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3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

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

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

RESERVATIONS: (202) 741–6008

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Contents

Federal Register

Vol. 74, No. 74

Monday, April 20, 2009

Agriculture Department
See Cooperative State Research, Education, and Extension Service
See Forest Service
See Grain Inspection, Packers and Stockyards Administration
See Rural Utilities Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 17939–17940

Antitrust Division
NOTICES
National Cooperative Research and Production Act (1993):
DVD Copy Control Association, 17985

Centers for Disease Control and Prevention
NOTICES
Criteria for Vaccination Requirements for U.S. Immigration Purposes; Correction, 17966
Meetings:
Disease, Disability, and Injury Prevention and Control Special Emphasis Panel; Correction, 17967

Coast Guard
RULES
Safety Zone:
Jordan Bridge Demolition, Elizabeth River, Chesapeake and Portsmouth, VA, 17905–17907
Red River, MN, 17902–17905
PROPOSED RULES
Safety Zone:
AVI July Fireworks Display; Laughlin, NV, 17931–17933
Rockets Over the River; Bullhead City, AZ, 17928–17931
Sea World 4th of July Fireworks Display; Mission Bay, San Diego, CA, 17926–17928
NOTICES
Meetings:
National Maritime Security Advisory Committee, 17979–17980

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration
See National Telecommunications and Information Administration

Cooperative State Research, Education, and Extension Service
PROPOSED RULES
Solicitation of Input from Stakeholders on the 1890 Institution Capacity Building Grants Program, 17909–17910

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals; Correction, 17955

Employee Benefits Security Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 17985–17991

Employment and Training Administration
NOTICES
Termination of Investigation:
ABF Freight Systems Inc., Dayton, OH, 17994
Acument Global Technologies, North America Business Unit, Ring Screw, LLC, Fenton, MI, et al., 17991
Alcatel-Lucent, Westford, MA, 17992
Allegheny Ludlum Corp., Midland, PA, 17992
Arcelormittal Lackawanna LLC, Subsidiary of Arcelormittal USA, Blasdell, NY, 17992–17993
Auto Truck Transport, Portland, OR, 17995
Boise Cascade LLC, White City, OR, 17991
Cabot Supermetals, Gilbertsville, PA, 17992
CB and I Inc., Warren, PA, 17993
Chrysler, LLC, Chrysler Plymouth Road Office Complex, Detroit, MI, 17994
Datwyler Rubber And Plastic, Marion, SC, 17994
Diversified Machine, Inc., Milwaukee, WI, 17993
Eaton Hydraulics, Greenwood, SC, 17992
Ecoquest Holding Corp., Greenville, TN, 17993
Ethan Allen Operations, Inc., Case Goods Division, Andover, ME, 17995
Ethan Allen Operations, Inc., Case Goods Division, Old Fort, NC, 17995
Fairfield Chair Co., Plant 2; Lenoir, NC, 17992
Freescale Semiconductor, Technical Support Engineering, Austin, TX, 17995
Gerber Technology, Richardson, TX, 17993
Gmark Industries, McAlllen, TX, 17994
Group Dekko, Inc., Murray Plant, Murray, IA, 17991
Hewlett Packard Caribe, Bv, LLC, Aguadilla, PR, 17991
Lyon Workspace Products, Montgomery, IL, 17994
Masterbrand, Littlestown, PA, 17994
Oviso Manufacturing, Concord, CA, 17992
Richland Manufacturing, a Subsidiary of Eagle Wings Industries, Inc., Olney, IL, 17995
Sekisui Voltek, LLC, Coldwater, MI, 17993
SUMCO Phoenix Corp., SUMCO Southwest Corp., Subsidiary of SUMCO Corp., Phoenix, AZ, 17995
Tyco Electronics Corp., Jonestown, PA, 17993
Ultimizers, Inc., Boring, OR, 17994

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 17955

Environmental Protection Agency
PROPOSED RULES
Outer Continental Shelf Air Regulations Consistency Update for CA, 17934–17938
NOTICES
Cross-Media Electronic Reporting Rule State Approved Program Revision Approval:
North Dakota, 17958–17959

Federal Aviation Administration
RULES
Amendment of Class D and Class E Airspace:
Conroe, TX, 17899–17900
Amendment to Class E Airspace:
Summersville, WV, 17900
Establishment of Class E Airspace:
Dallas, GA, 17900–17901
Modification of Class D and Class E Airspace, Establishment of Class E Airspace:
Binghamton, NY, 17901–17902
PROPOSED RULES
Establishment of VOR Federal Airway V–625:
Arizona, 17911–17912
Proposed Amendment of Class E Airspace:
Devine, TX, 17912–17914
Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers; Extension of Comment Period, 17910–17911
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18022
Charter Renewal:
RTCA Government/Industry Air Traffic Management Advisory Committee, 18022–18031
Noise Compatibility Program:
Gulfport Biloxi International Airport, Gulfport MS: Correction, 18036

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 17959

Federal Emergency Management Agency
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 17971–17972
Assistance to Firefighters Grant Program, 17972–17979

Federal Energy Regulatory Commission
NOTICES
Applications:
Maritimes & Northeast Pipeline, LLC, 17956–17957
Nevada Hydro Company, Inc., 17956
Complaints:
Suncor Energy Marketing Inc. et al., 17957
Filings:
Grayling Generating Station Limited Partnership, 17958
PacifiCorp, 17957

Federal Highway Administration
NOTICES
Environmental Impact Statements; Availability, etc.:
Kings County, NY, 18031–18032

Federal Reserve System
RULES
Equal Credit Opportunity; CFR Correction, 17899
NOTICES
Federal Open Market Committee; Domestic Policy Directive (March 17 and 18, 2009), 17959

Federal Trade Commission
PROPOSED RULES
Health Breach Notification Rule, 17914–17925

Food and Drug Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 17962–17964
Meetings:
Risk Evaluation and Mitigation Strategies for Certain Opioid Drugs, 17967–17970

Foreign–Trade Zones Board
NOTICES
Application for Expansion:
Foreign-Trade Zone 17—Kansas City, Kansas Area, 17953–17954

Forest Service
NOTICES
Meetings:
Glenn/Colusa County Resource Advisory Committee, 17944
Revised Land and Resource Management Plan:
Kaibab National Forest; AZ, 17947–17948
Two Special Focus Grants from National Urban and Community Forestry Advisory Council; Request for Proposals, 17948

General Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 17959–17960

Grain Inspection, Packers and Stockyards Administration
NOTICES
Designation for the Unassigned Areas of East Texas, 17940–17941
Proposed Posting, Posting, and Deposting of Stockyards, 17945–17947
United States Standards for Whole Dry Peas and Split Peas, 17948–17950

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
See U.S. Customs and Border Protection

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 17981–17982

Interior Department
See Land Management Bureau
See Minerals Management Service
See Reclamation Bureau

International Trade Administration
NOTICES
Antidumping:
Circular Welded Carbon Steel Pipes and Tubes from Taiwan, 17950–17951
Hot-Rolled Carbon Steel Flat Products from India, 17951–17953

Wooden Bedroom Furniture from China, 17951

Justice Department
See Antitrust Division

Labor Department
See Employee Benefits Security Administration
See Employment and Training Administration

Land Management Bureau
NOTICES
Filing of Plat of Survey:
Illinois, 17984
Nebraska, 17984
Wisconsin, 17983

Legal Services Corporation
NOTICES
Meetings; Sunshine Act, 17995–17997

Minerals Management Service
NOTICES
Outer Continental Shelf Oil and Gas Lease Sales, 17984

National Archives and Records Administration
NOTICES
Records Schedules; Availability and Request for Comments, 17997–17999

National Highway Traffic Safety Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18021–18022
Petition for Decision:
Nonconforming 2008 Harley Davidson FX, FL, XL and VR Series Motorcycles Are Eligible for Importation, 18036–18037
Petition for Exemption from the Federal Motor Vehicle Motor Theft Prevention Standard:
Porsche, 18037–18039

National Institutes of Health
NOTICES
Meetings:
National Heart, Lung, and Blood Institute, 17970–17971
National Institute of Mental Health, 17966–17967
NIH Blue Ribbon Panel; Cancelled, 17970

National Oceanic and Atmospheric Administration
RULES
Magnuson–Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States:
Northeast Multispecies Fishery; Closure of the Eastern U.S./Canada Management Area, 17907–17908
NOTICES
Meetings:
New England Fishery Management Council, 17954
Pacific Fishery Management Council, 17954–17955

National Science Foundation
NOTICES
Meetings:
Advisory Committee for Education and Human Resources, 17999–18000
Proposal Review Panel for Physics, 17999

National Telecommunications and Information Administration
PROPOSED RULES
Low-Power Television and Translator Upgrade Program; Withdrawal, 17938

Nuclear Regulatory Commission
NOTICES
Final Regulatory Guide: Issuance, Availability and Withdrawal, 18000
Issuance of Renewed Facility Operating License:
Exelon Generation Co., LLC, 18000–18001

Postal Regulatory Commission
NOTICES
Postal Product Price Changes, 18001–18002

Postal Service
NOTICES
Change in Rates of General Applicability for Competitive Products; Correction, 18002–18003

Railroad Retirement Board
NOTICES
Meetings; Sunshine Act, 18003

Reclamation Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 17982–17983

Research and Innovative Technology Administration
NOTICES
Establishing Strategic Direction for the Intelligent Transportation Systems Program, 18032–18036

Rural Utilities Service
NOTICES
Grant Application Deadlines and Funding Levels; Availability and Solicitation, 17941–17944

Securities and Exchange Commission
PROPOSED RULES
Amendments to Regulation SHO, 18042–18113
Interagency Proposal for Model Privacy Form Under the Gramm–Leach–Bliley Act, 17925–17926
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18004–18005
Meetings:
Triangle Capital Corp., 18005–18006
Order Approving Increase to Public Company Accounting Oversight Board Annual Accounting Support Fee (Calendar Year 2009), 18006–18007
Self-Regulatory Organizations; Proposed Rule Change:
Financial Industry Regulatory Authority, Inc., 18007–18009
International Securities Exchange, LLC, 18017
New York Stock Exchange LLC and NYSE Alternext US LLC, 18009–18012
NYSE Arca, Inc., 18012–18013, 18018–18019
Options Clearing Corp., 18013–18017

Small Business Administration
NOTICES
Disaster Declaration:
Indiana, 18004

Minnesota, 18003
North Dakota, 18003–18004

State Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 18020
Waiver of Restriction on Assistance to Central Government of Egypt, 18020

Substance Abuse and Mental Health Services Administration

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 17960–17962, 17964–17966

Surface Transportation Board
NOTICES
Abandonment Exemption:
Mid-Michigan Railroad, Inc.; Muskegon County, MI, 18020–18021

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See National Highway Traffic Safety Administration
See Research and Innovative Technology Administration
See Surface Transportation Board

U.S. Customs and Border Protection
NOTICES
Meetings:
Advisory Committee on Commercial Operations of Customs and Border Protection, 17980–17981

Veterans Affairs Department
RULES
Post-9/11 GI Bill; Correction, 17907
NOTICES
Meetings:
Advisory Committee on Disability Compensation, 18039
Advisory Committee on Gulf War Veterans, 18039–18040
Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board, 18040

Separate Parts In This Issue

Part II
Securities and Exchange Commission, 18042–18113

Reader Aids
Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR

Proposed Rules:

Chap. XXXIV 17909

12 CFR

202.....17899

14 CFR

71 (4 documents) 17899, 17900, 17901

Proposed Rules:

65.....17910

71 (2 documents) 17911, 17912

119.....17910

121.....17910

135.....17910

142.....17910

16 CFR

Proposed Rules:

318.....17914

17 CFR

Proposed Rules:

242.....18042

248.....17925

33 CFR

165 (2 documents) 17902, 17905

Proposed Rules:

165 (3 documents) 17926, 17928, 17931

38 CFR

21.....17907

40 CFR

Proposed Rules:

55.....17934

47 CFR

Proposed Rules:

Chapter III.....17938

50 CFR

648.....17907

Rules and Regulations

Federal Register
Vol. 74, No. 74
Monday, April 20, 2009

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.

FEDERAL RESERVE SYSTEM

12 CFR Part 202

Equal Credit Opportunity

CFR Correction

In Title 12 of the Code of Federal Regulations, parts 200 to 219, revised as of January 1, 2009, on page 31, the following text is reinstated at the end of Appendix A to part 202.

Appendix A to Part 202—Federal Enforcement Agencies

* * * * *

Federal Credit Unions: Regional office of the National Credit Union Administration serving the area in which the federal credit union is located.

Air carriers: Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590

Creditors Subject to Surface Transportation Board: Office of Proceedings, Surface Transportation Board, Department of Transportation, 1925 K Street NW., Washington, DC 20423

Creditors Subject to Packers and Stockyards Act: Nearest Packers and Stockyards Administration area supervisor.

Small Business Investment Companies: Associate Deputy Administrator for Capital Access, United States Small Business Administration, 409 Third Street, SW., 8th Floor, Washington, DC 20416.

Brokers and Dealers: Securities and Exchange Commission, Washington, DC 20549.

Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks, and Production Credit Associations: Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

Retailers, Finance Companies, and All Other Creditors Not Listed Above: FTC Regional Office for region in which the creditor operates or Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

[FR Doc. E9–9103 Filed 4–17–09; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0338; Airspace Docket No. 09–ASW–9]

Amendment of Class D and Class E Airspace; Conroe, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, technical amendment.

SUMMARY: This action clarifies the Class D and Class E airspace descriptions for Lone Star Executive Airport, Conroe, TX, published in the **Federal Register** December 17, 2008 (73 FR 76517). Ambiguities in the legal description has caused inaccurate charting of the Class D and Class E surface areas at Lone Star Executive Airport. This action amends the legal descriptions to coincide with the FAA's National Aeronautical Charting Office.

DATES: *Effective Date:* 0901 UTC, May 7, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Ft Worth, TX 76193–0530; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On, December 17, 2008, the FAA published in the **Federal Register** a final rule to establish Class D and Class E airspace at Lone Star Executive Airport, Conroe, TX (73 FR 76517, Docket No. FAA–2008–0960). Subsequent to publication, the FAA found ambiguities in the Class D and Class E airspace area depictions on the VFR Sectional Chart and VFR Terminal Area Chart for Lone Star Executive Airport. This technical amendment will clarify the above airspace area.

Class D and E airspace designations are published in paragraph 5000, and 6002, respectively, of FAA Order 7400.9S signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR Part 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

Final Rule Technical Amendment

This technical amendment clarifies the legal description of the Class D & E airspace areas to avoid confusion on the part of pilots flying in the vicinity of Lone Star Executive Airport, Conroe, TX. The legal description will be restated in its entirety to avoid further confusion.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Lone Star Executive Airport, Conroe, TX.

In consideration of the need to clarify the legal description and avoid confusion on the part of pilots flying in the vicinity of Lone Star Executive Airport, the FAA finds good cause, pursuant to 5 U.S.C. 553(d), for making this amendment effective in less than 30 days in order to promote the safe and efficient handling of air traffic in the area. ''Accordingly, since this merely involves a change in the legal description of the Conroe, TX, airspace area, and does not involve a change in the dimension or operating requirements, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.''

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR part 71.1 of the Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008, and effective October 31, 2008, is amended as follows:

Paragraph 5000 Class D Airspace.

ASW TX D Conroe, TX [Amended]

Lone Star Executive Airport, TX
(Lat. 30°21′09″ N., long. 95°24′52″ W.)
Navasota VORTAC
(Lat. 30°17′19″N., long. 096°03′30″ W.)
HUMBLE VORTAC
(Lat. 29°57′25″ N., long. 095°20′45″ W.)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 4.1-mile radius of Lone Star Executive Airport, excluding that airspace within the 4.1 mile radius northeast of the intersection of the IAH VORTAC 356° radial and the TNV VORTAC 081° radial. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E Airspace Designated as Surface Areas.

