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. E9–8745 Filed 4–15–09; 8:45 am]

**BILLING CODE 4710–05–P**

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## DEPARTMENT OF STATE

**[Public Notice 6579]**

## Bureau of Educational and Cultural Affairs (ECA)

*Request for Grant Proposals*: Visual Arts Initiative Program.

*Announcement Type*: New Cooperative Agreements.

*Funding Opportunity Number:* ECA/PE/C/CU–09–50.

*Key Dates:*

*Application Deadline:* May 19, 2009.

*Executive Summary*: The Bureau of Educational and Cultural Affairs (ECA) of the U.S. Department of State seeks an organization to assist the Cultural Programs Division of the Office of Citizen Exchanges in all logistical and administrative aspects related to its support of U.S. Embassy sponsored visual arts programs. The visual arts programs to be supported are intended to foster good will, engage foreign audiences, and provide insight into American culture and values. The Visual Arts Initiative (VAI) program will provide funding on a competitive basis for posts to showcase American talent overseas. Over a period of two years, grantee will be responsible for one-way exchanges in the visual arts, providing support to ECA to include cyclical solicitation and review of proposals received from U.S. Missions abroad using ECA-established criteria; packaging and submitting proposals to ECA for final decision; extending financial support to selected U.S. partners, and; to reporting on program results. The Bureau anticipates that approximately $500,000 will be available to support this program.

The Bureau is interested in receiving proposals from organizations with a strong background/thematic expertise in the visual arts, institutional commitment to cultural diplomacy and the role of the United States in the arts, and a successful track-record in conducting international programs in the arts. Organizations that have the expertise, interest, and institutional commitment but lack the required experience of conducting exchanges may wish to consider developing proposals based on consortia type relationships with more experienced, eligible organizations. Please note that for these proposals, the role of each organization must be clearly defined and any sub-granting agreements must be included in the proposal submission.

**I. Funding Opportunity Description**

*Authority*

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

*Purpose*

Goals and Objectives

This competition is based on the premise that the arts provide an ideal vehicle for communication between people in the United States and other countries and is well-suited to highlight American innovation, creativity, and democratic values. Cultural exchanges strengthen discourse, nurture the social growth of societies, help counter negative stereotypes and demonstrate U.S. commitment to the arts and to artistic and educational projects of high quality. Under this premise, the Bureau and Public Affairs Sections of U.S. Missions abroad look for opportunities to support selected exhibitions or other projects that showcase the work of U.S. artists abroad and that can be the basis for outreach beyond exhibition halls and into the community. The Bureau therefore offers this new funding opportunity for an organization that will help facilitate this type of cultural diplomacy abroad.

Desired Grantee Qualifications

Applicants should have extensive expertise in the visual arts and in the organization of international programs. Proposals must therefore describe this expertise and reflect a practical understanding of global issues, and demonstrate sensitivity to cultural, political, economic, and social differences. Special attention should be given to describing the applicant organization's experience with planning and implementing international cultural exchange projects. Applicants should outline their project team's capacity for successfully implementing projects of this nature, provide a detailed sample program and timeline to illustrate planning capacity and ability to achieve overall objectives. Applicants must identify all U.S. and foreign partner organizations and/or venues with whom they are proposing to collaborate, and describe previous cooperative projects in the section on ''Institutional Capacity.'' For this competition, applicants must include in their proposal supporting materials or documentation that demonstrates a minimum of five years experience in conducting international arts programs and four years experience in conducting exchange programs with the U.S. Government. Proposals must include references with name and contact information for other assistance awards the applicant has received in the event the Bureau chooses to be in touch directly.

Successful applicants must fully demonstrate a capacity to achieve the following:

(1) Work jointly with foreign and U.S. partners, including Public Affairs Sections of U.S. Missions, and/or contacts to design, develop, and execute a program that achieves the goals described in this solicitation.

(2) Design, build, and implement a program across a three year continuum.

(3) Provide a sound infrastructure for coordination and implementation of the entire program. This refers to both substantive and administrative components of the program, including but not limited to: Receipt, review and recommendations of VAI proposals for possible ECA support; arrangement of international and domestic travel for U.S. artists/approved participants; briefing and orientation of artists prior to departure; visa and passport applications; vaccines and other pre-departure procedures; transfer of funds for honoraria; shipping and insuring of art and other costs allowed by ECA under the approved proposal.

(4) Successful applicants will also have U.S. partners able and willing to provide cost-sharing (including in-kind) in order to help cover program costs.

Desired Program Design

Each year of the grant, ECA will solicit proposals for visual arts projects from Public Affairs Sections (PAS) of U.S. Missions in countries across the globe. The solicitation will be for proposals in a determined/set number of cycles with specific deadlines. The grantee, in turn, will receive these proposals from PAS and review them for accuracy and completion. It will communicate with PAS when additional information or clarification is necessary to obtain a complete and comprehensive proposal. The grantee will review and assess proposals following other criteria to be determined by ECA. Shortly following the cycle deadline, the grantee will present the full package of completed proposals in priority order with recommendations and comments that correspond to criteria set by ECA. The Bureau will make final decisions regarding approval of projects and communicate these to the grantee and to the Public Affairs Section (PAS) located at U.S. Missions abroad. PAS and/or ECA will communicate final decisions to selected U.S. artists. The grantee will subsequently proceed to disburse approved funds to the U.S. artist or his/her designated representative. As applicable, the grantee will make all travel arrangements for the U.S. artist, curator or other approved participant selected by the Bureau to participate in the overseas program. Funds are expected to cover such costs as international travel, honoraria and/or expenses for shipment of art, including insurance. Final determination of funding amounts will be made by ECA as part of its approval of projects. Occasionally, proposals will be received from PAS outside of the cycle deadlines and the grantee may be asked to make a review and recommendation in these instances. The grantee will be expected to put together a final report within a month of the project completion that will include but not be limited to media coverage, reports from PAS, photos or other visuals, reports from the selected artist or other approved participant, and final costs.