ASW TX E2 Conroe, TX [Amended]

Lone Star Executive Airport, TX
(Lat. 30°21′09″ N., long. 95°24′52″ W.)
Navasota VORTAC
(Lat. 30°17′19″ N., long. 096°03′30″ W.)
HUMBLE VORTAC
(Lat. 29°57′25″ N., long. 095°20′45″ W.)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 4.1-mile radius of Lone Star Executive Airport, excluding that airspace within the 4.1 mile radius northeast of the intersection of the IAH VORTAC 356° radial and the TNV VORTAC 081° radial. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E9–8845 Filed 4–17–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–1073; Airspace Docket No. 08–AEA–28]

Amendment to Class E Airspace; Summersville, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; confirmation of effective date, technical amendment.

SUMMARY: This action confirms the effective date of a final rule published in the **Federal Register** on December 15, 2008, amending Class E airspace at Summersville, WV (73 FR 75938). This action also corrects the misspelling of the airport name and town from Summerville to Summersville.

DATES: *Effective Date:* 0901 UTC, April 20, 2009. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support Group, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; Telephone (404) 305–5610, Fax 404–305–5572.

SUPPLEMENTARY INFORMATION:

Confirmation of Effective Date

The FAA published this direct final rule with a request for comments in the **Federal Register** on December 15 (73 FR 75938) amending Class E airspace to provide adequate controlled Class E airspace for aircraft executing Instrument Flight Rule operations at Summersville, WV. The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on March 12, 2009. No adverse comments were received, and thus this notice confirms that effective date.

Technical Amendment

After publication, it was observed that the airport name and town were misspelled. Therefore, in the **Federal Register** Docket No. FAA–2008–1073; Airspace Docket No. 08–AEA–28, published on December 15, 2008 (73 FR 75938), change the following: on page 75938, columns 1 and 2, and page 75939, columns 1 and 2, change referenced spelling from Summerville Airport and Summerville, WV, to ''Summersville Airport and Summersville, WV.''

* * * * *

Issued in College Park, Georgia, on April 1, 2009.

Myron A. Jenkins,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. E9–8834 Filed 4–17–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–1084; Airspace Docket No. 08–ASO–17]

Establishment of Class E Airspace; Dallas, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; confirmation of effective date, technical amendment.

SUMMARY: This action confirms the effective date of the direct final rule that establishes controlled airspace at Dallas, GA, published in the **Federal Register** on October 22, 2008, (73 FR 62876). This action also changes the airport name from Paulding County Airport to Paulding County Regional Airport.

DATES: *Effective Date:* 0901 UTC, April 20, 2009. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

Correction to Final Rule

After publication, it was observed that the airport name was incomplete. Therefore, in the **Federal Register** Docket No. FAA–2008–1084; Airspace Docket No. 08–ASO–17, published October 22, 2008, (73 FR 62876) make

the following change: On page 62876, in the third column, under ''Summary'', and on page 62877, in the second column, under ''History and The Rule'', and on page 62878, in the first column, under ''ASO GA E Dallas, GA [New]'', correct the airport name to read ''Paulding County Regional Airport''.

Confirmation of Effective Date

The FAA published this direct final rule with a request for comments in the **Federal Register** on October 22, 2008, (73 FR 62876), establishing Class E airspace to support Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPS) developed for Paulding County Regional Airport. The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment or a written notice of intent to submit such an adverse comment were received within the comment period, the regulation would become effective on January 15, 2009. No adverse comments were received, and thus this notice confirms that effective date.

* * * * *

Issued in College Park, GA, on April 2, 2009.

Myron A. Jenkins,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. E9–8846 Filed 4–17–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0202; Airspace Docket 09–AEA–11]

Modification of Class D and Class E Airspace, Establishment of Class E Airspace; Binghamton, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action modifies the Class D and E airspace at Binghamton Regional/Edwin A. Link Field Airport in Binghamton, NY. After the development of specific Approach Procedures (APs) at the airfield, it was determined the Class D and E Surface airspace should be modified to facilitate a more efficient operation. This rule increases the safety and management of the National Airspace System (NAS) around Binghamton Regional/Edwin A. Link Field.

DATES: Effective 0901 UTC, July 2, 2009. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments should be received no later than June 4, 2009.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001; *Telephone:* 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2009–0202; Airspace Docket No. 09–AEA–11, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov*.

You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (*see* **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this rule only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit and adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. An electronic copy of this document may be downloaded from and comments may be submitted and reviewed at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*. Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES** above or through the Web site. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2009–0202; Airspace Docket No. 09–AEA–11.'' The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 modifies Class D and E4 airspace and

establishes Class E2 airspace at Binghamton, NY by expanding the controlled airspace, extending upward from the surface of the Earth to support IFR operations at Binghamton Regional/Edwin A. Link Field Airport to a 4.3-mile radius with minor extensions for arrivals.

Class D, Class E2 and E4 airspace designations for airspace areas extending upwards from the surface of the Earth are published in Paragraph 5000, 6002 and 6004 respectively, of FAA Order 7400.9S, dated October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class D and E2 airspace designations listed in this document will be published subsequently in the Order.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the Class D, E2 and E4 airspace at Binghamton Regional/Edwin A. Link Field Airport in Binghamton, NY.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, dated October 3, 2008, and effective October 31, 2008, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AEA NY D Binghamton, NY [REVISED]

Binghamton Regional/Edwin A. Link Field Airport, Binghamton, NY
(Lat. 42°12′31″ N, long. 75°58′47″ W)

That airspace extending upward from the surface to and including 4,100 feet MSL within a 4.3-mile radius of the Binghamton Regional/Edwin A. Link Field Airport. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

AEA NY E2 Binghamton, NY [NEW]

Binghamton Regional/Edwin A. Link Field Airport, Binghamton, NY
(Lat. 42°12′31″ N, long. 75°58′47″ W)
Binghamton VORTAC
(Lat. 42°09′27″ N, long. 76°08′11″ W)
SMITE LOM
(Lat. 42°06′17″ N, long. 75°53′29″ W)
ILS Runway 34 Localizer
(Lat. 42°13′12″ N, long. 75°59′15″ W)

That airspace extending upward from the surface of the Earth within a 4.3-mile radius of the Binghamton Regional/Edwin A. Link Field Airport and within 1.6 miles each side of the 070° bearing from the airport to 9.3 miles northeast of the airport and within 1.8 miles each side of the Binghamton VORTAC 067° bearing from the VORTAC to the 4.3-mile radius to the airport and within 1.8 miles each side of the Binghamton Regional/Edwin A. Link Field Airport ILS LOC SE course extending from the 4.3-mile radius of the airport to 1.8 miles SE of the SMITE LOM. This Class E Surface airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E Airspace Designated as an Extension to Class D Surface Areas.

* * * * *

AEA NY E4 Binghamton, NY [REVISED]

Binghamton Regional/Edwin A. Link Field Airport, Binghamton, NY
(Lat. 42°12′31″ N, long. 75°58′47″ W)
Binghamton VORTAC
(Lat. 42°09′27″ N, long. 76°08′11″ W)
SMITE LOM
(Lat. 42°06′17″ N, long. 75°53′29″ W)
Binghamton Regional/Edwin A. Link Field Airport ILS Runway 34 Localizer
(Lat. 42°13′12″ N, long. 75°59′15″ W)

That airspace extending upward from the surface within 1.6 miles each side of the 070° bearing from the airport to 9.3 miles northeast of the airport and within 1.8 miles each side of the Binghamton VORTAC 067° bearing from the VORTAC to the 4.3-mile radius to the airport and within 1.8 miles each side of the Binghamton Regional/Edwin A. Link Field Airport ILS LOC SE course extending from the 4.3-mile radius of the airport to 1.8 miles SE of the SMITE LOM. This Class E Surface airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on April 2, 2009.

Myron A. Jenkins,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. E9–8835 Filed 4–17–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0240]

RIN 1625–AAOO

Safety Zone, Red River, MN

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard Captain of the Port, Marine Safety Unit Duluth, MN is establishing a temporary safety zone on the Red River, MN. This safety zone is being established to ensure, to the extent practicable, the safety of the public. The safety zone prohibits individuals from entering all navigable waters of the Red River, in the State of Minnesota, north of a line drawn across latitude 46°20′00″ N, including those portions of the river in Wilkin, Clay, Norman, Polk, Marshall and Kittson counties, extending to the United States-Canada international border.

DATES: This rule is effective from 12 p.m. on March 31, 2009 until 5 p.m. on April 24, 2009. If the river conditions change such that enforcement of the Safety Zone is unnecessary prior to 5 p.m. on April 24, 2009, the COTP will notify the public via a Broadcast Notice to Mariners.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0240 and are available online at *http://www.regulations.gov.* They are also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the Coast Guard Marine Safety Unit Duluth, MN, 600 S. Lake Avenue, Duluth, MN, 55802 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call LT Aaron Gross, Chief of Port Operations, Marine Safety Unit Duluth, 600 S. Lake Avenue, Duluth, MN 55802; (218) 720–5286 Ext. 111. 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 doing so would be contrary to the emergency nature for which this safety zone is being established. Specifically, inclement weather has caused the Red River to flood, and in an effort to protect the public, to the extent practicable, from the dangers of the flood it is necessary to publish this temporary rule without notice and comment.

For that same reason, 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.**

Background and Purpose

This temporary safety zone is necessary to ensure, to the extent practicable, the safety of the public from hazards involved with the flooding of the Red River. Restricted access to the Red River by the public will help protect persons and property from the dangers associated with the flooding along the Red River.

Discussion of Rule

A temporary safety zone is necessary to ensure, to the extent practicable, the safety of and property from the hazards presented from the flooding of the Red River. The safety zone will be in effect from March 31, 2009 until 5 p.m. on April 24, 2009.

The safety zone will encompass all navigable waters of the Red River in the State of Minnesota north of a line drawn across latitude 46°20′00″ N, including those portions of the river in Wilkin, Clay, Norman, Polk, Marshall and Kittson counties, extending to the United States-Canada international border.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Duluth or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

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.

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 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 only until the Red River is deemed safe to transit. Further, vessel operators desiring to enter or operate within the safety zone may contact the Captain of the Port Duluth or his on-scene representative to seek permission to do so.

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 expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect 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 5100.1 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 under the Instruction that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This temporary rule establishes a safety zone therefore paragraph (34)(g) of the Instruction applies.

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. 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 temporary § 165.T09–0240 to read as follows:

§ 165.T09–0240 Safety zone; Red River Safety Zone, Red River, MN.

(a) *Location.* The following area is a temporary safety zone: all navigable waters of the Red River in the State of Minnesota north of a line drawn across latitude 46°20′00″ N, including those portions of the river in Wilkin, Clay, Norman, Polk, Marshall and Kittson counties, to the United States—Canada international border.

(b) *Enforcement period.* This rule will be enforced from 12 p.m. on March 31, 2009 until 5 p.m. on April 24, 2009. If the River conditions change such that enforcement of the Safety Zone is unnecessary prior to 5 p.m. on April 24, 2009, the COTP will notify the public via a Broadcast Notice to Mariners.

(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 Duluth, 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 Duluth 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 Duluth or his on-scene representative to obtain permission to do so. 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 Duluth or his on-scene representative.

Dated: March 31, 2009.

M.P. Lebsack,

Commander, U.S. Coast Guard, Captain of the Port, Duluth.

[FR Doc. E9–8911 Filed 4–17–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0217]

RIN 1625–AA00

Safety Zone; Jordan Bridge Demolition, Elizabeth River, Chesapeake and Portsmouth, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Elizabeth River in the vicinity of Chesapeake and Portsmouth, VA during demolition of the Jordan Bridge. This action is intended to protect mariners and public property on the Elizabeth River from the hazards associated with bridge demolition.

DATES: This rule is effective from May 3, 2009 through May 6, 2009, with contingency dates of May 18, 2009 through May 21, 2009 in the event of adverse weather conditions.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0217 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–2009–0217 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 at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail LT Tiffany Duffy, Coast Guard; telephone 757–668–5580, e-mail *Tiffany.A.Duffy@uscg.mil.* 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 any delay encountered in this regulation's effective date by publishing a NPRM would be contrary to public interest since immediate action is needed to provide for the safety of life and property on navigable waters. Specifically, since debris from a bridge being demolished could lead to severe injury, fatalities and/or destruction of public property, immediate action is needed to protect, to the extent practicable, the public's safety.

For the same reason, 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.** Delaying the effective date would be contrary to the public interest.

Background and Purpose

Coast Guard Sector Hampton Roads has been notified by Delta Demolition Group that construction operations to demolish the Jordan Bridge lift span over the Elizabeth River will commence on May 3, 2009. Due to the need to protect mariners and spectators from the hazards associated with this project, access to the Elizabeth River between the Belt Line Railroad Bridge and the Norfolk and Western Portsmouth Chesapeake Railroad Bridge will be temporarily restricted.

Discussion of Rule

The Coast Guard is establishing a temporary safety zone on specified waters of the Elizabeth River in the vicinity of Chesapeake and Portsmouth, VA. This safety zone will encompass all navigable waters of the Elizabeth River between the Belt Line Railroad Bridge at approximate position 36°48′42″ N/ 76°17′25″ W (NAD 1983) and the Norfolk and Western Portsmouth Chesapeake Railroad Bridge at approximate position 36°47′49″ N/ 76°17′34″ W (NAD 1983). This regulated area will be established in the interest of public safety during the removal of the Jordan Bridge lift span and will be enforced from May 3, 2009 through May 6, 2009, with contingency dates of May 18, 2009 through May 21, 2009 in the event of adverse weather conditions. Access to the area within the safety zone will be restricted during the specified date and times or until swing span removal is complete, whichever is sooner. Except for participants and vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the regulated area.

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. Although this proposed regulation restricts access to the safety zone, the effect of this rule will not be significant because: (i) The 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. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

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 affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit a portion of the Elizabeth River during the time this regulation is in effect. Since the impact

of this rule is expected to be minimal, 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 safety zone will not have a significant economic impact on a substantial number of small entities for the following reason: The safety zone will only be in place for a limited duration. Before the effective period, maritime advisories will be issued allowing mariners to adjust their plans accordingly. Although the safety zone will apply to the entire width of the bridge, traffic will be allowed to pass through the zone with the permission of the Captain of the Port or his Representative.

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 establishing a safety zone around the removal of a bridge lift span. This zone introduces no additional hazards to the environment, but closes the zone to the maritime public to protect life and property during hazardous conditions. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

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 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. 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.T05–0217 to read as follows:

§ 165.T05–0217 Safety Zone; Jordan Bridge Lift Span Demolition, Elizabeth River, Chesapeake and Portsmouth, VA.

(a) *Regulated Area.* The following area is a safety zone: All waters of the Elizabeth River, located between the Belt Line Railroad Bridge at approximate position 36°48′42″ N/ 76°17′25″ W (NAD 1983) and the Norfolk and Western Portsmouth Chesapeake Railroad Bridge at approximate position 36°47′49″ N/ 76°17′34″ W (NAD 1983), in the vicinity of Chesapeake and Portsmouth, 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 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 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 from May 3, 2009 through May 6, 2009, with contingency dates of May 18, 2009 through May 21, 2009 in the event of adverse weather conditions.

Dated: April 3, 2009.

Patrick B. Trapp,

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

[FR Doc. E9–8946 Filed 4–17–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900—AN10

Post-9/11 GI Bill

Correction

In rule document E9–7052 beginning on page 14654 in the issue of Tuesday, March 31, 2009, make the following corrections:

§ 21.4200 [Corrected]

1. On page 14667, in the second column, in §21.4200, under amendatory instruction 21a., ''title10, U.S.C.'' should read ''title 10, U.S.C.''.

§ 21.9650 [Corrected]

2. On page 14687, in the first column, in §21.9650(a)(i), ''$50.00 per month'' should read ''$950.00 per month''.

3. On the same page, in the second column, in §21.9650(b)(2)(i), ''$50.00 per month'' should read ''$950.00 per month''.

[FR Doc. Z9–7052 Filed 4–17–09; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 071004577–8124–02]

RIN 0648–XO25

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Closure of the Eastern U.S./Canada Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces a temporary closure of the Eastern U.S./Canada Area to limited access NE multispecies days-at-sea (DAS) vessels. Based upon Vessel Monitoring System (VMS) reports and other available information, the Administrator, Northeast Region, NMFS (Regional Administrator) has projected that 100 percent of the total allowable catch (TAC) of Georges Bank (GB) cod allocated to be harvested from the Eastern U.S./Canada Area would be harvested in the next few days, if current catch rates continue. This action is being taken to prevent the 2008 TAC for GB cod in the Eastern U.S./Canada Area from being exceeded during the 2008 fishing year in accordance with the regulations implemented under Amendment 13 to the NE Multispecies Fishery Management Plan (FMP) and the Magnuson–Stevens Fishery Conservation and Management Act.

DATES: The temporary closure of the Eastern U.S./Canada Area to all limited access NE multispecies DAS vessels is effective 0001 hr April 16, 2009, through 2400 hr local time, April 30, 2009.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, (978) 281–9341, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing the GB cod landing limit within the Eastern U.S./ Canada Area are found at (§ 648.85(a)(3)(iv)(A) and (D). The regulations authorize vessels issued a valid limited access NE multispecies permit and fishing under a NE multispecies DAS to fish in the U.S./ Canada Management Area, as defined at (§ 648.85(a)(1), under specific conditions. The TAC for Eastern GB cod for the 2008 fishing year (May 1, 2008– April 30, 2009) was set at 667 mt (73 FR 16572, March 28, 2008), a 35–percent increase from the TAC for the 2007 fishing year.

The regulations at (§ 648.85(a)(3)(iv)(D) authorize the Administrator, Northeast (NE) Region, NMFS (Regional Administrator), to increase or decrease the trip limits in the U.S./Canada Management Area to prevent over-harvesting or under-harvesting the TAC allocation. The default landing limit of Eastern GB cod for NE multispecies DAS vessels fishing in the Eastern U.S./Canada Area is 500 lb (226.8 kg) per DAS, or any part of a DAS, up to 5,000 lb (2,268 kg) per trip. NMFS published a temporary rule on December 23, 2008 (73 FR 78659), increasing the landing limit for Eastern GB cod to 1,000 lb (453.6 kg) per DAS, or any part of a DAS, up to 10,000 lb (4,535.9 kg) per trip. The limit was subsequently decreased on March 9, 2009, to 500 lb per DAS, or any part of a DAS, up to 5,000 lb per trip, as the TAC was expected to be achieved by early April, prior to the conclusion of the 2008 fishing year.

Based upon VMS daily catch reports and other available information, the 2008 TAC is projected to be achieved if the Eastern U.S./Canada Area is closed immediately. Therefore, to ensure that the TAC for GB cod will not be exceeded, the Eastern U.S./Canada Area is closed to all limited access NE

multispecies DAS vessels, effective 0001 hr April 16, 2009, pursuant to (§ 648.85(a)(3)(iv)(E), through the end of the 2008 fishing year (April 30, 2009).

Vessel owners that have made a correct VMS declaration indicating their intention to fish in the Eastern U.S./Canada Area, and crossed the demarcation line prior to 0001 hr April 16, 2009 may continue to fish for the remainder of their trip in the Eastern U.S./Canada Area. Vessels that are currently declared into the Eastern U.S./Canada Area and have already (flexed out(or (flexed west,(may not reenter the Eastern U.S./Canada Area after 0001 hr April 16, 2009. Any vessel that leaves the Eastern U.S./Canada Area after 0001 hr April 16, 2009 is prohibited from reentering the Eastern U.S./Canada Area for the remainder of the fishing year, unless otherwise notified.

Classification

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3), there is good cause to waive prior notice and opportunity for public comment, as well as the delayed effectiveness for this action, because prior notice and comment and a delayed effectiveness would be impracticable and contrary to the public interest. This action will temporarily close the Eastern U.S./Canada Area to NE multispecies DAS vessels. This action is necessary to prevent the Eastern U.S./Canada Area GB cod TAC from being exceeded during the 2008 fishing year. Because of the rapidly increasing GB cod harvest rate, and the small GB cod TAC, it is projected that 102 percent of the GB cod TAC will be harvested if the Eastern U.S./Canada Area is closed immediately. This projection was not available until April 13, 2009.

This action is required by the regulations at (§ 648.85(a)(3)(iv)(E) to prevent over-harvesting the U.S./Canada Management Area TACs. The time necessary to provide for prior notice, opportunity for public comment, and delayed effectiveness for this action would prevent the agency from taking immediate action to halt the catch of GB cod in the Eastern U.S./Canada Area and prevent the Eastern U.S./Canada Area GB cod TAC from being exceeded prior to the end of the 2008 fishing year. To allow vessels to continue directed fishing effort on GB cod and GB haddock during the period necessary to publish and receive comments on a proposed rule could allow the GB cod harvest to exceed the GB cod TAC for the 2008 fishing year. Exceeding the 2008 TAC for GB cod would increase mortality of this overfished stock beyond that evaluated during the development of Amendment 13, resulting in decreased revenue for the NE multispecies fishery, increased negative economic impacts to vessels operating in the Eastern U.S./Canada Area, a reduced chance of achieving optimum yield in the groundfish fishery, and unnecessary delays to the rebuilding of this overfished stock. Exceeding the 2008 GB cod TAC would also necessitate that any overage of the GB cod TAC during the 2008 fishing year be deducted from the GB cod TAC for the 2009 fishing year. Reducing the 2009 TAC due to exceeding the 2008 TAC caused by delaying this action, therefore, would create an unnecessary burden on the fishing industry and further negative economic and social impacts that were not previously considered.

The public is able to obtain information on the rate of harvest of the Eastern GB cod TAC via the NMFS Northeast Regional Office website (*http://www.nero.noaa.gov*), which provides at least some advanced notice of a potential action to prevent the TAC for Eastern GB cod from being exceeded during the 2008 fishing year. Further, the potential for this action was considered and open to public comment during the development of Amendment 13 and Framework 42 to the FMP. Therefore, any negative effect the waiving of public comment and delayed effectiveness may have on the public is mitigated by these factors.

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

Dated: April 15, 2009.

Kristen C. Koch,

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

[FR Doc. E9–8990 Filed 4–15–09; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 74
Monday, April 20, 2009

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

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

7 CFR Chapter XXXIV

Solicitation of Input From Stakeholders on the 1890 Institution Capacity Building Grants Program

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Request for stakeholder input.

SUMMARY: The 1890 Institution Capacity Building Grants Program is authorized under section 1417(b)(4) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (NARETPA) (7 U.S.C. 3152(b)(4)) and pursuant to the annual appropriations made specifically for the 1890 Institution Capacity Building Grants Program. Section 7107 of the Food, Conservation, and Energy Act of 2008 (FCEA) (Pub. L. 110–246) amended section 1417(b)(4) of NARETPA to add extension to the 1890 Institution Capacity Building Grants Program. By this notice, the Cooperative State Research, Education, and Extension Service (CSREES) is soliciting public comment and stakeholder input from interested parties regarding the future design and implementation of this program, particularly the addition of extension to this program.

DATES: All written comments must be received by May 20, 2009.

ADDRESSES: You may submit comments, identified by CSREES–2009–0007, through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Fax: (202) 720–3398.

Mail: Paper, disk or CD–ROM submissions should be submitted to Science and Education Resources Development (SERD) Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Mail Stop 2250; 1400 Independence Avenue, SW.; Washington, DC 20250–2250.

Hand Delivery/Courier: Ali Mohamed; Science and Education Resources Development SERD Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 3101; Waterfront Centre; 800 9th Street, SW.; Washington, DC 20024.

Instructions: All submissions received must include the Title, ''1890 Institution Capacity Building Grants Program'' and CSREES–2009–0007. All comments received will be posted to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ali Mohamed, (202) 720–5229 (phone), (202) 720–3398 (fax), or *mohamed@csrees.usda.gov,* or Tim Grosser, (202) 690–0402 (phone), (202) 720–3398 (fax), or *tgrosser@csrees.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background and Summary

Purpose

CSREES has existing regulations for this program at 7 CFR part 3406, 1890 Institution Capacity Building Grants Program, which were finalized on July 22, 1997 [62 FR 39329–39349]. Since then, CSREES published an interim regulation for competitive and noncompetitive non-formula Federal assistance programs (7 CFR part 3430) on August 1, 2008 [73 FR 44897–44909]. That interim regulation consolidates, standardizes, and streamlines the Federal assistance processes for all CSREES competitive and noncompetitive non-formula Federal assistance programs, except the Small Business Innovation Research Grants Program with implementing regulations at 7 CFR part 3403 and the Veterinary Medicine Loan Repayment Program with implementing regulations under development. The interim rule furthers the streamlining and standardization efforts of the Federal Financial Assistance Management Improvement Act of 1999, Public law 106–107 (31 U.S.C. 6101 note), which sunset in November 2007, and is in accordance with the efforts of CSREES and the U.S. Department of Agriculture (USDA) to streamline and simplify the entire Federal assistance process while meeting the ever-increasing accountability and transparency standards.

As stated in the preamble to the August 1, 2008, regulatory notice, CSREES organized the regulation as follows: Subparts A through E provide administrative provisions for all competitive and noncompetitive non-formula Federal assistance awards. Subparts F and thereafter apply to specific CSREES programs. CSREES is, to the extent practical, using the following subpart template for each program authority: (1) Applicability of regulations; (2) purpose; (3) definitions (those in addition to or different from § 3430.2); (4) eligibility; (5) project types and priorities; (6) funding restrictions; and (7) matching requirements. Subparts F and thereafter will contain the seven components in this order, to the extent practical. Additional sections may be added for a specific program if there are additional requirements or a need for additional rules for the program (*e.g.,* additional reporting requirements). In the preamble, CSREES also states that it plans to review the existing program-specific regulations, promulgate a separate subpart under 7 CFR part 3430 for the Federal assistance program regulations, and when appropriate, cancel the existing program-specific regulation. Accordingly, CSREES is proposing to add subpart L to 7 CFR part 3430 for the 1890 Institution Capacity Building Grants Program and is soliciting stakeholder comment in the development of the subpart for this program.

Section 7107 of the FCEA amended section 1417(b)(4) of NARETPA to add extension to the 1890 Institution Capacity Building Grants Program. With the FCEA amendment, CSREES is now authorized to award grants to build teaching, research, and extension capacity in the food and agricultural sciences at the 1890 Institutions eligible to receive funds under the Act of August 30, 1890 (7 U.S.C. 321 et seq.). To develop the FY 2009 Request for Applications (RFA) for this program and the associated implementing regulation, CSREES will consider stakeholder input received pursuant to this notice. In addition to the future design and implementation of the program, CSREES is soliciting comments on how funds should be allocated among research, teaching, extension, and for projects

combining two or more of these areas (*e.g.,* research and extension).

Purpose of the 1890 Institution Capacity Building Grants Program

The 1890 Capacity Building Grants Program is intended to fund projects that build teaching, research, and extension capacity in the food and agricultural sciences at colleges and universities having significant minority enrollments, and pursuant to annual appropriations made available specifically by Congress for the 1890 Institutions. The program is designed to build the institutional teaching, research, and extension capacities of the eligible institutions through cooperative programs with Federal and non-Federal entities. The program is designed to achieve three major goals:

(1) To advance cultural diversity of the food and agricultural scientific and professional work force by attracting and educating more students from underrepresented groups;

(2) To strengthen linkages among the 1890 Institutions, other colleges and universities, USDA, and private industry; and

(3) To enhance the quality of teaching, research, and extension programs at the 1890 Institutions to more readily establish them as full partners in the U.S. food and agricultural sciences higher education system.

Implementation Plans

In developing the FY 2009 1890 Institution Capacity Building Grants Program RFA and the program-specific administrative regulations for this program as subpart L to 7 CFR part 3430, Competitive and Noncompetitive Non-Formula Federal Assistance Programs—General Award Administrative Provisions, CSREES plans to consider all stakeholder input and the written comments received in response to this notice. CSREES anticipates releasing the FY 2009 RFA by May 31, 2009.

Done at Washington, DC, this 16th day of April 2009.

Colien Hefferan,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. E9–9123 Filed 4–17–09; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 65, 119, 121, 135, and 142

[Docket No. FAA–2008–0677; Notice No. 08–07]

RIN 2120–AJ00

Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers; Extension of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: This action extends the comment period for an NPRM that was published on January 12, 2009. In that document, the FAA proposed to revise the regulations for crewmember and aircraft dispatcher training programs in domestic, flag, and supplemental operations. This extension is a result of a request from the Air Transport Association of America, Inc., Air Carrier Association of America, Regional Airline Association, and National Air Carrier Association on behalf of their members, and Airbus Americas, Inc. to extend the comment period to the proposal.

DATES: The comment period for the NPRM published on January 12, 2009 (74 FR 1280) was scheduled to close on May 12, 2009, and is extended until August 10, 2009.

ADDRESSES: You may send comments identified by Docket Number FAA–2008–0677 using any of the following methods:

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

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketsInfo.dot.gov.*

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ed Cook for flight crewmember information, *Edward.D.Cook@faa.gov;* Nancy Lauck Claussen for flight attendant information, *Nancy.L.Claussen@faa.gov;* and Dave Maloy for aircraft dispatcher information, *David.Maloy@faa.gov,* Flight Standards Service (AFS–200), Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, telephone 202–267–8166. For legal questions, contact Anne Bechdolt, Office of Chief Counsel (AGC–200), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone 202–267–7230; e-mail: *Anne.Bechdolt@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will

consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Federal eRulemaking Portal at *http://www.regulations.gov*;

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm;* or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD–ROM, mark the outside of the disk or CD–ROM and also identify electronically within the disk or CD–ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

Background

On January 12, 2009, the Federal Aviation Administration (FAA) issued Notice No. 08–07, Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers (74 FR 1280). Comments to that document were to be received on or before May 12, 2009.

By letter dated April 3, 2009, the Air Transport Association of America, Inc., Air Carrier Association of America, Regional Airline Association, and National Air Carrier Association on behalf of their members, and Airbus Americas, Inc. requested that the FAA extend the comment period for Notice No. 08–07 for 180 days. They requested the extension so the public has sufficient time to review and comment on the extensive and complex proposed rule.

While the FAA concurs with the petitioners' requests for an extension of the comment period on Notice No. 08–07, the FAA believes that a 180-day extension would be excessive. As Notice No. 08–07 is lengthy, the FAA provided a 120-day comment period. Although the FAA agrees that additional time for comments may be needed, this need must be balanced against the need to proceed expeditiously with an important rulemaking. The FAA believes an additional 90 days would be adequate for these petitioners to provide meaningful comment to Notice No. 08–07. The FAA does not anticipate any further extension of the comment period for this rulemaking.

Extension of Comment Period

In accordance with section 11.47(c) of title 14, Code of Federal Regulations, the FAA has reviewed the petition made by the Air Transport Association of America, Inc., Air Carrier Association of America, Regional Airline Association, and the National Air Carrier Association on behalf of their members, and Airbus Americas, Inc. for extension of the comment period to Notice No. 08–07. These petitioners have shown a substantive interest in the proposed rule and good cause for the extension. The FAA has determined that extension of the comment period is consistent with the public interest, and that good cause exists for taking this action.

Accordingly, the comment period for Notice No. 08–07 is extended until August 10, 2009.

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

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. E9–8968 Filed 4–17–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0248; Airspace Docket No. 09–AWP–2]

RIN 2120–AA66

Establishment of VOR Federal Airway V–625; Arizona

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish VOR Federal Airway 625 (V–625) between the Nogales, AZ, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) and the ULAPI, AZ, intersection. Specifically, the FAA is proposing this action to establish a coordination point to facilitate border crossing flights between Mexico and the United States.

DATES: Comments must be received on or before June 4, 2009.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; telephone: (202) 366–9826. You must identify FAA Docket No. FAA–2009–0248 and Airspace Docket No. 09–AWP–2 at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2009–0248 and Airspace Docket No. 09–AWP–2) and be submitted in triplicate

to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2009–0248 and Airspace Docket No. 09–AWP–2.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Western Service Center, Operations Support Group, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98055.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

History

In November 2008, Albuquerque ARTCC requested the establishment of a new airway for the coordination of border crossing flights between Mexico and the United States. This action responds to that request.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to establish VOR Federal Airway 625 (V–625) between the Nogales, AZ, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) and the ULAPI, AZ, intersection. Specifically, the FAA is proposing this action to establish a coordination point to facilitate border crossing flights between Mexico and the United States.