Responsibilities

In the cooperative agreement, ECA is substantially involved in program activities above and beyond routine monitoring. ECA responsibilities for this program are as follows:

■ Each year of the grant ECA will make a worldwide solicitation of nominations for visual arts projects from U.S. Missions abroad (Public Affairs Sections).

■ PAS will be one channel for nominations of proposals. Grantee may also propose visual arts projects for consideration by PAS. However, all nominations for consideration under this program must be submitted by PAS to the grantee with a copy to ECA.

■ ECA will review all the nominations as presented by the grantee and make the final selection of projects for award. ECA will also make the final determination regarding funding amount for each proposal approved.

■ ECA will notify PAS and, as appropriate, the U.S. artist/approved participant.

Grantee responsibilities for this program are as follows:

• Design nomination form and draft solicitation message for final approval by ECA.

• Develop a budget that will incrementally allocate the total funding over the life-cycle of the entire project.

• Accept, review and analyze incoming proposals using criteria set by ECA at the initiation of the program. Criteria may include, but is not limited to elements such as artistic quality/excellence of U.S. artist and art; appropriateness of venue, and; opportunities for local outreach. Grantee will need to rely on its expertise in the visual arts in order to provide the necessary analysis addressing matters related to quality of art to be displayed, suitability of U.S. artist selected to represent the U.S., suitability of foreign venue.

• Cyclically present to ECA a package of all received proposals in priority order with recommendations based on expert analysis of all criteria set by ECA.

• For each cycle, the grantee will also provide recommendations for funding of each proposal, and produce a report of past expenditures to include an itemized listing of actual costs compared to budgeted amounts and a detailed plan for the use of any funds not expended and carried over. Grantee will need to rely on its expertise in arts exchanges in order to provide ECA with an appropriate recommendation of suitability of costs for project.

• Once final decisions on proposals have been communicated to PAS by ECA and artists or curators informed by ECA or PAS, begin to process administrative aspects of program, including but not limited to disbursement of moneys to U.S. artists or other envoys, travel arrangements, visa and passport, immunizations, payments and other applicable logistical elements determined by ECA to be necessary in order to support PAS' project.

• Arrange and provide orientation sessions and pre-travel briefings and produce press materials for U.S. artists/envoys. Orientation sessions should address issues of cultural sensitivity for country/ies to be visited by U.S. artist/approved participant/curator.

• Liaise with post and U.S. artist/approved participant/curator as necessary in order to support logistical aspects of the VAI project.

• Within one month from project completion, report on VAI project activities compiling PAS and U.S. artist/envoy reports, media coverage and an evaluation of the project.

## II. Award Information

*Type of Award*: Cooperative Agreement. ECA's level of involvement in this program is listed under number I above.

*Fiscal Year Funds:* FY–2009.

*Approximate Total Funding:* $500,000.

*Approximate Number of Awards:* 1.

*Approximate Average Award:* $500,000.

*Anticipated Award Date:* September 1, 2009.

*Anticipated Project Completion Dates:* December 30, 2011.

*Additional Information:*

## III. Eligibility Information

### *III.1. Eligible Applicants*

Applications may be submitted by public and private non-profit

organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

*III.2. Cost Sharing or Matching Funds*

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing, and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

*III.3. Other Eligibility Requirements*

(a.) Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates making one award of approximately $500,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

(b.) Proposals must demonstrate that an applicant has an established resource base of programming contacts and the ability to keep this resource base continuously updated. This resource base should include but is not limited to thematically related institutions (e.g., visual arts organizations), speakers, thematic specialists, and practitioners in a wide range of professional fields in both private and public sectors.

(c.) Technical Eligibility: All proposals must comply with the list of requirements below or they will result in your proposal being declared technically ineligible and given no further consideration in the review process:

—For this competition, all eligible organizations must demonstrate a minimum of five years' experience successfully conducting international arts exchange programs that involved the exchange of participants, as well as at least four years' experience successfully conducting international programs with the U.S. Government.

—Key U.S. partner institutions and their roles in the project must be identified and letters of support provided in the proposal.

## IV. Application and Submission Information

**Note:** Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

*IV.1. Contact Information To Request an Application Package*

Please contact the Cultural Programs Division of the Office of Citizens' Exchanges of the Bureau of Educational and Cultural Affairs, ECA/PE/P/CU, Room 569, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, 202–453–8175, 202–203–7525, *BrooksMM@state.gov*, to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/PE/C/CU–09–50 located at the top of this announcement when making your request.

Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

Please specify Alan Cross and refer to the Funding Opportunity Number ECA/PE/C/CU–09–50 located at the top of this announcement on all other inquiries and correspondence.