Domestic VOR Federal Airways are published in paragraph 6010(a) of FAA Order 7400.9S, signed October 3, 2008 and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Domestic VOR Federal Airway listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes a VOR Federal Airway in Arizona.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008 and effective October 31, 2008, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–625 [New]

From Nogales, AZ, to int Nogales 154T/142M excluding that airspace in Mexico.

* * * * *

Issued in Washington, DC, on April 13, 2009.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. E9–8969 Filed 4–17–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0089; Airspace Docket No. 09–ASW–4]

Proposed Amendment of Class E Airspace; Devine, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Devine, TX. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach

Procedures (SIAPs) at Devine Municipal Airport, Devine, TX. This action also would update the geographic coordinates of the Devine RBN to coincide with the FAA's National Aeronautical Charting Office. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) aircraft operations at Devine Municipal Airport.

DATES: 0901 UTC. Comments must be received on or before June 4, 2009.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2009–0089/Airspace Docket No. 09–ASW–4, at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76193–0530; telephone: (817) 321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2009–0089/Airspace Docket No. 09–ASW–4.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration (FAA), Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), part 71 by adding additional Class E airspace for SIAPs operations at Devine Municipal Airport, Devine, TX. The area would be depicted on appropriate aeronautical charts. This action also would update the geographic coordinates of the Devine RBN to coincide with the FAA's National Aeronautical Charting Office.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9S, dated October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would add additional controlled airspace at Devine Municipal Airport, Devine, TX.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, dated October 3, 2008, and effective October 31, 2008, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Devine, TX [Amended]

Devine Municipal Airport, TX
(Lat. 29°08′18″ N., long. 98°56′31″ W.)
Devine RBN
(Lat. 29°08′18″ N., long. 98°56′21″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Devine Municipal Airport and within 4 miles each side of the 173° bearing from the airport extending from the 6.5-mile radius to 10.5 miles south of the airport, and within 2.6 miles each side of the 183° bearing from the Devine RBN extending from the 6.3-mile radius to 16 miles south of the RBN.

* * * * *

Issued in Fort Worth, TX, on April 6, 2009.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E9–9050 Filed 4–17–09; 8:45 am]

BILLING CODE 4901–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 318

[RIN 3084–AB17]

Health Breach Notification Rule

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice of proposed rulemaking; request for public comment.

SUMMARY: Under the American Recovery and Reinvestment Act of 2009 (the ''Recovery Act'' or ''the Act''), the Federal Trade Commission (''FTC'') or (''Commission'') must issue rules requiring vendors of personal health records and related entities to notify individuals when the security of their individually identifiable health information is breached. Accordingly, the FTC seeks comment on a proposed rule.

DATES: Comments must be received on or before June 1, 2009.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to ''Health Breach Notification Rulemaking, Project No. R911002'' to facilitate the organization of comments. Please note that your comment—including your name and your state—will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as an individual's Social Security number; date of birth; driver's license number, state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential * * *,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the weblink (*https://secure.commentworks.com/ftc-healthbreachnotification*), and following the instructions on the web-based form. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink (*https://secure.commentworks.com/ftc-healthbreachnotification*). If this Notice appears at (*http://www.regulations.gov/search/index.jsp*), you also may file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You also may visit the FTC website at *http://www.ftc.gov* to read the Notice and the news release describing it.

A comment filed in paper form should include the ''Health Breach Notification Rulemaking, Project No. R911002'' reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–135 (Annex M), 600 Pennsylvania Avenue, NW., Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

Comments on any proposed filing, recordkeeping, or disclosure requirements that are subject to paperwork burden review under the Paperwork Reduction Act should additionally be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget (''OMB''), Attention: Desk Officer for Federal Trade Commission. Comments should be submitted via facsimile to (202) 395–5167 because U.S. postal mail at the OMB is subject to delays due to heightened security precautions.

FOR FURTHER INFORMATION CONTACT: Cora Tung Han or Maneesha Mithal, Attorneys, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2252.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Section-by-Section Analysis of the Proposed Rule
III. Paperwork Reduction Act
IV. Regulatory Flexibility Act
V. Proposed Rule

I. Background

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009 (the ''Recovery Act'' or ''the Act'') into law.[2] The Act includes provisions to advance the use of health information technology and, at the same time, strengthen privacy and security protections for health information.

Among other things, the Recovery Act recognizes that there are new types of web-based entities that collect consumers' health information. These entities include vendors of personal health records and online applications that interact with such personal health records. Some of these entities are not subject to the privacy and security requirements of the Health Insurance Portability and Accountability Act (''HIPAA'').[3] For such entities, the Recovery Act requires the Department of Health and Human Services (''HHS'') to

[1] *See also* FTC Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

[2] American Recovery & Reinvestment Act of 2009, Pub. L. 111–5, __ Stat. __.

[3] Health Insurance Portability & Accountability Act, Pub. L. 104–191, 110 Stat. 1936 (1996).

study, in consultation with the FTC, potential privacy, security, and breach notification requirements and submit a report to Congress containing recommendations within one year of enactment of the Recovery Act. Until Congress enacts new legislation implementing any recommendations contained in the HHS/FTC report, the Recovery Act contains temporary requirements, to be enforced by the FTC, that such entities notify customers in the event of a security breach.[4] The proposed rule implements these requirements.

The Recovery Act also directs HHS to promulgate interim final regulations requiring (1) HIPAA-covered entities, such as hospitals, doctors' offices, and health insurance plans, to notify individuals in the event of a security breach and (2) business associates of HIPAA-covered entities to notify such covered entities in the event of a security breach. To the extent that FTC-regulated entities engage in activities as business associates of HIPAA-covered entities, such entities will be subject only to HHS' rule requirements and not the FTC's rule requirements, as explained below. In addition, the Commission notes that many of the breach notification requirements applicable to FTC-regulated entities are the same as the breach notification requirements applicable to HHS-regulated entities. Indeed, section 13407 of the Recovery Act states that the statutory requirements for timeliness, method, and content of breach notifications contained in section 13402 (the section applicable to HHS-regulated entities) shall apply to FTC-regulated entities ''in a manner specified by the Federal Trade Commission.'' Thus, the FTC is consulting with HHS to harmonize its proposed rule with HHS' proposed rule.

II. Section-by-Section Analysis of the Proposed Rule

The Commission proposes to issue the Health Breach Notification Rule as a new Part 318 of 16 CFR. The following is a section-by-section analysis of the proposed rule.

Proposed Section 318.1: Purpose and Scope

Proposed section 318.1 serves three purposes. First, it states the relevant statutory authority for the proposed rule. Second, it identifies the entities to which the proposed rule would apply: vendors of personal health records, PHR[5] related entities, and third party service providers. Third, proposed section 318.1 clarifies that the proposed rule does not apply to HIPAA-covered entities or to an entity's activities as a business associate of a HIPAA-covered entity.

The Commission also notes that the proposed rule applies to entities beyond the FTC's traditional jurisdiction under Section 5 of the FTC Act, since the Recovery Act does not limit the FTC's enforcement authority to its enforcement jurisdiction under Section 5. Indeed, section 13407 of the Recovery Act expressly applies to ''vendors of personal health records and other non-HIPAA covered entities,'' without regard to whether such entities fall within the FTC's enforcement jurisdiction. Thus, the proposed rule would apply to entities such as non-profit entities that offer personal health records or related products and services, as well as non-profit third party service providers.

With respect to the scope of the proposed rule, the Commission seeks comment on (1) the nature of entities to which its proposed rule would apply; (2) the particular products and services they offer; (3) the extent to which vendors of personal health records, PHR related entities, and third party service providers may be HIPAA-covered entities or business associates of HIPAA-covered entities; (4) whether some vendors of personal health records may have a dual role as a business associate of a HIPAA-covered entity and a direct provider of personal health records to the public; and (5) circumstances in which such a dual role might lead to consumers' receiving multiple breach notices or receiving breach notices from an unexpected entity, and whether and how the rule should address such circumstances.

Proposed Section 318.2: Definitions

This section defines terms used in the Health Breach Notification Rule.

Breach of Security

The first sentence of proposed paragraph (a) defines ''breach of security'' as the acquisition of unsecured PHR identifiable health information of an individual in a personal health record without the authorization of the individual. This sentence is identical to the definition of ''breach of security'' in section 13407(f)(1) of the Recovery Act.

In some cases, it will be fairly easy to determine whether unsecured PHR identifiable health information has been acquired without authorization. Examples of such cases include the theft of a laptop containing unsecured personal health records; the theft of hard copies of such records; the unauthorized downloading or transfer of such records by an employee; and the electronic break-in and remote copying of such records by a hacker.

In other cases, there may be unauthorized access to data, but it is unclear, without further investigation, whether the data also has been acquired. Unauthorized persons may have *access* to information if it is available to them. The term *acquisition*, however, suggests that the information is not only available to unauthorized persons, but in fact has been obtained by them.

For example, if an entity's access log shows that an unauthorized employee obtained access to information by opening an online database of personal health records, there clearly has been access to the data, but it is not clear whether the data also has been acquired. Consider the following possible scenarios:

(1) the employee viewed the records to find health information about a particular public figure and sold the information to a national gossip magazine;

(2) the employee viewed the records to obtain information about his or her friends;

(3) the employee inadvertently accessed the database, realized that it was not the one he or she intended to view, and logged off without reading, using, or disclosing anything.

In scenario (3), the Commission believes that no acquisition has taken place; thus, breach notification is not required. Unauthorized acquisition has, however, occurred in scenarios (1) and (2).

In the types of situations described above, where there has been unauthorized access to unsecured PHR identifiable health information, the Commission believes that the entity that experienced the breach is in the best position to determine whether unauthorized acquisition has taken place. Thus, the proposed rule creates a presumption that unauthorized persons have acquired information if they have access to it, thus creating the obligation to provide breach notification. This presumption can be rebutted with reliable evidence showing that the information was not or could not reasonably have been acquired. Such evidence can be obtained by, among other things, conducting appropriate interviews of employees, contractors, or other third parties; reviewing access

[4] Section 13407(g)(1) of the Recovery Act requires the FTC to promulgate, within 180 days of its enactment, regulations on the breach of security notification provisions applicable to its regulated entities.

[5] PHR means personal health record.

logs and sign-in sheets; and/or examining forensic evidence.

For example, if an entity's employee loses a laptop containing unsecured health information in a public place, the information would be accessible to unauthorized persons, giving rise to a presumption that unauthorized acquisition has occurred. The entity can rebut this presumption by showing that the laptop was recovered, and that forensic analysis revealed that files were never opened, altered, transferred, or otherwise compromised.

Accordingly, the Commission proposes to add a second sentence to the definition of breach of security as follows: ''Unauthorized acquisition will be presumed to include unauthorized access to unsecured PHR identifiable health information unless the vendor of personal health records, PHR related entity, or third party service provider that experienced the breach has reliable evidence showing that there has not been, or could not reasonably have been, any unauthorized acquisition of such information.''

Business Associate

Proposed paragraph (b) defines ''business associate'' to mean a business associate under HIPAA, as defined in 45 CFR 160.103. That regulation, in relevant part, defines a business associate as an entity that (1) provides certain functions or activities on behalf of a HIPAA-covered entity or (2) provides ''legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services to or for'' a HIPAA-covered entity.

HIPAA-Covered Entity

Proposed paragraph (c) defines ''HIPAA-covered entity'' to mean a covered entity under HIPAA, as defined in 45 CFR 160.103. That regulation provides that a HIPAA-covered entity is a health care provider that conducts certain transactions in electronic form, a health care clearinghouse (which provides certain data processing services for health information), or a health plan.

Personal Health Record

Proposed paragraph (d) defines a ''personal health record'' as an ''electronic record of PHR identifiable health information on an individual that can be drawn from multiple sources and that is managed, shared, and controlled by or primarily for the individual.'' This language is substantively identical to the definition of personal health record in section 13400(11) of the Recovery Act.[6]

PHR Identifiable Health Information

Proposed paragraph (e) defines ''PHR identifiable health information'' as ''individually identifiable health information, as defined in section 1171(6) of the Social Security Act (42 U.S.C. 1320d(6)),[7] and with respect to an individual, information (1) that is provided by or on behalf of the individual; and (2) that identifies the individual or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual.'' This definition is substantively identical to section 13407(f)(2) of the Recovery Act.

The Commission notes three points with respect to this definition. First, because the definition of ''PHR identifiable health information'' includes information that relates to the ''past, present, or future payment for the provision of health care to an individual,'' the proposed rule covers breaches of such information. Thus, for example, the proposed rule would cover a security breach of a database containing names and credit card information, even if no other information was included.

Second, because the definition includes information that relates to ''the health or condition'' of the individual, it would include *the fact of* having an account with a vendor of personal health records or related entity, where the products or services offered by such vendor or related entity relate to particular health conditions. For example, the theft of an unsecured customer list of a vendor of personal health records or related entity directed to AIDS patients or people with mental illness would require a breach notification, even if no specific health information is contained in that list.

Third, if there is no reasonable basis to believe that information can be used to identify an individual, the information is not ''PHR identifiable health information,'' and a breach notification need not be provided. For example, if a breach involves information that has been ''de-identified'' under HHS rules implementing HIPAA, the Commission will deem that information to fall outside the scope of ''PHR identifiable health information'' and therefore not covered by the proposed rule. The HHS rules specify two ways to de-identify information: (1) If there has been a formal determination by a qualified statistician that information has been de-identified; or (2) if specific identifiers about the individual, the individual's relatives, household members, and employers are removed, and the covered entity has no actual knowledge that the remaining information could be used to identify the individual.[8] There may be additional instances where, even though the standard for de-identification under 45 CFR 164.514(b) is not met, there is no reasonable basis to believe that information is individually identifiable. The Commission requests examples of such instances.

PHR Related Entity

Proposed paragraph (f) defines the term ''PHR related entity'' to cover the three types of entities set forth in clauses (ii), (iii), and (iv) of section 13424(b)(1)(A) of the Recovery Act.[9] First, the definition includes entities that are not HIPAA-covered entities and that offer products or services through the website of a vendor of personal health records. This definition is substantively identical to the statutory language but also clarifies that HIPAA-covered entities are excluded. This clarification is consistent with the coverage of section 13424, which requires a study and report on the ''Application of Privacy and Security Requirements to Non-HIPAA Covered Entities.''

Examples of entities that could fall within this category include a web-based application that helps consumers manage medications; a website offering

[6] Where this Notice characterizes an element of the proposed rule as ''substantively identical'' to a corresponding provision in the Recovery Act, the difference between the two texts is minor and not substantive, and the relevant text of both the rule and statute is intended to have the same meaning. For example, the Recovery Act's definition of ''personal health record'' states that it is an ''electronic record of PHR identifiable health information (as defined in section 13407(f)(2))...'' The proposed rule definition drops the cross-reference, but is identical in all other respects. In other places, the rule may change a plural to a singular or vice versa; substitute terminology such as ''HIPAA-covered entity'' for ''covered entity''; spell out a shorthand notation in the statute; or make similar non-substantive changes.

[7] This provision defines ''individually identifiable health information'' as information that ''(1) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.''

[8] 45 CFR 164.514(b); *see also* U.S. Department of Health and Human Services, OCR Privacy Brief: Summary of the HIPAA Privacy Rule, (*www.hhs.gov/ocr/privacy/hipaa/understanding/summary/privacysummary.pdf*).

[9] At the outset, proposed paragraph (f) clarifies that the term excludes HIPAA-covered entities, as well as other entities to the extent that they engage in activities as a business associate of a HIPAA-covered entity.

an online personalized health checklist; and a brick-and-mortar company advertising dietary supplements online. Consumers interact with entities in this category by clicking on the appropriate link on the website of a vendor of personal health records.