*IV.2. To Download a Solicitation Package Via Internet*

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/grants/open2.html*, or from the Grants.gov Web site at *http://www.grants.gov*.

Please read all information before downloading.

*IV.3. Content and Form of Submission*

Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. ''Application Deadline and Methods of Submission'' section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

IV.3c. You must have nonprofit status with the IRS at the time of application. **Please note:** Effective January 7, 2009, all applicants for ECA federal assistance awards must include in their application the names of directors and/or senior executives (current officers, trustees, and key employees, regardless of amount of compensation). In fulfilling this requirement, applicants must submit information in one of the following ways:

(1) Those who file Internal Revenue Service Form 990, ''Return of Organization Exempt From Income Tax,'' must include a copy of relevant portions of this form.

(2) Those who do not file IRS Form 990 must submit information above in the format of their choice.

In addition to final program reporting requirements, award recipients will also be required to submit a one-page document, derived from their program reports, listing and describing their grant activities. For award recipients, the names of directors and/or senior executives (current officers, trustees, and key employees), as well as the one-page description of grant activities, will be transmitted by the State Department to OMB, along with other information required by the Federal Funding Accountability and Transparency Act (FFATA), and will be made available to the public by the Office of Management and Budget on its USASpending.gov Web site as part of ECA's FFATA reporting requirements.

If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary

documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1. Adherence to All Regulations Governing the J Visa

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the ''Responsible Officer'' for the program under the terms of 22 CFR part 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR part 62, organizations receiving awards (either a grant or cooperative agreement) under this RFGP will be third parties ''cooperating with or assisting the sponsor in the conduct of the sponsor's program.'' The actions of recipient organizations shall be ''imputed to the sponsor in evaluating the sponsor's compliance with'' 22 CFR 62. Therefore, the Bureau expects that any organization receiving an award under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 *et seq*.

The Bureau of Educational and Cultural Affairs places critically important emphases on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by recipient organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should explicitly state in writing that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR part 62 *et seq.*, including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 203–5029, FAX: (202) 453–8640.

IV.3d.2. Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the recipient organization will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program outputs and outcomes. Outputs are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. Outcomes, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.

2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

**Please note:** Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and

institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.*, surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Recipient organizations will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3d.4. Describe your plans for: Sustainability, overall program management, staffing, coordination with ECA and PAS.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit SF–424A—''Budget Information—Non-Construction Programs'' along with a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.3e.2. Allowable costs for the program include the following:

(1) Design and implementation of VAI program (including, as appropriate, staff, administrative expenses, supplies, equipment, production costs for filmmaking project, orientation and de-briefing costs, etc.);

(2) International and domestic travel for U.S. artists/envoys and other costs associated (visas, passports, immunization);

(3) As allowed, costs associated with transportation of art to foreign venue, including insurance;

(4) Costs related to collecting and compiling material for final reports to ECA.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods Of Submission

*Application Deadline Date:* May 19, 2009.

*Reference Number:* ECA/PE/C/CU–09–50.

*Methods of Submission:* Applications may be submitted in one of two ways:

1. In hard-copy, via a nationally recognized overnight delivery service (i.e., Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

2. Electronically through *http://www.grants.gov.*

**Please Note:** ECA strongly encourages organizations interested in applying for this competition to submit printed, hard copy applications as outlined in section IV.3f.1., below rather than submitting electronically through Grants.gov. This recommendation is being made as a result of the anticipated high volume of grant proposals that will be submitted via the Grants.gov webportal as part of the Recovery Act stimulus package. As stated in this RFGPs, ECA bears no responsibility for data errors resulting from transmission or conversion processes for proposals submitted via Grants.gov.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1. Submitting Printed Applications

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will not notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages may not be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

**Important note:** When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and nine (9) copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/CU–09–50, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

IV.3f.2. Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system.

**Please Note:** ECA strongly encourages organizations interested in applying for this competition to submit printed, hard copy applications as outlined in section IV.3f.1. above, rather than submitting electronically through *Grants.gov.* This recommendation is being made as a result of the anticipated high volume of grant proposals that will be submitted via the *Grants.gov* webportal as part of the Recovery Act stimulus package. As stated in these RFGPs, ECA bears no responsibility for data errors resulting from transmission or conversion processes for proposals submitted via *Grants.gov.*

Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the ''For Applicants'' section of the Web site. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data

errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support, Contact Center Phone: 800–518–4726, Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time, E-mail: *support@grants.gov.*

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Please refer to the Grants.gov Web site, for definitions of various ''application statuses'' and the difference between a submission receipt and a submission validation.

Applicants will receive a validation e-mail from Grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov. ECA will not notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Optional—IV.3f.3. You may also state here any limitations on the number of applications that an applicant may submit and make it clear whether the limitation is on the submitting organization, individual program director or both.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

## V. Application Review Information

### *V.1. Review Process*

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for cooperative agreements resides with the Bureau's Grants Officer.

Review Criteria

1. *Program Planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

2. *Ability To Achieve Program Objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

3. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

4. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

5. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau awards (grants or cooperative agreements) as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

6. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended.