Second, PHR related entities include entities that are not HIPAA-covered entities and that offer products or services through the websites of HIPAA-covered entities that offer individuals personal health records. This language is substantively identical to section 13424(b)(1)(A)(iii) of the Recovery Act. This category differs from the first category in that it covers entities whose applications are offered through the websites of HIPAA-covered entities, as opposed to non-HIPAA covered entities. Entities may fall in both categories if they offer their applications through both HIPAA-covered websites and non-HIPAA covered websites.

Third, PHR related entities include non-HIPAA covered entities ''that access information in a personal health record or send information to a personal health record.'' This language is substantively identical to section 13424(b)(1)(A)(iv) of the Recovery Act. This category could include online applications through which individuals, for example, connect their blood pressure cuffs, blood glucose monitors, or other devices so that the results could be tracked through their personal health records. It could also include an online medication or weight tracking program that pulls information from a personal health record.

Third Party Service Provider

Proposed paragraph (g) defines the term ''third party service provider'' as ''an entity that (1) provides services to a vendor of personal health records in connection with the offering or maintenance of a personal health record or to a PHR related entity in connection with a product or service offered by that entity, and (2) accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses unsecured PHR identifiable health information as a result of such services.'' Because the term third party service provider is not defined in the Recovery Act, the Commission based its proposed definition on the description of third party service providers in section 13407(b) of the Act. Third party service providers include, for example, entities that provide billing or data storage services to vendors of personal health records or PHR related entities.

Unsecured

Proposed paragraph (h) defines the term ''unsecured'' as ''not protected through the use of a technology or methodology specified by the Secretary of Health and Human Services in the guidance issued under section 13402(h)(2) of the American Recovery and Reinvestment Act of 2009.'' If such guidance is not issued by the date specified in such section (*i.e.*, by 60 days after enactment of the Act and annually thereafter), the term unsecured means ''not secured by a technology standard that renders PHR identifiable information unusable, unreadable, or indecipherable to unauthorized individuals and that is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute.'' The proposed definition is substantively identical to the definition of ''unsecured PHR identifiable health information'' in the Recovery Act.

Vendor of Personal Health Records

Proposed paragraph (i) defines the term ''vendor of personal health records'' to mean ''an entity, other than a HIPAA-covered entity or an entity to the extent that it engages in activities as a business associate of a HIPAA-covered entity, that offers or maintains a personal health record.'' This proposed definition is substantively identical to the statutory definition contained in section 13400(18) of the Recovery Act, but also clarifies that a vendor of personal health records does not include entities' activities as a business associate of a HIPAA-covered entity.

Proposed Section 318.3: Breach Notification Requirement

Proposed paragraph 318.3(a) requires vendors of personal health records and PHR related entities, upon discovery of a breach of security, to notify U.S. citizens and residents whose information was acquired in the breach and to notify the FTC. This provision is substantively identical to section 13407(a) of the Recovery Act.

Proposed paragraph 318.3(b) requires third party service providers to both vendors of personal health records and PHR related entities to provide notification to such vendors and entities following the discovery of a breach. The purpose of this requirement is to ensure that the vendor or entity receiving the breach notification is aware of the breach, so that it can in turn provide its customers with a breach notice. To further this purpose, proposed paragraph 318.3(b) requires that the third party service provider's notification shall include ''the identification of each individual'' whose information ''has been, or is reasonably believed to have been acquired during such breach.''

The proposed paragraph is substantively identical to section 13407(b) of the Recovery Act,[10] but adds language requiring entities to provide notice to a senior official of the vendor or PHR related entity and to obtain acknowledgment from such official that he or she has received the notice. The purpose of this requirement is to avoid the situation in which lower-level employees of two entities might have discussions about a breach that never reach senior management. It is also designed to avoid the problem of lost e-mails or voicemails.

Finally, proposed section 318.3(c) provides that a breach ''shall be treated as discovered as of the first day on which such breach is known to a vendor of personal health records, PHR related entity, or third party service provider, respectively, (including any person, other than the individual committing the breach, that is an employee, officer, or other agent of such vendor of personal health records, PHR related entity, or third party service provider, respectively) or should reasonably have been known to such vendor of personal health records, PHR related entity, or third party service provider (or person) to have occurred.'' This proposed paragraph is substantively identical to section 13402(c) of the Recovery Act.[11]

Regarding the ''reasonably should have been known'' standard, the Commission expects entities that collect and store unsecured PHR identifiable health information to maintain reasonable security measures, including breach detection measures, which should assist them in discovering breaches in a timely manner. If an entity fails to maintain such measures, and

[10] As noted above, although the Recovery Act does not define the term ''third party service provider,'' the proposed rule sets forth a definition based on the language in section 13407(b) describing such entities. Thus, it is not necessary to repeat the descriptive language in this section of the proposed rule.

In addition, the proposed rule requires notification to individuals whose information was ''acquired,'' while the Recovery Act uses the terms ''accessed, acquired, or disclosed.'' This change is intended to harmonize the proposed rule with the other provisions of the Act making clear that the standard for FTC-regulated entities, including third party service providers, is ''acquired.'' Indeed, the statute requires third party service providers to notify individuals upon a ''breach of security,'' which is defined only as unauthorized acquisition.

[11] Section 13407(c) of the Recovery Act states that the standard for when breaches are discovered for HIPAA-covered entities also shall apply to FTC-regulated entities ''in a manner specified by the Federal Trade Commission.''

thus fails to discover a breach, such failure could constitute a violation of the proposed rule because the entity ''reasonably'' should have known about the breach. The Commission recognizes, however, that certain breaches may be very difficult to detect, and that an entity with strong breach detection measures may nevertheless fail to discover a breach. In such circumstances, the failure to discover the breach would not constitute a violation of the proposed rule.[12]

Proposed Section 318.4: Timeliness of Notification [13]

Proposed section 318.4(a) requires breach notifications to individuals and the media to be made ''without unreasonable delay'' and in no case later than 60 calendar days after discovery of the breach. This language is substantively identical to section 13402(d)(1) of the Recovery Act, except that the Commission has clarified that the timing requirement for notice to consumers is different from the requirement for notice to the FTC. Proposed section 318.4(b) states that vendors of personal health records, PHR related entities, and third party service providers have the burden of proving that they provided the appropriate breach notifications. Finally, proposed section 318.4(c) allows breach notification to be delayed upon appropriate request of a law enforcement official. The proposed burden of proof and law enforcement provisions are substantively identical to sections 13402(d)(2) and 13402(g) of the Recovery Act.[14]

The Commission notes that the standard for timely notification is ''without unreasonable delay,'' with the 60-day period serving as an outer limit. Thus, in some cases, it may be an ''unreasonable delay'' to wait until the 60th day to provide notification. For example, if a vendor of personal health records or PHR related entity learns of a breach, gathers all necessary information, and has systems in place to provide notification within 30 days, it would be unreasonable to wait until the 60th day to send the notice. There may also be circumstances where a vendor of personal health records or PHR related entity discovers that its third party service provider has suffered a breach (*e.g.*, through a customer or whistleblower) before the service provider notifies the vendor or entity that the breach has occurred. In such circumstances, the vendor or entity should treat this breach as ''discovered'' for purposes of providing timely notification, and should not wait until receiving notice from the service provider to begin taking steps to address the breach.

Proposed Section 318.5: Methods of Notice [15]

Proposed section 318.5 addresses the methods of notice to individuals, the Commission, and the media in the event of a breach of security of unsecured PHR identifiable health information. The goal of this proposed section is to ensure prompt and effective notice.

Individual Notice

Proposed paragraph (a) addresses notice to individuals. It contains four main requirements. First, proposed paragraph (a)(1) states that individuals must be given notice by first-class mail or, if the individual provides express affirmative consent, by e-mail. This language is identical to section 13402(e)(1)(A) of the Recovery Act, except that it interprets the statutory phrase ''specified as a preference by the individual'' to mean that the individual must provide ''express affirmative consent'' to receive breach notices by e-mail. Entities may obtain such consent by asking individuals, when they create an account, whether they would prefer to receive important notices about privacy by first-class mail or e-mail.[16]

The Commission recognizes that the relationship between a vendor of personal health records or PHR related entity and the individual takes place online. Thus, e-mail notice may be particularly well-suited to the relationship. In addition, vendors of personal health records and PHR related entities may not want to collect mailing addresses from consumers, and consumers may not want to provide them. Under the proposed rule, these entities need not collect such mailing addresses, as long as they obtain consumers' express affirmative consent to receive notices by e-mail. The Commission recognizes that some e-mail notifications may be screened by consumers' spam filters and requests comment on how to address this issue.

Second, as provided in section 13402(e)(1)(C) of the Recovery Act, proposed paragraph (a)(2) allows a vendor of personal health records or PHR related entity to provide notice by telephone or other appropriate means, in addition to the notice provided in paragraph (a)(1), if there is possible imminent misuse of unsecured PHR identifiable health information.

Third, proposed paragraph (a)(3) states that if, after making reasonable efforts to contact an individual through his or her preferred method of communication, the vendor of personal health records or PHR related entity learns that such method is insufficient or out-of-date, the vendor or related entity shall attempt to provide the individual with a substitute form of actual notice, which may include written notice through the individual's less-preferred method, a telephone call, or other appropriate means. This provision gives effect to section 13402(e)(1)(B) of the Recovery Act, which requires a substitute form of notice in the case of insufficient or out-of-date contact information, but adds clarifying language requiring reasonable efforts to provide the preferred form of notice before substitute notice can be used. Examples of reasonable efforts include: (1) where e-mail is the consumer's preferred method, attempting to e-mail the notice and receiving a return message stating that the e-mail could not be delivered; (2) where first class mail is the consumer's preferred method, attempting to mail such notice and having it returned as undeliverable; (3) in the case of incomplete contact information, searching internal records and, if needed, undertaking additional reasonable efforts to obtain complete and accurate contact information from other sources. The proposed rule also adds language stating that methods of substitute notice may include written notice by the consumer's less preferred method or telephone.

Finally, the proposed rule states that if ten or more individuals cannot be reached, the vendor of personal health records or PHR related entity must

[12] The Commission enforces a variety of laws requiring entities to provide reasonable and appropriate security for the data that they collect from consumers. *See, e.g.*, Federal Trade Commission Act, 5 U.S.C. 45; Fair Credit Reporting Act, 15 U.S.C. 1681–1681x; Gramm-Leach-Bliley Act, 15 U.S.C. 6801(b), and Standards for Safeguarding Customer Information, 16 CFR Part 314 (''Safeguards Rule''), *available at* (*http://www.ftc.gov/os/2002/05/67fr36585.pdf.*) The Commission has also disseminated educational materials encouraging companies to provide security for consumer data and providing guidance regarding practical ways to do so.

[13] Section 13407(c) of the Recovery Act states that the requirements for timeliness of notification applicable to HIPAA-covered entities also shall apply to FTC-regulated entities ''in a manner specified by the Federal Trade Commission.''

[14] Section 13402(d)(1) of the Recovery Act sets forth the standard for timeliness of notification, but notes that this standard is subject to the exception for law enforcement set forth in section 13402(g).

[15] Section 13407(c) of the Recovery Act states that the requirements for methods of breach notification applicable to HIPAA-covered entities also shall apply to FTC-regulated entities ''in a manner specified by the Federal Trade Commission.''

[16] The Commission does not regard pre-checked boxes or disclosures that are buried in a privacy policy or terms of service agreement to be sufficient to obtain consumers' ''express affirmative consent.''

provide substitute notice in one of two forms. First, it can provide notice through the home page of its website. Second, it can provide notice in major print or broadcast media. The language in the proposed rule is substantively identical to section 13402(e)(1)(B) of the Recovery Act, but adds certain clarifying language, as noted below.

As to the first method of substitute notice, the Recovery Act states that the posting should appear for a period determined by the Commission and be ''conspicuous.'' The Commission believes that six months is an appropriate time period for posting of the notice and has so specified in the proposed rule. Requiring a six month posting will ensure that individuals who intermittently check their accounts obtain notice, without being unduly burdensome for businesses.

To ensure conspicuousness, if an entity intends to use a hyperlink on the home page to convey the breach notice, the hyperlink should be (1) prominent so that it is noticeable to consumers, given the size, color and graphic treatment of the hyperlink in relation to other parts of the page; and (2) worded to convey the nature and importance of the information to which it leads. For example, ''click here'' would not be an appropriate hyperlink; a prominent ''click here for an important notice about a security breach that may affect you'' would be.[17]

Regarding the requirement that the notice be posted on the home page, the Commission notes that individuals who already have accounts with vendors of personal health records may be directed to a first or ''landing'' page that is different from the home page to which non-account holders are directed. The Commission thus construes ''home page'' to include both the home page for new visitors and the landing page for existing account holders. In general, the Commission anticipates that, because PHRs generally involve an online relationship, web posting would be a particularly well-suited method of substitute notice to individuals.

The alternative form of substitute notice described in this paragraph is media notice ''in major print or broadcast media, including major media in geographic areas where individuals affected by the breach likely reside, which shall be reasonably calculated to reach individuals affected by the breach.'' This language is substantively identical to section 13402(e)(1)(B) of the Recovery Act, but also adds a clause requiring that such notice ''be reasonably calculated to reach the individuals affected.'' Indeed, because this notice is intended to serve as a substitute for notice to particular individuals, it should be reasonably calculated to reach those individuals.

The appropriate scope of substitute media notice will depend on several factors, including the number of individuals for whom no contact information can be obtained, the location of those individuals, and the reach of the particular media used. For example, if a vendor of personal health records experiences a breach in which a hacker obtains the health records of millions of individuals nationwide, and the vendor has no contact information for these individuals, the notice should run multiple times in national print publications and on national network and cable television. In contrast, if an online weight management application loses a customer list and can reach all but 20 individuals in a particular city, it could run a more limited number of advertisements in appropriate local media.

Further, a notice can only be ''reasonably calculated to reach the individuals affected'' if it is clear and conspicuous. Thus, the notices should be stated in plain language, be prominent, and run multiple times. The Commission requests further comment on the standards that should apply to substitute media notice.

As set forth in section 13402(e)(1)(B) of the Recovery Act, the proposed rule also provides that notice under paragraph (3), whether on the home page of the website or by media notice, must include a toll-free phone number where an individual can learn whether his or her unsecured PHR identifiable health information may be included in the breach. As to this requirement, the Commission notes that entities should have reasonable procedures in place to verify that they are providing the requested information only to the individual and not to an unauthorized person. For example, entities could provide the requested information pertaining to the consumer pursuant to the ''preferred method'' designated in paragraph (a)(1).

Notice to Media

Proposed paragraph (b) requires media notice ''to prominent media outlets serving a State or jurisdiction'' if there has been a breach of security of unsecured PHR identifiable health information of 500 or more residents of the state or jurisdiction.[18] This media notice differs from the substitute media notice described in paragraph 318.5 in that it is directed ''to'' the media and is intended to supplement, but not substitute for, individual notice. The proposed paragraph is substantively identical to section 13402(e)(2) of the Recovery Act, but adds a requirement that the notice include the information set forth in proposed section 318.6.

This media notice should, at a minimum, include the dissemination of a press release to media outlets in the area(s) affected by the breach. For example, if a breach affects consumers from a particular state or locality, the press release could be sent to the relevant division or department (*e.g.*, health, technology, or business) of a number of state or local print publications, network and cable new shows, and radio stations. The Commission requests further comment on the standards and criteria that should apply in determining the adequacy of media notice.

Notice to the Commission

Proposed paragraph (c) addresses notice to the Commission. Under the proposed paragraph, vendors of personal health records and PHR related entities must provide notice to the Commission as soon as possible and in no case later than five business days if the breach involves the unsecured PHR identifiable health information of 500 or more individuals. If the breach involves the unsecured PHR identifiable health information of fewer than 500 individuals, vendors of personal health records and PHR related entities may, in lieu of immediate notice, maintain a breach log and submit such a log annually to the Commission. The proposed paragraph is substantively identical to section 13402(e)(3) of the Recovery Act, but clarifies the Act's requirements as follows.

First, the paragraph interprets the term ''immediately'' to mean ''as soon as possible, and in no case later than five business days.'' The Commission believes that this period of time satisfies the requirement for immediacy, while still being sufficient for the breached entity to learn enough about the breach to provide meaningful notice to the Commission.[19]

[17] *See* ''Dot Com Disclosures: Information about Online Advertising,'' (*http://www.ftc.gov/bcp/edu/pubs/business/ecommerce/bus41.pdf*).

[18] Although section 13402(e)(2) of the Recovery Act requires notice to media for breaches involving ''more than 500'' residents, section 13402(e)(3) requires notice to the government for breaches with respect to ''500 or more'' individuals. For consistency, the proposed rule uses ''500 or more'' for both kinds of notice.

[19] The Commission recognizes that the breached entity may not learn all relevant information about

Continued

Second, the paragraph states that the ''annual log'' to be submitted to the Commission for breaches involving fewer than 500 individuals shall be due one year from the date of the entity's first breach.[20] The Commission believes that specifying a date for submitting the log will assist entities in complying with the proposed rule.

Third, the paragraph references a form that the Commission plans to develop, to be posted on the Commission's website, *www.ftc.gov,* and to be used by entities to provide both the immediate and the annual required notice to the Commission under the proposed rule.[21] Among other things, the form will request information similar to that required to be included in a notice to individuals under section 318.6.

Proposed Section 318.6: Content of Notice[22]

Proposed section 318.6 addresses the content of the notice to individuals. It requires that the notice include a description of how the breach occurred; a description of the types of unsecured PHR identifiable health information that were involved in the breach; the steps individuals should take to protect themselves from potential harm; a description of what the vendor of personal health records or PHR related entity involved is doing to investigate the breach, to mitigate any losses, and to protect against any further breaches; and contact procedures for individuals to ask questions or learn additional information. The language in the proposed rule is substantively identical to the language of section 13402(f) of the Recovery Act. The Commission notes two points with respect to this section.

First, to ensure that notices do not raise concerns about phishing, those sending notices should not include any requests for personal or financial information.[23]

Second, the proposed rule requires that the notice identify steps individuals should take to protect themselves from potential harm. The Commission recognizes that these steps will differ depending on the circumstances of the breach and the type of PHR identifiable health information involved. In some instances—for example, if health insurance account information is compromised—there is a possibility that data will be misused. In such cases, the entity could suggest steps including, but not limited to, requesting and reviewing copies of medical files for potential errors; monitoring explanation of benefit forms for potential errors; contacting insurers to notify them of possible medical identity theft; following up with providers if medical bills do not arrive on time to ensure that an identity thief has not changed the billing address; and, in appropriate cases, trying to change health insurance account numbers.

If the breach also involves Social Security numbers, the entity should suggest additional steps such as placing a fraud alert on credit reports; obtaining and reviewing copies of credit reports for signs of identity theft; calling the local police or sheriff's office in the event suspicious activity is detected; and if appropriate, obtaining a credit freeze.[24] In the case of a breach involving financial account numbers, the entity also should direct consumers to monitor their accounts for suspicious activity and contact their financial institution about closing any compromised accounts. In appropriate cases, the entity also could refer consumers to the FTC's identity theft website, *www.ftc.gov/idtheft.*

In other instances, the likely harm will be personal embarrassment. In such cases, any steps that an individual may choose to take will likely be personal to that individual, and the entity may not be in a position to advise the consumer.

Proposed Sections 318.7, 318.8, and 318.9

Proposed sections 318.7, 318.8, and 318.9 are substantively identical to the statutory provisions on enforcement, effective date, and sunset. Proposed section 318.9 clarifies that the sunsetting of the rule is triggered when Congress enacts new legislation affecting entities subject to the FTC rule.

III. Communications by Outside Parties to Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record. *See* 16 CFR 1.26(b)(5).

IV. Paperwork Reduction Act

The Commission is submitting this proposed rule and a Supporting Statement to the Office of Management and Budget for review under the Paperwork Reduction Act (''PRA'') (44 U.S.C. 3501–3521). The breach notification requirements discussed above constitute ''collections of information'' for purposes of the PRA. *See* 5 CFR 1320.3(c). Accordingly, staff has estimated the paperwork burden for these requirements as set forth below.

In the event of a data breach, the proposed rule would require covered firms to investigate and, if certain conditions are met, notify consumers and the Commission. The paperwork burden of these requirements will depend on a variety of factors, including the number of covered firms; the percentage of such firms that will experience a breach requiring further investigation and, if necessary, the sending of breach notices; and the number of consumers notified.

Based on input from industry sources, staff estimates that approximately 200 vendors of personal health records and 500 PHR related entities will be covered by the Commission's proposed rule. Thus, a total of 700 entities may be required to notify consumers and the Commission in the event that they experience a breach. Approximately 200 third party service providers also will be subject to the rule, and thus required to notify vendors of personal health records or PHR related entities in the event of a breach. Thus, a total of approximately 900 entities will be subject to the proposed rule's breach notification requirements.

Staff estimates that these entities, cumulatively, will experience 11 breaches per year for which notification may be required. Because there is insufficient data at this time about the number and incidence of breaches in the PHR industry, staff used available data relating to breaches incurred by private sector businesses in order to calculate a breach incidence rate. Staff then applied this rate to the estimated total number of entities that will be subject to the proposed rule. According to one recent research paper, private sector businesses across multiple industries experienced a total of approximately 50 breaches per year

the breach within five business days, such as number of consumers affected or extent of the information breached. Nonetheless, the entity should tell the Commission all that it knows and should provide additional information as it becomes available.

[20] No annual log needs to be provided for years in which no breaches occur.

[21] The Commission also will provide notice of breaches to the Secretary of HHS, as required by section 13407(d) of the Recovery Act.

[22] Section 13407(c) of the Recovery Act states that the requirements for contents of breach notification applicable to HIPAA-covered entities also shall apply to FTC-regulated entities ''in a manner specified by the Federal Trade Commission.''

[23] Phishing is the act of sending an electronic message under false pretenses to induce unsuspecting victims to reveal personal and financial information.

[24] In general, once a consumer initiates a credit freeze with a consumer reporting agency, the freeze prevents the agency from releasing a credit report about that consumer unless the consumer removes the freeze.

during the years 2002 through 2007.[25] Dividing 50 breaches by the estimated number of firms that would be subject to a breach (4,187)[26] yields an estimated breach incidence rate of 1.2% per year. Applying this incidence rate to the estimated 900 vendors of personal health records, PHR related entities, and third party service providers yields an estimate of 11 breaches per year that may require notification of consumers and the Commission.

To determine the annual paperwork burden, staff has developed estimates for three categories of potential costs: (1) The costs of determining what information has been breached, identifying the affected customers, preparing the breach notice, and making the required report to the Commission; (2) the cost of notifying consumers; and (3) the cost of setting up a toll-free number, if needed.

First, in order to determine what information has been breached, identify the affected customers, prepare the breach notice, and make the required report to the Commission, staff estimates that covered firms will require per breach, on average, 100 hours of employee labor at a cost of $4,652,[27] and the services of a forensic expert at an estimated cost of $2,930.[28] Thus, the cost estimate for each breach will be $7,582. This estimate does not include the cost of equipment or other tangible assets of the breached firms, because they likely will use the equipment and other assets they have for ordinary business purposes. Based on the estimate that there will be 11 breaches per year, the annual cost burden for affected entities to perform these tasks will be $83,402 (11 breaches × $7,582 each).

Second, the cost of breach notifications will depend on the number of consumers contacted. Based on a recent survey, 11.6 percent of adults reported receiving a breach notification during a one-year period.[29] Staff estimates that for the prospective 3-year PRA clearance, the average customer base of all vendors of personal health records and PHR related entities will be approximately two million per year. Accordingly, staff estimates that an average of 232,000 consumers per year will receive a breach notification.

Given the online relationship between consumers and vendors of personal health records and PHR related entities, most notifications will be made by email and the cost of such notifications will be de minimis.[30]

In some cases, however, vendors of personal health records and PHR related entities will need to notify individuals by postal mail, either because these individuals have asked for such notification, or because the email addresses of these individuals are not current or not working. Staff estimates that the cost of notifying an individual by postal mail is approximately $2.30 per letter.[31] Assuming that vendors of personal health records and PHR related entities will need to notify by postal mail 10 percent of their customers whose information is breached, the estimated cost of this notification will be $53,360 per year.

In addition, vendors of personal health records and PHR related entities sometimes may need to notify consumers by posting a message on their home page, or by providing media notice. Based on a recent study on data breach costs, staff estimates the cost of providing notice via website posting to be 6 cents per breached record, and the cost of providing notice via published media to be 3 cents per breached record.[32] Applied to the above-stated estimate of 232,000 consumers per year receiving breach notification, the estimated total annual cost of website notice will be $13,920, and the estimated total annual cost of media notice will be $6,960, yielding an estimated total annual cost for all forms of notice to consumers of $74,240.

Finally, the cost of a toll-free number will depend on the cost associated with T1 lines sufficient to handle the projected call volume, the cost of obtaining a toll-free telephone number and queue messaging (a service that provides rudimentary call routing), the cost of processing each call, and the telecommunication charges associated with each call. Because the proposed rule may require entities to notify consumers by posting a message on their homepage for a period of six months, staff estimated the cost of a toll-free line for a six-month period. Based on industry research, staff projects that in order to accommodate a sufficient number of incoming calls for that period, affected entities may need two T1 lines at a cost of $18,000.[33] Staff further estimates that the cost of obtaining a dedicated toll-free line and queue messaging will be $3,017,[34] and that processing an estimated 5,000 calls for the first month per breach will require an average of 1,917 hours of employee labor at a cost of $27,468.[35] Staff estimates that affected entities will need to offer the toll-free number for an additional five months, during which time staff projects that entities will

[25] Sasha Romanosky, Rahul Telang & Alessandro Acquisti, ''Do Data Breach Disclosure Laws Reduce Identity Theft?'' Seventh Workshop on the Economics of Information Security, June 2008. The authors tallied the breaches reported to the website Attrition.org during the time period 2002 to 2007 and counted a total of 773 breaches for a range of entities, including businesses, governments, health providers, and educational institutions. Staff used the volume of breaches reported for businesses (246 over a 5 year period, or approximately 50 per year) because that class of data is most compatible with other data staff used to calculate the incidence of breaches.

[26] Staff focused on firms that routinely collect information on a sizeable number of consumers, thereby rendering them attractive targets for data thieves. To do so, staff focused first on retail businesses and eliminated retailers with annual revenue under $1,000,000. The 2002 Economic Census reports that, in that year, there were 418,713 retailers with revenue of $1,000,000 or more. To apply 50 breaches to such a large population, however, would yield a very small incidence rate. In an abundance of caution, to estimate more conservatively the incidence of breach, staff then assumed that only one percent of these firms had security vulnerabilities that would render them breach targets, thus yielding the total of 4,187.

[27] Hourly wages throughout this notice are based on *http://www.bls.gov/ncs/ncswage2007.htm* (National Compensation Survey: Occupational Earnings in the United States 2007, U.S. Department of Labor released August 2008, Bulletin 2704, Table 3 (''Full-time civilian workers,'' mean and median hourly wages).

The breakdown of labor hours and costs is as follows: 50 hours of computer and information systems managerial time at $52.56 per hour; 12 hours of marketing managerial time at $53.00 per hour; 33 hours of computer programmer time at $33.77 per hour; and 5 hours of legal staff time at 54.69 per hour.

[28] Staff estimates that breached entities will use 30 hours of a forensic expert's time. Staff applied the wages of a network systems and data communications analyst ($32.56), tripled it to reflect profits and overhead for an outside consultant ($97.68), and multiplied it by 30 hours to yield $2,930.

[29] Ponemon Institute, ''National Survey on Data Security Breach Notification,'' 2005. Staff believes that this estimate is likely high given the importance of data security to the PHR industry and the likelihood that data encryption will be a strong selling point to consumers.

[30] *See* National Do Not Email Registry, A Report to Congress, June 2004 n.93, available at *www.ftc.gov/reports/dneregistry/report.pdf.*

[31] Robin Sidel and Mitchell Pacelle, ''Credit-Card Breach Tests Banking Industry's Defenses,'' Wall Street Journal, June 21, 2005, p.C1. Sidel and Pacelle reported that industry sources estimated the cost per letter to be about $2.00 in 2005. Allowing for inflation, staff estimates the cost to average about $2.30 per letter over the next three years of prospective PRA clearance sought from OMB.

[32] Ponemon Institute, 2006 Annual Study: Cost of a Data Breach, Understanding Financial Impact, Customer Turnover, and Preventative Solutions, Table 2.

[33] According to industry research, the cost of a single T1 line is $1,500 per month.

[34] Staff estimates that installation of a toll-free number and queue messaging will require 40 hours of a technician's time. Staff applied the wages of a telecommunications technician ($25.14), tripled it to reflect profits and overhead of a telecommunications firm ($75.42), and multiplied it by 40 hours to yield $3,017.

[35] The breakdown of labor hours and costs is as follows: 667 hours of telephone operator time (8 minutes per call × 5,000 calls) at $14.87 per hour and 1,250 hours of information processor time (15 minutes per call × 5,000 calls) at $14.04 per hour.

receive an additional 5,000 calls per breach,[36] yielding an estimated total processing cost of $54,936. In addition, according to industry research, the telecommunication charges associated with the toll-free line will be approximately $2,500.[37] Adding these costs together, staff estimates that the cost per breach for the toll-free line will be $78,453. Based on the above rate of 11 breaches per year, the annual cost burden for affected entities will be $862,983 (11 x $78,453).

In sum, the estimated annual cost burden associated with the breach notification requirements is $1,020,625: $83,402 (costs associated with investigating breaches, drafting notifications of breaches, and notifying the Commission) + $74,240 (costs associated with notifying consumers) + $862,983 (costs associated with establishing toll-free numbers). Staff notes that this estimate likely overstates the costs imposed by the proposed rule because: (1) it assumes that all breaches will require notification, whereas many breaches (*e.g.*, those involving data that is ''not unsecured'') will not require notification; (2) it assumes that all covered entities will be required to take all of the steps required above; and (3) staff made conservative assumptions in developing many of the underlying estimates.

The Commission invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the FTC, including whether the information will have practical utility; (2) the accuracy of the FTC's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of collecting information on those who 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.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 604(a), requires an agency either to provide an Initial Regulatory Flexibility Analysis with a proposed rule, or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. The FTC does not expect that this rule, if adopted, would have a significant economic impact on a substantial number of small entities. First, most of the burdens flow from the mandates of the Act, not from the specific provisions of the proposed rule. Second, the rule will apply to entities that, in many instances, already have obligations to provide notification of data breaches under certain state laws covering medical breaches. Third, once a notice is created, the costs of sending it should be minimal because the Commission anticipates that most consumers will elect to receive notification by e-mail. Nevertheless, to obtain more information about the impact of the proposed rule on small entities, the Commission has decided to publish the following initial regulatory flexibility analysis pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, as amended, and request public comment on the impact on small businesses of its proposed rule.

A. Description of the Reasons That Action by the Agency Is Being Considered

Section 13407 of the American Recovery and Reinvestment Act requires the Commission to promulgate this rule not later than six months after the date of enactment of the Act, or August 18, 2009.

B. Statement of the Objectives of, and Legal Basis for, the Proposed Rule

To implement the requirement that certain entities that handle health information provide notice to individuals whose individually identifiable health information has been breached. The legal basis for the proposed rule is Section 13407 of the American Recovery and Reinvestment Act.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

The proposed rule will apply to vendors of personal health records, PHR related entities, and third party service providers. As discussed in the section on Paperwork Reduction Act above, FTC staff estimates that the proposed rule will apply to approximately 900 entities. Determining a precise estimate of which of these entities are small entities, or describing those entities further, is not readily feasible. The Commission invites comment and information on this issue.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The Recovery Act and proposed rule impose certain reporting requirements within the meaning of the Paperwork Reduction Act. The Commission is seeking clearance from the Office of Management & Budget (OMB) for these requirements, and the Commission's Supporting Statement submitted as part of that process is being made available on the public record of this rulemaking.

Specifically, the Act and proposed rule require vendors of personal health records and PHR related entities to provide notice to consumers and the Commission in the event of a breach of unsecured PHR identifiable health information. The Act and proposed rule also require third party service providers to provide notice to vendors of personal health records and PHR related entities in the event of such a breach.