7. *Cost-effectiveness/Cost-sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

## VI. Award Administration Information

### *VI.1a. Award Notices*

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive a Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.1b. The following additional requirements apply to this project:

A critical component of current U.S. government Iran policy is the support for indigenous Iranian voices. The State Department has made the awarding of grants for this purpose a key component of its Iran policy. As a condition of licensing these activities, the Office of Foreign Assets Control (OFAC) has requested the Department of State to follow certain procedures to effectuate the goals of Sections 481(b), 531(a), 571, 582, and 635(b) of the Foreign Assistance Act of 1961 (as amended); 18 U.S.C. 2339A and 2339B; Executive Order 13224; and Homeland Security Presidential Directive 6. These licensing conditions mandate that the Department conduct a vetting of potential Iran grantees and sub-grantees for counter-terrorism purposes. To conduct this vetting the Department will collect information from grantees and sub-grantees regarding the identity and background of their key employees and Boards of Directors.

**Note:** To assure that planning for the inclusion of Iran complies with requirements, please contact (Cultural Programs Division—Jill Staggs at *StaggsJ@state.gov*) for additional information.

All awards made under this competition must be executed according to all relevant U.S. laws and policies regarding assistance to the Palestinian Authority, and to the West Bank and Gaza. Organizations must consult with relevant Public Affairs Offices before entering into any formal arrangements or agreements with Palestinian organizations or institutions.

**Note:** To assure that planning for the inclusion of the Palestinian Authority complies with requirements, please contact Cultural Programs Division, Jill Staggs, *StaggsJ@state.gov* for additional information.

*VI.2. Administrative and National Policy Requirements*

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''.

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information:

*http://www.whitehouse.gov/omb/grants*. *http://fa.statebuy.state.gov*.

*VI.3. Reporting Requirements*

You must provide ECA with a hard copy original plus nine (9) copies of the following reports:

1. A final program and financial report no more than 90 days after the expiration of the award;

2. A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will will be transmitted to OMB, and be made available to the public via OMB's USAspending.gov Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

3. A SF–PPR, ''Performance Progress Report'' Cover Sheet with all program reports.

Award recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information).

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

**VII. Agency Contacts**

For questions about this announcement, contact: Alan Cross, Cultural Programs Division, ECA/PE/C/CU, Room 568, ECA/PE/C/CU–09–50, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, 202–203–7497, 202–205–7525, *CrossA@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/CU–09–50.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

**VIII. Other Information**

*Notice*

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: April 8, 2009.

**C. Miller Crouch,**

*Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. E9–8677 Filed 4–15–09; 8:45 am]

BILLING CODE 4710–05–P

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## DEPARTMENT OF STATE

**[Public Notice 6582]**

## Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: U.S.-French Teachers-in-Training Program

*Announcement Type*: Cooperative Agreement.

*Funding Opportunity Number:* ECA/A/S/X–09–02.

*Catalog of Federal Domestic Assistance Number:* 00.000.

*Application Deadline:* June 4, 2009.

*Executive Summary*: The Fulbright Teacher Exchange Branch in the Office of Global Educational Programs of the U.S. Department of State's Bureau of Educational and Cultural Affairs (ECA/A/S/X) announces an open competition for the U.S.-French Teachers-in-Training Program. Accredited, U.S. post-secondary educational institutions meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to administer a three-month teacher exchange program for U.S. and French beginning teachers. The program will provide approximately 25 French pre-service teachers with a three-week orientation to American history, culture and society, provided through seminars in an academic setting, and a nine-week practical component, provided through practice teaching experience under the guidance of experienced mentor teachers at a U.S. secondary school. The program will also integrate a professional development seminar with other program activities throughout the practical teaching period. Proposals should document strong contacts with local school districts in the United States to demonstrate the ability to provide the practical student-teaching component for French pre-service teachers. Proposals should also demonstrate the ability to conduct a substantive professional development seminar in an academic setting.

The program will also provide for exchange visits to France for U.S. beginning teachers and students preparing for teaching careers. In cooperation with the French Ministry of Education and the Conference of Directors of the University Institutes for Teacher Training (Conférence des directeurs d'IUFM), and with support from the Franco-American Commission for Educational Exchange (Fulbright Commission), the cooperating institution will recruit and select approximately 15 U.S. pre-service or in-service teachers, and provide a pre-departure orientation in the U.S. The French partners will arrange an in-country orientation, French language training, and a three-month student teaching internship for U.S. teachers with funds that will be provided separately. The program for French teachers will run from January to March 2010. The U.S. program should be planned for fall 2010. The total award for all program and administrative expenses covered under the agreement will be approximately $375,000.

## I. Funding Opportunity Description

*I.1. Authority*

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries* * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations* * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

*I.2. Purpose*

*Overview:*

I.2a. Program Goals

1. Contribute to mutual understanding between France, a key U.S. partner and ally, and the United States.
2. Provide French teachers-in-training, especially those who plan to teach in diverse schools, a better understanding of U.S. society, history, and culture.
3. Provide opportunities for students in French schools to learn first-hand about U.S. society, history and culture from beginning and future American teachers.
4. Expose U.S. beginning and student teachers to a greater understanding of another culture, society, and educational system.
5. Provide opportunities for both French and U.S. teachers to develop teaching skills in a different educational environment.
6. Provide opportunities for schools in France and in the United States to develop long-lasting ties and to share educational best practices, including strategies for teaching in multi-cultural, mixed-ability classrooms.

This program is expected to assist French and American educators as they prepare students to live in an increasingly interdependent world.

I.2b. French Participants

French participants will be in their first year of practical teaching and will be expected to pass their final practical examination in France in early June 2010. It is anticipated that many of the participants will teach in schools that serve economically disadvantaged and/or diverse socio-economic sectors.

I.2c. U.S. Participants

U.S. participants will be undergraduate or graduate students in education, recent graduates with education degrees, or first-year teachers. All U.S. participants must be new teachers or in an advanced stage of preparations to become teachers. The cooperating institution will recruit and select U.S. participants in a nationwide search in coordination with the Fulbright Teacher Exchange Branch, the Fulbright Commission, the French Embassy, the Conference of Directors of the University Institutes for Teacher Training (Conférence des directeurs d'IUFM), and the French Ministry of Education. U.S. participants may teach any subject, but some proficiency in the French language is a requirement. As a whole, U.S. participants should reflect the diversity of American society (including, but not limited to geographic, gender, racial, ethnic, and socio-economic diversity).

I.2d. Guidelines

The cooperating institution should conduct a short planning visit to France to consult with representatives from the Fulbright Commission, the French Ministry of Education, the Conference of Directors of the University Institutes for Teacher Training (Conférence des directeurs d'IUFM), the U.S. Embassy, and local educators. Based on assessments made during this planning visit, the cooperating institution will develop a detailed schedule and curriculum in consultation with the Fulbright Teacher Exchange Branch for the U.S.-based program and will discuss with French partners the development of the program for U.S. participants. The cooperating institution, in consultation with the Ministry of Education, should develop a process that will assist French participants to receive official recognition by the French Ministry of Education for their participation in this program.

I.2e. Cooperating Institution's Responsibilities for French Participants

- Plan and implement the exchange program, including both the academic and practical components;
- Identify school districts to host groups for internships (schools should submit a brief proposal outlining their interest, understanding of goals, examples of best practices, and commitment to mentoring). School districts should be within driving distance of the host university. Schools should designate an experienced mentor teacher to oversee the day-to-day activities of the participants;
- Arrange Washington, DC program;
- Assist with and attend pre-departure orientation in France;
- Conduct debriefing in the U.S.;
- Prepare DS–2019 forms for participants in this program under a Bureau SEVIS program number;
- Administer logistics for French participants: transportation to local schools and training sites, enrollment in Bureau health insurance program, assistance with U.S. tax, social security, and other government forms;
- Arrange for housing.

I.2f. Cooperating Institution's Responsibilities for U.S. Participants

- Recruit and select U.S. participants in consultation with the Fulbright Teacher Exchange Branch, the Fulbright Commission, the Conference of Directors of the University Institutes for Teacher Training (Conférence des directeurs d'IUFM), and the French Ministry of Education;
- Facilitate pre-departure orientation in the U.S.;
- Arrange travel of U.S. participants: Purchase airline tickets and enrollment in Bureau health insurance for U.S. participants.

I.2g. General Responsibilities

- Coordinate with various partners, including the Fulbright Commission, the French Ministry of Education, the Conference of Directors of the University Institutes for Teacher Training (Conférence des directeurs d'IUFM), and the Fulbright Teacher Exchange Branch in the Bureau of Educational and Cultural Affairs regarding all activities, reporting and evaluation (the proposal should address mechanisms for communication and coordination);
- Monitor and evaluate the program;
- Administer all financial aspects of the program and comply with reporting requirements;
- Plan follow-on activities with host schools and participants.

Please note that international tickets for French participants will be arranged and funded by the French Ministry of Education. French participants will receive a maintenance allowance from the French Ministry of Education and will be responsible for their own meals and incidental expenses.

The Department of State will provide American participants with a monthly maintenance allowance to be disbursed by the Fulbright Commission in France.

Proposals should address follow-on activities in conjunction with the Fulbright Commission and host schools

in the United States and France to increase future impact and on-going participant support.

The agreement will begin on, or about, September 1, 2009 and the cooperating institution should complete all exchange activities by June 30, 2011. Please refer to additional program specific guidelines in the Project Objectives, Goals, and Implementation (POGI) document. Programs must comply with J–1 visa regulations. Please refer to the Solicitation Package for further information.

In a cooperative agreement, ECA/A/S/X will be substantially involved in the program activities mentioned above and beyond routine grant monitoring. ECA/A/S/X activities and responsibilities for this program are as follows:

- Formulation of program policy;
- Clearing texts, recruitment and program guidelines for publication;
- In cooperation the Fulbright Commission, oversee selection of U.S. participants;
- Oversight of the content for all orientations as well as review and approval of program schedules.

## II. Award Information

*Type of Award*: New Cooperative Agreement. ECA's level of involvement in this program is listed under number I above.

*Fiscal Year Funds*: FY2009.

*Approximate Total Funding*: $375,000.

*Approximate Number of Awards*: 1.

*Approximate Average Award*: $375,000.

*Anticipated Award Date*: September 1, 2009.

*Anticipated Project Completion Date*: June 30, 2011.

*Additional Information*: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this agreement for two additional fiscal years, before openly competing it again.