If a breach occurs, each entity covered by Act and proposed rule will expend costs to determine the extent of the breach and the individuals affected. If the entity is a vendor of personal health records or PHR related entity, additional costs will include the costs of preparing a breach notice, notifying the Commission, compiling a list of consumers to whom a breach notice must be sent, and sending a breach notice. Such entities may incur additional costs in locating consumers who cannot be reached, and in certain cases, posting a breach notice on a website, notifying consumers through media advertisements, or sending breach notices through press releases to media outlets.

In-house costs may include technical costs to determine the extent of breaches; investigative costs of conducting interviews and gathering information; administrative costs of compiling address lists; professional/legal costs of drafting the notice; and potentially, costs for postage, web posting, and/or advertising. Costs may also include the purchase of services of a forensic expert.

As noted in the Paperwork Reduction Act analysis above, the estimated annual cost burden for all entities subject to the proposed rule will be approximately $1,020,625. The Commission seeks further comment on the costs and burdens of small entities in complying with the requirements of the proposed rule.

E. Other Duplicative, Overlapping, or Conflicting Federal Rules

The FTC has not identified any other federal statutes, rules, or policies

[36] Staff anticipates that the greatest influx of calls will be in the first month, and that it will be equivalent to the volume of calls over the remaining five months.

[37] Staff estimates a cost per call of 25¢ (5¢ per minute/per call × 5 minutes per call). Assuming 10,000 calls for each breach, the total estimated telecommunications charges are $2,500.

currently in effect that would conflict with the proposed rule. As noted above, there is a potential for overlap with forthcoming HHS rules governing breach notification for HIPAA-covered entities. The Commission is consulting with HHS on this potential overlap. The Commission invites comment and information on this overlap, along with any other potentially duplicative, overlapping, or conflicting federal statutes, rules, or policies.

F. Description of Any Significant Alternatives to the Proposed Rule

In drafting the proposed rule, the Commission has made every effort to avoid unduly burdensome requirements for entities. In particular, the Commission believes that the alternative of providing notice to consumers electronically will assist small entities by significantly reducing the costs of sending breach notices.

The Commission is not aware of alternative methods of compliance that will reduce the impact of the proposed rule on small entities, while also comporting with the Recovery Act. The statutory requirements are specific as to the timing, method, and content of notice, as well as the effective date of the final rule that results from this Notice of Proposed Rulemaking. Accordingly, the Commission seeks comment and information on ways in which the rule could be modified to reduce any costs or burdens for small entities consistent with the Recovery Act's mandated requirements.

VI. Proposed Rule

List of Subjects in 16 CFR Part 318

Consumer protection, Data protection, Health records, Privacy, Trade practices.

Accordingly, for the reasons set forth in the preamble, the Commission proposes to add a new Part 318 of title 16 to the Code of Federal Regulations to read as follows:

PART 318—HEALTH BREACH NOTIFICATION RULE

Sec.

318.1 Purpose and scope.
318.2 Definitions.
318.3 Breach notification requirement.
318.4 Timeliness of notification.
318.5 Method of notice.
318.6 Content of notice.
318.7 Enforcement.
318.8 Effective date.
318.9 Sunset.

Authority: Pub. L. 111–5.

§ 318.1 Purpose and scope.

This part, which shall be called the ''Health Breach Notification Rule,'' implements Section 13407 of the American Recovery and Reinvestment Act of 2009. It applies to vendors of personal health records, PHR related entities, and third party service providers. It does not apply to HIPAA-covered entities, or to any other entity to the extent that it engages in activities as a business associate of a HIPAA-covered entity.

§ 318.2 Definitions.

(a) *Breach of security* means, with respect to unsecured PHR identifiable health information of an individual in a personal health record, acquisition of such information without the authorization of the individual. Unauthorized acquisition will be presumed to include unauthorized access to unsecured PHR identifiable health information unless the vendor of personal health records, PHR related entity, or third party service provider that experienced the breach has reliable evidence showing that there has not been, or could not reasonably have been, any unauthorized acquisition of such information.

(b) *Business associate* means a business associate under the Health Insurance Portability and Accountability Act, Pub. L. 104–191, 110 Stat. 1936, as defined in 45 CFR 160.103.

(c) *HIPAA*-covered entity means a covered entity under the Health Insurance Portability and Accountability Act, Pub. L. 104–191, 110 Stat. 1936, as defined in 45 CFR 160.103.

(d) *Personal health record* means an electronic record of PHR identifiable health information on an individual that can be drawn from multiple sources and that is managed, shared, and controlled by or primarily for the individual.

(e) *PHR identifiable health information* means ''individually identifiable health information,'' as defined in section 1171(6) of the Social Security Act (42 U.S.C. 1320d(6)), and, with respect to an individual, information:

(1) That is provided by or on behalf of the individual; and

(2) That identifies the individual or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual.

(f) *PHR related entity* means an entity, other than a HIPAA-covered entity or an entity to the extent that it engages in activities as a business associate of a HIPAA-covered entity, that:

(1) Offers products or services through the website of a vendor of personal health records;

(2) Offers products or services through the websites of HIPAA-covered entities that offer individuals personal health records; or

(3) Accesses information in a personal health record or sends information to a personal health record.

(g) *Third party service provider* means an entity that:

(1) Provides services to a vendor of personal health records in connection with the offering or maintenance of a personal health record or to a PHR related entity in connection with a product or service offered by that entity; and

(2) Accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses unsecured PHR identifiable health information as a result of such services.

(h) *Unsecured* means PHR identifiable information that is not protected through the use of a technology or methodology specified by the Secretary of Health and Human Services in the guidance issued under section 13402(h)(2) of the American Reinvestment and Recovery Act of 2009. If such guidance is not issued by the date specified in section 13402(h)(2), the term ''unsecured'' shall mean not secured by a technology standard that renders PHR identifiable health information unusable, unreadable, or indecipherable to unauthorized individuals and that is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute.

(i) *Vendor of personal health records* means an entity, other than a HIPAA-covered entity or an entity to the extent that it engages in activities as a business associate of a HIPAA-covered entity, that offers or maintains a personal health record.

§ 318.3 Breach notification requirement.

(a) *In general*. In accordance with §§ 318.4, 318.5, and 318.6, each vendor of personal health records, following the discovery of a breach of security of unsecured PHR identifiable health information that is in a personal health record maintained or offered by such vendor, and each PHR related entity, following the discovery of a breach of security of such information that is obtained through a product or service provided by such entity, shall—

(1) Notify each individual who is a citizen or resident of the United States whose unsecured PHR identifiable health information was acquired by an unauthorized person as a result of such breach of security; and

(2) Notify the Federal Trade Commission.

(b) *Third party service providers.* A third party service provider shall, following the discovery of a breach of security, provide notice of the breach to a senior official at the vendor of personal health records or PHR related entity to which it provides services, and obtain acknowledgment from such official that such notice was received. Such notification shall include the identification of each individual whose unsecured PHR identifiable health information has been, or is reasonably believed to have been, acquired during such breach.

(c) *Breaches treated as discovered.* A breach of security shall be treated as discovered as of the first day on which such breach is known to a vendor of personal health records, PHR related entity, or third party service provider, respectively, (including any person, other than the individual committing the breach, that is an employee, officer, or other agent of such vendor of personal health records, PHR related entity, or third party service provider, respectively) or should reasonably have been known to such vendor of personal health records, PHR related entity, or third party service provider (or person) to have occurred.

§ 318.4 Timeliness of notification.

(a) *In general.* Except as provided in paragraph (c) of this section and § 318.5(c), all notifications required under §§ 318.3(a) and 318.3(b) shall be made without unreasonable delay and in no case later than 60 calendar days after the discovery of a breach of security.

(b) *Burden of proof.* The vendor of personal health records, PHR related entity, and third party service provider involved shall have the burden of demonstrating that all notifications were made as required under this part, including evidence demonstrating the necessity of any delay.

(c) *Law enforcement exception.* If a law enforcement official determines that a notification, notice, or posting required under this part would impede a criminal investigation or cause damage to national security, such notification, notice, or posting shall be delayed. This paragraph shall be implemented in the same manner as provided under § 164.528(a)(2) of title 45, Code of Federal Regulations, in the case of a disclosure covered under such section.

§ 318.5 Method of notice.

(a) *Individual notice.* A vendor of personal health records or PHR related entity that experiences a breach of security shall provide notice of such breach to an individual promptly, as described in § 318.4, and in the following form:

(1) Written notice by first-class mail to the individual (or the next of kin of the individual if the individual is deceased) at the last known address of the individual or the next of kin, respectively, or, if the individual provides express affirmative consent, by electronic mail. The notice may be provided in one or more mailings as information is available.

(2) In any case deemed by the vendor of personal health records or PHR related entity to require urgency because of possible imminent misuse of unsecured PHR identifiable health information, that entity may provide information to individuals by telephone or other means, as appropriate, in addition to notice provided under paragraph (a)(1) of this section.

(3) If, after making reasonable efforts to contact the individual through his or her preferred form of communication under paragraph (a)(1) of this section, the vendor of personal health records or PHR related entity finds that such preferred form of communication is insufficient or out-of-date, the vendor of personal health records or PHR related entity shall attempt to provide the individual with a substitute form of actual notice, which may include written notice by the consumer's less preferred method or telephone.

(4)(i) If ten or more individuals cannot be reached by the methods specified in paragraphs (a)(1)through (3) of this section, the vendor of personal health records or PHR related entity involved shall provide notice:

(A) Through a conspicuous posting for a period of six months on the home page of its website; or

(B) In major print or broadcast media, including major media in geographic areas where the individuals affected by the breach likely reside, which shall be reasonably calculated to reach the individuals affected by the breach.

(ii) Such a notice in media or web posting shall include a toll-free phone number where an individual can learn whether or not the individual's unsecured PHR identifiable health information may be included in the breach.

(b) *Notice to media.* A vendor of personal health records or PHR related entity shall provide notice to prominent media outlets serving a State or jurisdiction, following the discovery of a breach of security, if the unsecured PHR identifiable health information of 500 or more residents of such State or jurisdiction is, or is reasonably believed to have been, acquired during such breach. Such notice shall include, at a minimum, the information contained in § 318.6.

(c) *Notice to FTC.* Vendors of personal health records and PHR related entities shall provide notice to the Federal Trade Commission following the discovery of a breach of security. If the breach involves the unsecured PHR identifiable health information of 500 or more individuals, then such notice shall be provided as soon as possible and in no case later than five business days following the date of discovery of the breach. If the breach involved the unsecured PHR identifiable health information of fewer than 500 individuals, the vendor of personal health records or PHR related entity may maintain a log of any such breach occurring over the ensuing twelve months and submit the log to the Federal Trade Commission documenting breaches from the preceding year. All notices pursuant to this paragraph shall be provided according to instructions at the Federal Trade Commission's website.

§ 318.6 Content of notice.

Regardless of the method by which notice is provided to individuals under section 318.5, notice of a breach of security shall include, to the extent possible, the following:

(a) A brief description of how the breach occurred, including the date of the breach and the date of the discovery of the breach, if known;

(b) A description of the types of unsecured PHR identifiable health information that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code);

(c) Steps individuals should take to protect themselves from potential harm resulting from the breach;

(d) A brief description of what the entity that suffered the breach is doing to investigate the breach, to mitigate losses, and to protect against any further breaches; and

(e) Contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, website, or postal address.

§ 318.7 Enforcement.

A violation of § 318.3 of this part shall be treated as an unfair or deceptive act or practice in violation of a regulation under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)) regarding unfair or deceptive acts or practices.

§ 318.8 Effective date.

This part shall apply to breaches of security that are discovered on or after September 18, 2009.

§ 318.9 Sunset.

If new legislation is enacted establishing requirements for notification in the case of a breach of security that apply to entities covered by this part, the provisions of this part shall not apply to breaches of security discovered on or after the effective date of regulations implementing such legislation.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E9–8882 Filed 4–17–09: 8:45 am]

[BILLING CODE 6750–01–S

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 248

[Release Nos. 34–59769, IA–2866, IC–28697; File No. S7–09–07]

RIN 3235–AJO6

Interagency Proposal for Model Privacy Form Under the Gramm-Leach-Bliley Act

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Securities and Exchange Commission (''Commission'') is reopening the period for public comment on proposed amendments to Regulation S–P, which implements the privacy provisions of the Gramm-Leach-Bliley Act (''GLB Act''), originally published in the **Federal Register** on March 29, 2007. The proposed amendments would, if adopted, create a safe harbor for a model form that financial institutions may use to provide disclosures in initial and annual privacy notices required under Regulation S–P.

DATES: Comments should be received on or before May 20, 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/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–09–07 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–09–07. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). 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: Paula Jenson, Deputy Chief Counsel, or Brice Prince, Special Counsel, Office of Chief Counsel, Division of Trading and Markets, (202) 551–5550; or Penelope Saltzman, Assistant Director, or Thoreau Bartmann, Senior Counsel, Office of Regulatory Policy, Division of Investment Management, (202) 551–6792, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is reopening the period for public comment on proposed rule amendments,[1] which were proposed pursuant to the Financial Services Regulatory Relief Act of 2006 (the ''Act''), enacted on October 13, 2006.[2] The proposal was published on March 29, 2007, and the comment period closed on May 29, 2007. Section 728 of the Act added subsection (e) to section 503 of the GLB Act, which directs the Commission, together with seven other federal agencies[3] (collectively the ''Agencies'') responsible for implementing Title V, Subtitle A of the GLB Act, to ''jointly develop a model form which may be used, at the option of the financial institution, for the provision of disclosures under this section.''[4] The proposed amendments would, if adopted, create a safe harbor for a model privacy notice form that financial institutions may use to provide disclosures required under the privacy rules[5] adopted by the Agencies pursuant to section 504 of the GLB Act.[6]

In connection with the development of the model form, an outside consultant, Macro International (''Macro'') was retained to conduct quantitative testing to evaluate the effectiveness of four different types of privacy notices, including a slightly revised version of the proposed model privacy notice form.[7] Macro tested the notices on approximately 1,000 consumers at five retail shopping mall locations around the country. Each of the four notices used for testing was printed in a double-sided format, using the front and back sides of an 8½ x 11-inch piece of white paper. We have placed in the comment file for the proposed rule (available at *http://www.sec.gov/comments/s7-09-07/s70907.shtml* and at *http://www.ftc.gov/privacy/privacyinitiatives/financial_rule_inrp.html*) the following documents from the testing: (i) The test data collected and provided by Macro together with the codebook that relates to the data; (ii) the report provided by Macro, which includes a summary of the methodology used in collecting the data, the interview protocol, and the four test notices; and (iii) a report describing the results of the test data prepared by Dr. Alan Levy and Dr. Manoj Hastak.[8]

We are reopening the comment period before final action is taken on the proposal in order to provide all persons who are interested in this matter an opportunity to comment on these

[1] *See* Interagency Proposal for Model Privacy Form Under the Gramm-Leach-Bliley Act, Securities Exchange Act Release No. 55497, Investment Company Act Release No. 27755 (Mar. 20, 2007) [72 FR 14940 (Mar. 29, 2007)] (''Interagency Proposal'') and [72 FR 16875 (Apr. 5, 2007)] (correction notice).

[2] Public Law 109–351 (Oct. 13, 2006), 120 Stat. 1966.

[3] The seven other agencies are the: Commodity Futures Trading Commission (''CFTC''), Federal Deposit Insurance Corporation (''FDIC''), Board of Governors of the Federal Reserve System (''Board''), Federal Trade Commission (''FTC''), National Credit Union Administration (''NCUA''), Office of the Comptroller of the Currency (''OCC''), and Office of Thrift Supervision (''OTS'').

[4] *See supra* note 2, adding 15 U.S.C. 6803(e). The Act stipulates that the model form shall be a safe harbor for financial institutions that elect to use it.

[5] For the Agencies' privacy rules *see* 12 CFR Part 40 (OCC); 12 CFR Part 216 (Board); 12 CFR Part 332 (FDIC); 12 CFR Part 573 (OTS); 12 CFR Part 716 (NCUA); 16 CFR Part 313 (FTC); 17 CFR part 160 (CFTC); 17 CFR Part 248 (Commission).