## III. Eligibility Information

### *III.1. Eligible Applicants*

Applications may be submitted by accredited, post-secondary educational institutions meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

### *III.2. Cost Sharing or Matching Funds*

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

### *III.3. Other Eligibility Requirements*

(a) Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates awarding one grant, in an amount up to $375,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

## IV. Application and Submission Information

**Note:** Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

### *IV.1. Contact Information To Request an Application Package*

Please contact the Office of Global Educational Programs, ECA/A/S/X, Room 349, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, tel. (202) 453–8897, fax (202) 453–8890, or e-mail *Mosleypj@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/A/S/X 09–02 located at the top of this announcement when making your request. Alternatively, an electronic application package may be obtained from Grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify ECA/A/S/X Program Officer Michelle Garren and refer to the Funding Opportunity Number (ECA/A/S/X 09–02) located at the top of this announcement on all other inquiries and correspondence.

### *IV.2. To Download a Solicitation Package Via Internet*

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm,* or from the Grants.gov Web site at *http://www.grants.gov.*

Please read all information before downloading.

### *IV.3. Content and Form of Submission*

Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. ''Application Deadline and Methods of Submission'' section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. **Please note:** Effective January 7, 2009, all applicants for ECA federal assistance awards must include in their application the names of directors and/or senior executives (current officers, trustees, and key employees, regardless

of amount of compensation). In fulfilling this requirement, applicants must submit information in one of the following ways:

(1) Those who file Internal Revenue Service Form 990, ''Return of Organization Exempt From Income Tax,'' must include a copy of relevant portions of this form.

(2) Those who do not file IRS Form 990 must submit information above in the format of their choice.

In addition to final program reporting requirements, award recipients will also be required to submit a one-page document, derived from their program reports, listing and describing their grant activities. For award recipients, the names of directors and/or senior executives (current officers, trustees, and key employees), as well as the one-page description of grant activities, will be transmitted by the State Department to OMB, along with other information required by the Federal Funding Accountability and Transparency Act (FFATA), and will be made available to the public by the Office of Management and Budget on its USASpending.gov Web site as part of ECA's FFATA reporting requirements.

If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

*IV.3d.1. Adherence to All Regulations Governing the J Visa*

The Bureau of Educational and Cultural Affairs places critically important emphases on the security and proper administration of the Exchange Visitor (J visa) Programs and adherence by award recipients and sponsors to all regulations governing the J-visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR part 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Grantee will be responsible for designating an Alternate Responsible Officer under a Bureau SEVIS program number to issue DS–2019 forms on its behalf to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 203–5029, FAX: (202) 453–8640.

Please refer to Solicitation Package for further information.

*IV.3d.2. Diversity, Freedom and Democracy Guidelines*

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

*IV.3d.3. Program Monitoring and Evaluation*

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the recipient will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program outputs and outcomes. Outputs are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. Outcomes, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.

2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. Institutional changes, such as increased collaboration and

partnerships, policy reforms, new programming, and organizational improvements.

**Please note:** Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (i.e., surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

*IV.3d.4. Describe Your Plans for Overall Program Management, Staffing, and Coordination With ECA/A/S/X*

ECA/A/S/X considers program management, staffing and coordination with the Department of State essential elements of your program. Please be sure to give sufficient attention to these elements in your proposal. Please refer to the Technical Eligibility Requirements and the POGI in the Solicitation package for specific guidelines. Describe your plans for: *i.e.*, sustainability, overall program management, staffing, coordination with ECA and PAS or any other requirements, etc.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. The budget should not exceed $375,000 for program and administrative costs. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.3e.2. Allowable costs for the program include the following:

(1) International Travel.

(2) Costs for U.S. Competition.

(3) U.S. Ground Transportation.

(4) Orientation and Professional Development Seminar (instruction, materials, logistics).

(5) Host schools (administrative costs).

(6) Participant lodging and per diem.

(7) Cultural Activities.

(8) Book Allowance/Shipping.

(9) Recipient Administrative Costs.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

*IV.3f. Application Deadline and Methods of Submission*

*Application Deadline Date:* June 4, 2009.

*Reference No*: ECA/A/S/X–09–02.

*Methods of Submission:* Applications may be submitted in one of two ways:

1. In hard-copy, via a nationally recognized overnight delivery service (*i.e.*, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

2. Electronically through *http://www.grants.gov.*

**Please Note:** ECA strongly encourages organizations interested in applying for this competition to submit printed, hard copy applications as outlined in section IV.3f.1 below rather than submitting electronically through Grants.gov. This recommendation is being made as a result of the anticipated high volume of grant proposals that will be submitted via the Grants.gov webportal as part of the Recovery Act stimulus package. As stated in these RFGPs, ECA bears no responsibility for data errors resulting from transmission or conversion processes for proposals submitted via Grants.gov

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

*IV.3f.1. Submitting Printed Applications*

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will not notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages may not be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

**Important note:** When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and eight copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/X–09–02, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants submitting hard-copy applications must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) or Microsoft Word format on a PC-formatted disk. The Bureau will provide these files electronically to the appropriate Public Affairs Section at the U.S. embassy for its review.

*IV.3f.2. Submitting Electronic Applications*

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system.

**Please Note:** ECA strongly encourages organizations interested in applying for this competition to submit printed, hard copy applications as outlined in section IV.3f.1. above rather than submitting electronically through *Grants.gov*. This recommendation is being made as a result of the anticipated high volume of grant proposals that will be submitted via the *Grants.gov* webportal as part of the Recovery Act stimulus package. As stated in these RFGPs, ECA bears no responsibility for data errors resulting from transmission or conversion processes for proposals submitted via *Grants.gov*.

Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov. Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of

the application and the speed of your internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the ''For Applicants'' section of the Web site. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support, Contact Center Phone: 800–518–4726, Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time, E-mail: *support@grants.gov*.

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Please refer to the Grants.gov Web site, for definitions of various ''application statuses'' and the difference between a submission receipt and a submission validation. Applicants will receive a validation e-mail from grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov. ECA will not notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

## V. Application Review Information

### *V.1. Review Process*

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (cooperative agreement) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Program planning*: Detailed agenda and relevant work plan should demonstrate substantive expertise in professional development for student teachers and logistical capacity. The agenda and plan should illustrate effective use of community and regional resources to enhance participants' educational and cultural experiences.

2. *Ability to achieve program objectives*: Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

3. *Multiplier effect/impact*: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages between U.S. and French schools.

4. *Support of Diversity*: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities) both in the United States and in France.

5. *Institutional Capacity*: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

6. *Institution's Record/Ability*: Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

7. *Follow-on Activities*: Proposals should provide a plan for continued follow-on activity ensuring that Bureau supported programs are not isolated events.

8. *Project Evaluation*: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives are recommended.

9. *Cost-effectiveness/cost sharing*: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support, as well as institutional direct funding contributions.

## VI. Award Administration Information

### *VI.1a. Award Notices*

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive a Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

### *VI.2. Administrative and National Policy Requirements*

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations''.
Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions''.
OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''.
OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.
OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.
OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information:
*http://www.whitehouse.gov/omb/grants.*
*http://fa.statebuy.state.gov.*

*VI.3. Reporting Requirements*

You must provide ECA with a hard copy original plus one copy of the following reports:

1. A program report no more than 90 days following the French teacher program component as well as the U.S. teacher program component.
2. A final program and financial report no more than 90 days after the expiration of the award;
3. A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will be transmitted to OMB, and be made available to the public via OMB's USAspending.gov Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.
4. A SF–PPR, ''Performance Progress Report'' Cover Sheet with all program reports.

Award recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.)

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

*VI.4. Program Data Requirements*

Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

1. Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.
2. Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

**VII. Agency Contacts**

For questions about this announcement, contact: Michelle Garren, *garrenmw@state.gov*, ECA/A/S/X, Room 349, ECA/A/S/X 09–02, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, tel. (202) 453–8884, fax (202) 453–8890.

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/S/X 09–02.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

**VIII. Other Information**

*Notice*

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: April 8, 2009.

**C. Miller Crouch,**

*Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. E9–8645 Filed 4–15–09; 8:45 am]

BILLING CODE 4710–05–P

## DEPARTMENT OF STATE

**[Public Notice 6583]**

### Culturally Significant Objects Imported for Exhibition Determinations: ''William Holman Hunt and the Pre-Raphaelite Vision''

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''William Holman Hunt and the Pre-Raphaelite Vision,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Minneapolis Institute of Arts, from on or about June 14, 2009, until on or about September 6, 2009, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8048). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: April 7, 2009.

**C. Miller Crouch,**

*Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. E9–8746 Filed 4–15–09; 8:45 am]

BILLING CODE 4710–05–P

## DEPARTMENT OF STATE

**[Public Notice 6584]**

### Culturally Significant Objects Imported for Exhibition Determinations: ''African and Oceanic Art From the Barbier-Mueller Museum, Geneva: A Legacy of Collecting''

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to

the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''African and Oceanic Art from the Barbier-Mueller Museum, Geneva: A Legacy of Collecting,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York, NY, from on or about June 2 until on or about September 27, 2009, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8048). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: April 7, 2009.

**C. Miller Crouch,**

*Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. E9–8747 Filed 4–15–09; 8:45 am]

**BILLING CODE 4710–05–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket No. FRA 2009–0001–N–8]**

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Federal Railroad Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

**DATES:** Comments must be received no later than June 15, 2009.

**ADDRESSES:** Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 17, Washington, DC 20590, or Ms. Nakia Jackson, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number ___.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6216 or (202) 493–6497, or via e-mail to Mr. Brogan at *robert.brogan@dot.gov*, or to Ms. Jackson at *nakia.jackson@dot.gov*. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Ms. Nakia Jackson, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6073). (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(I)–(iv); 5 CFR 1320.8(d)(1)(I)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below are brief summaries of three currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

*Title*: Grade Crossing Signal System Safety Regulations.

*OMB Control Number:* 2130–0534.

*Abstract*: FRA believes that highway-rail grade crossing (grade crossing) accidents resulting from warning system failures can be reduced. Motorists lose faith in warning systems that constantly warn of an oncoming train when none is present. Therefore, the fail-safe feature of a warning system loses its effectiveness if the system is not repaired within a reasonable period of time. A greater risk of an accident is present when a warning system fails to activate as a train approaches a grade crossing. FRA's regulations require railroads to take specific responses in the event of an activation failure. FRA uses the information to develop better solutions to the problems of grade crossing device malfunctions. With this information, FRA is able to correlate accident data and equipment malfunctions with the types of circuits and age of equipment. FRA can then identify the causes of grade crossing system failures and investigate them to

determine whether periodic maintenance, inspection, and testing standards are effective. FRA also uses the information collected to alert railroad employees and appropriate highway traffic authorities of warning system malfunctions so that they can take the necessary measures to protect motorists and railroad workers at the grade crossing until repairs have been made.

*Form Number(s):* FRA F 6180.83.

*Affected Public:* Businesses.

*Frequency of Submission:* On occasion; recordkeeping.

*Reporting Burden:*

| CFR Section | Respondent universe | Total annual responses | Average time per response (min) | Total annual burden hours | Total annual burden cost |
|---|---|---|---|---|---|
| 234.7—Telephone Notification | 685 railroads | 4 phone calls | 15 | 1 | $35 |
| 234.9—Grade crossing signal system failure rpts. | 685 railroads | 600 reports | 15 | 150 | 5,250 |
| 234.9—Notification to train crew and highway traffic control authority. | 685 railroads | 24,000 notifications | 5 | 2,000 | 70,000 |
| 234.9–Recordkeeping | 685 railroads | 12,000 records | 10 | 2,000 | 70,000 |

*Total Estimated Responses:* 36,604.

*Total Estimated Annual Burden:* 4,151 hours.

*Status:* Regular Review.

*OMB Control Number:* 2130–0535.

*Type of Request:* Extension of a currently approved collection.

*Affected Public:* Businesses.

*Form Number(s):* N/A.

*Abstract:* Section 20139 of Title 49 of the United States Code required FRA to issue rules, regulations, orders, and standards for the safety of maintenance-of-way employees on railroad bridges, including for ''bridge safety equipment'' such as nets, walkways, handrails, and safety lines, and requirements for the use of vessels when work is performed on bridges located over bodies of water. FRA has added 49 CFR Part 214 to establish minimum workplace safety standards for railroad employees as they apply to railroad bridges. Specifically, section 214.15(c) establishes standards and practices for safety net systems. Safety nets and net installations are to be drop-tested at the job site after initial installation and before being used as a fall-protection system; after major repairs; and at six-month intervals if left at one site. If a drop-test is not feasible and is not performed, then a written certification must be made by the railroad or railroad contractor, or a designated certified person, that the net does comply with the safety standards of this section. FRA and State inspectors use the information to enforce Federal regulations. The information that is maintained at the job site promotes safe bridge worker practices.

*Frequency of Submission:* On occasion.

*Total Estimated Responses:* 6.

*Total Estimated Annual Burden:* 1 hour.

*Status:* Regular Review.

*Title:* Railroad Police Officers.

*OMB Control Number:* 2130–0537.

*Type of Request:* Extension of a currently approved collection.

*Affected Public:* Railroads and States.

*Form(s):* None.

*Abstract:* Under 49 CFR Part 207, railroads are required to notify states of all designated police officers who are discharging their duties outside of their respective jurisdictions. This requirement is necessary to verify proper police authority.

*Total Estimated Responses:* 70.

*Total Annual Estimated Burden Hours:* 181 hours.

*Status:* Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on April 10, 2009.

**Kimberly Orben,**

*Director, Office of Financial Management, Federal Railroad Administration.*

[FR Doc. E9–8723 Filed 4–15–09; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF THE TREASURY

### Office of the Secretary

### Notice of Call for Redemption of 12–1/2 Percent Treasury Bonds of 2009–14

**AGENCY:** Department of the Treasury.

**ACTION:** Notice.

**SUMMARY:** As of April 15, 2009, the Secretary of the Treasury gives public notice that all outstanding 12–1/2 percent Treasury Bonds of 2009–14 (CUSIP No. 912810 DL 9) dated August 15, 1984, due August 15, 2014, are called for redemption at par on August 15, 2009, on which date interest on such bonds will cease.

**DATES:** Treasury calls such bonds for redemption on August 15, 2009.

**FOR FURTHER INFORMATION CONTACT:** Definitives Section, Customer Service Branch 3, Office of Retail Securities, Bureau of the Public Debt, (304) 480–7711.

**SUPPLEMENTARY INFORMATION:**

1. *Bonds Held in Registered Form.* Owners of such bonds held in registered form should mail bonds for redemption directly to: Bureau of the Public Debt, Definitives Section, Customer Service Branch 3, P.O. Box 426, Parkersburg, WV 26106–0426. Owners of such bonds will find further information regarding how owners must present and surrender such bonds for redemption under this call, in Department of the Treasury Circular No. 300 dated March 4, 1973, as amended (31 CFR Part 306); by contacting the Definitives Section, Customer Service Branch 3, Office of Retail Securities, Bureau of the Public Debt, telephone number (304) 480–7711; and by going to the Bureau of the Public Debt's Web site, *http://www.treasurydirect.gov.*

2. *Bonds Held in Book-Entry Form.* Treasury automatically will make redemption payments for such bonds held in book-entry form, whether on the books of the Federal Reserve Banks or in Treasury Direct accounts, on August 15, 2009.

**Kenneth E. Carfine,**

*Fiscal Assistant Secretary.*

[FR Doc. E9–8672 Filed 4–15–09; 8:45 am]

BILLING CODE 4810–40–P

# Reader Aids

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**Reminders.** Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at **http://www.regulations.gov.**

**CFR Checklist.** Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

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**H.R. 146/P.L. 111–11**
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**H.R. 1512/P.L. 111–12**
Federal Aviation Administration Extension Act of 2009 (Mar. 30, 2009; 123 Stat. 1457)

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