[6] Codified at 15 U.S.C. 6804.

[7] As described in the Interagency Proposal, the consumer research project on privacy notices was launched in 2004. Interagency Proposal *supra* note 1, at Section I.B.

[8] Dr. Levy and Dr. Hastak are consultants to the model privacy notice research project.

additional quantitative testing documents. Accordingly, we are reopening the comment period until May 20, 2009.

Dated: April 15, 2009.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–8977 Filed 4–17–09; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0103]

RIN 1625–AA00

Safety Zone; Sea World 4th of July Fireworks Display; Mission Bay, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a safety zone on the navigable waters of Mission Bay in support of the Sea World 4th of July Fireworks Display. This safety zone is necessary to provide for the safety of crew, spectators, and other users and vessels 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: Comments and related material must be received by the Coast Guard on or before May 20, 2009.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0103 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. 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 Petty Officer Shane Jackson, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at (619) 278–7262. 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–2009–0103), 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 *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 phone 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–2009–0103'' 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–2009–0103 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit either 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; or the U.S. Coast Guard Sector San Diego, 2710 N. Harbor Dr., San Diego, CA 92101 between 8 a.m. and 3 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

Fireworks & Stage FX Inc. is sponsoring the Sea World 4th of July Fireworks Display, which will include a fireworks presentation originating from a land based firing site located at approximately 32°46′17.20″ N, 117°13′24.72″ W. The safety zone will encompass all navigable waters within 800 feet of the firing site. This safety zone is necessary to provide for the safety of the crew, spectators, and other users and vessels of the waterway.

Discussion of Proposed Rule

The Coast Guard proposes establishing a safety zone that will be enforced from 8 p.m. to 9:45 p.m. on July 3, 2009, thru July 5, 2009. This safety zone is necessary to provide for the safety of the crew, spectators, and other users and vessels of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative. The limits of the safety zone include all navigable waters within 800 feet of the firing site located at approximately 32°46′17.20″ N, 117°13′24.72″ W.

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. 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 established safety zone during the specified times unless authorized to do so by the Captain of the Port or his designated representative.

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 proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Mission Bay from 8 p.m. to 9:45 p.m. on July 3, 2009, thru July 5, 2009.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect late in the evening when vessel traffic is low. Vessel traffic could pass safely around the safety zone. Before the effective period, the Coast Guard will publish a local notice to mariners (LNM) and will issue a broadcast notice to mariners (BNM) alerts via marine channel 16 VHF before the safety zone is enforced.

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 Petty Officer Shane Jackson, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at (619) 278–7262. 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 under the Instruction 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 rule involves the establishment of a safety zone around a pyrotechnics firing site. 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 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. Chapter 701, 3306, 3703; 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 a new temporary zone § 165.T11–168 to read as follows:

§ 165.T11–168 Safety Zone; Sea World 4th of July Fireworks Display; Mission Bay, San Diego, California.

(a) *Location.* The limits of the safety zone are all the navigable waters within 800 feet of the firing site located at approximately 32°46′17.20″ N, 117°13′24.72″ W.

(b) *Enforcement Period.* This section will be enforced from 8 p.m. to 9:45 p.m. on July 3, 2009 thru July 5, 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: March 31, 2009.

T.H. Farris,

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

[FR Doc. E9–9001 Filed 4–17–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0070]

RIN 1625–AA00

Safety Zone; Rockets Over the River; Bullhead City, AZ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes a safety zone, on the navigable waters of the lower Colorado River, Bullhead City, AZ, in support of a fireworks display fired from the Arizona State Land Base in approximate position 35°09.15′ N, 114°34.07′ W. 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: Comments and related material must be received by the Coast Guard on or before May 20, 2009.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0070 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. 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 Petty Officer Shane Jackson, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at (619) 278–2767. 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–2009–0070), 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 phone 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–2009–0070'' 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–2009–0070 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit either 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; or the U.S. Coast Guard Sector San Diego, 2710 N. Harbor Drive, San Diego, CA 92101 between 8 a.m. and 2 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 all 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 Coast Guard is establishing a temporary safety zone on the navigable waters of the Lower Colorado River, Bullhead City, AZ in support of a fireworks show fired from the Arizona State Land Base near the navigational channel of the Lower Colorado River, Bullhead City, AZ. The fireworks show is being sponsored by The Laughlin Tourism Committee. The safety zone is set at a 1200 foot radius around the firing site. This temporary safety zone is necessary to provide for the safety of the show's crew, spectators, participants of the event, participating vessels, and other vessels and users of the waterway.

Discussion of Proposed Rule

The Coast Guard proposes a safety zone that would be enforced from 8:30 p.m. to 9:30 p.m. on July 4, 2009. The limits of the safety include all navigable waters within 1200 feet of the firing location in approximate position: 35°09.15′ N, 114°34.07′ W.

This safety zone is necessary to provide for the safety of the crews, spectators, and participants of the event and to protect other vessels and users of the waterway. Persons and vessels will be 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 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 the safety zone will restrict boating traffic within the navigable waters of the Lower Colorado River, Bullhead City, AZ, the effect of this regulation will not be significant as the safety zone will encompass only a small portion of the waterway and will be very short in duration. The entities most likely to be affected are pleasure craft engaged in recreational activities and sightseeing. As such, the Coast Guard expects the economic impact of this rule to be minimal.

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 proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the region of the lower Colorado River adjacent to Bullhead City, AZ from 8:30 p.m. to 9:30 p.m. on July 4, 2009.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zone only encompasses a small portion of the waterway, it is short in duration at a relatively late hour when vessel traffic is low, and the Captain of the Port may authorize entry into the zone, if necessary. 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 VFH before the safety zone is enforced.

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 Petty Officer Shane Jackson, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at (619) 278–7267. 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 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 M16475.1D, 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 under the Instruction 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 rule involves the establishment of a safety zone around a pyrotechnics firing site. 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 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. Chapter 701; 3306, 3703 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add new temporary zone § 165.T11–169 to read as follows:

§ 165.T11–169 Safety zone; Rockets Over the River; Bullhead City, Arizona.

(a) *Location.* The limits of the proposed safety zone are as follows: All navigable waters within 1200 feet of the Arizona State Land Base firing site in approximate position: 35°09.15′ N, 114°34.07′ W.

(b) *Enforcement Period.* This section will be enforced from 8:30 p.m. to 9:30 p.m. on July 4, 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 Patrol Commander (PATCOM). The PATCOM 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: March 27, 2009.

T.H. Farris,

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

[FR Doc. E9–9002 Filed 4–17–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–1261]

RIN 1625–AA00

Safety Zone; AVI July Fireworks Display; Laughlin, NV

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes a safety zone on the navigable waters of the lower Colorado River, Laughlin, NV, in support of a fireworks display near the AVI Resort and Casino. 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: Comments and related material must be received by the Coast Guard on or before May 20, 2009.

ADDRESSES: You may submit comments identified by docket number USCG–2008–1261 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 Petty Officer Shane Jackson, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at (619) 278–2767. 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–2008–1261), 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 phone 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–2008–1261'' 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–2008–1261 in the Docket ID box, press

Enter, and then click on the item in the Docket ID column. You may also visit either 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; or the U.S. Coast Guard Sector San Diego, 2710 N. Harbor Drive, San Diego, CA 92101 between 8 a.m. and 2 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 all 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 Coast Guard is establishing a temporary safety zone on the navigable waters of the Lower Colorado River, Laughlin, NV in support of a fireworks show in the navigation channel of the Lower Colorado River, Laughlin, NV. The fireworks show is being sponsored by AVI Resort and Casino. The safety zone is set at a 1,000 foot radius around the anchored firing barge. This temporary safety zone is necessary to provide for the safety of the show's crew, spectators, participants of the event, participating vessels, and other vessels and users of the waterway.

Discussion of Proposed Rule

The Coast Guard proposes a safety zone that would be enforced from 8 p.m. to 9:45 p.m. on July 4, 2009. The limits of the safety zone include all navigable waters within 1,000 feet of the firing location adjacent to the AVI Resort and Casino. The zone is centered in the channel between Laughlin Bridge and the northwest point of the AVI Resort and Casino Cove in position: 35°00′45″ N, 114°38′16″ W.

This safety zone is necessary to provide for the safety of the crews, spectators, and participants of the event and to protect other vessels and users of the waterway. Persons and vessels will be 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 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 the safety zone will restrict boating traffic within the navigable waters of the Lower Colorado River, Laughlin, NV, the effect of this regulation will not be significant as the safety zone will encompass only a small portion of the waterway and will be very short in duration. The entities most likely to be affected are pleasure craft engaged in recreational activities and sightseeing. As such, the Coast Guard expects the economic impact of this rule to be minimal.

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 proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in the region of the lower Colorado River adjacent to AVI Resort and Casino from 8 p.m. to 9:45 p.m. on July 4, 2009.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zone only encompasses a small portion of the waterway, it is short in duration at a relatively late hour when commercial traffic is low, and the Captain of the Port may authorize entry into the zone, if necessary. 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.

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 Petty Officer Shane Jackson, USCG, Waterways Management, U.S. Coast Guard Sector San Diego at (619) 278–7267. 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 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 under the Instruction 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 rule involves the establishment of a safety zone around a pyrotechnics firing site. 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 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. 122, 1231; 46 U.S.C. Chapter 701; 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 safety zone § 165.T11–167:

§ 165.T11–167 AVI July Fireworks Display; Laughlin, Nevada.

(a) *Location.* The limits of the proposed safety zone are as follows: all navigable waters within 1000 feet of the firing location adjacent to the AVI Resort and Casino, centered in the channel between Laughlin Bridge and the northwest point of the AVI Resort and Casino Cove in position: 35°00′45″ N, 114°38′16″ W.

(b) *Enforcement Period.* This section will be enforced from 8 p.m. to 9:45 p.m. on July 4, 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 Patrol Commander (PATCOM). The PATCOM 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: March 27, 2009.

T.H. Farris,

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

[FR Doc. E9–9004 Filed 4–17–09; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[OAR–2004–0091; FRL–8789–4]

Outer Continental Shelf Air Regulations Consistency Update for California

AGENCY: Environmental Protection Agency (''EPA'')

ACTION: Proposed rule.

SUMMARY: EPA is proposing to update a portion of the Outer Continental Shelf (''OCS'') Air Regulations. Requirements applying to OCS sources located within 25 miles of States' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (''COA''), as mandated by section 328(a)(1) of the Clean Air Act, as amended in 1990 (''the Act''). The portion of the OCS air regulations that is being updated pertain to the requirements for OCS sources by the Santa Barbara County Air Pollution Control District (Santa Barbara County APCD). The intended effect of approving the OCS requirements for the Santa Barbara County APCD is to regulate emissions from OCS sources in accordance with the requirements onshore. The change to the existing requirements discussed below is proposed to be incorporated by reference into the Code of Federal Regulations and is listed in the appendix to the OCS air regulations.

DATES: Any comments must arrive by May 20, 2009.

ADDRESSES: Submit comments, identified by docket number OAR–2004–0091, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.
2. *E-mail: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, Air Division (Air-4), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 947–4120, *allen.cynthia@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background Information
  A. Why is EPA taking this action?
II. EPA's Evaluation
  A. What criteria were used to evaluate rules submitted to update 40 CFR part 55?
  B. What requirements were submitted to update 40 CFR part 55?
III. Administrative Requirements
  A. Executive Order 12866: Regulatory Planning and Review
  B. Paperwork Reduction Act
  C. Regulatory Flexibility Act
  D. Unfunded Mandates Reform Act
  E. Executive Order 13132: Federalism
  F. Executive Order 13175: Coordination With Indian Tribal Government
  G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
  H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
  I. National Technology Transfer and Advancement Act
  J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. Background Information

A. Why is EPA taking this action?

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

Pursuant to § 55.12 of the OCS rule, consistency reviews will occur (1) at least annually; (2) upon receipt of a Notice of Intent under § 55.4; or (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in part 55. This proposed action is being taken in response to the submittal of requirements submitted by the Santa Barbara County APCD. Public comments received in writing within 30 days of publication of this document will be considered by EPA before publishing a final rule. Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the

[1] The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

II. EPA's Evaluation

A. What criteria were used to evaluate rules submitted to update 40 CFR part 55?

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

B. What requirements were submitted to update 40 CFR part 55?

1. After review of the requirements submitted by the Santa Barbara County APCD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following District requirements applicable to OCS sources:

Rule No.	Name	Adoption or amended date
102	Definitions	01/15/09
316	Storage and Transfer of Gasoline.	01/15/09

III. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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

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

B. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in 40 CFR part 55, and by extension this update to the rules, under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0249. Notice of OMB's approval of EPA Information Collection Request (''ICR'') No. 1601.06 was published in the **Federal Register** on March 1, 2006 (71 FR 10499–10500). The approval expires January 31, 2009. As EPA previously indicated (70 FR 65897–65898 (November 1, 2005)), the annual public reporting and recordkeeping burden for collection of information under 40 CFR part 55 is estimated to average 549 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable. In addition, EPA is amending the table in 40 CFR part 9 of currently approved OMB control numbers for various regulations to list the regulatory citations for the information requirements contained in this final rule.

C. Regulatory Flexibility Act

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

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

D. Unfunded Mandates Reform Act

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

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

result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million of more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

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

Today's proposed rules contain no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or to the private sector in any one year. These rules implement requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act without the exercise of any policy discretion by EPA. These OCS rules already apply in the COA, and EPA has no evidence to suggest that these OCS rules have created an adverse material effect. As required by section 328 of the Clean Air Act, this action simply updates the existing OCS requirements to make them consistent with rules in the COA.

E. Executive Order 13132, Federalism

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

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

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

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This rule does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal government and Indian tribes and thus does not have ''tribal implications,'' within the meaning of Executive Order 13175. This rule implements requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. As required by section 328 of the Clean Air Act, this rule simply updates the existing OCS rules to make them consistent with current COA requirements. In addition, this rule does not impose substantial direct compliance costs on tribal governments, nor preempt tribal law. Consultation with Indian tribes is therefore not required under Executive Order 13175. Nonetheless, in the spirit of Executive Order 13175 and consistent with EPA policy to promote communications between EPA and tribes, EPA specifically solicits comments on this proposed rule from tribal officials.

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

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

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

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

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

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable laws or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods,

sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decided not to use available and applicable voluntary consensus standards.

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

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

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

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

List of Subjects in 40 CFR Part 55

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

Dated: March 10, 2009.

Laura Yoshii,

Acting Regional Administrator, Region IX.

Title 40, chapter I of the Code of Federal Regulations, is proposed to be amended as follows:

PART 55—[AMENDED]

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

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

2. Section 55.14 is amended by revising paragraph (e)(3)(ii)(F) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of states seaward boundaries, by state.

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(F) *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources.*

* * * * *

3. Appendix A to CFR part 55 is amended by revising paragraph (b)(6) under the heading ''California'' to read as follows:

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

* * * * *

California

* * * * *

(b) * * *

(6) The following requirements are contained in *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources:*

Rule 102 Definitions (Adopted 01/15/09)
Rule 103 Severability (Adopted 10/23/78)
Rule 106 Notice to Comply for Minor Violations (Repealed 01/01/2001)
Rule 107 Emergencies (Adopted 04/19/01)
Rule 201 Permits Required (Adopted 06/19/08)
Rule 202 Exemptions to Rule 201 (Adopted 06/19/08)
Rule 203 Transfer (Adopted 04/17/97)
Rule 204 Applications (Adopted 04/17/97)
Rule 205 Standards for Granting Permits (Adopted 04/17/97)
Rule 206 Conditional Approval of Authority to Construct or Permit to Operate (Adopted 10/15/91)
Rule 207 Denial of Application (Adopted 10/23/78)
Rule 210 Fees (Adopted 03/17/05)
Rule 212 Emission Statements (Adopted 10/20/92)
Rule 301 Circumvention (Adopted 10/23/78)
Rule 302 Visible Emissions (Adopted 10/23/78)
Rule 304 Particulate Matter—Northern Zone (Adopted 10/23/78)
Rule 305 Particulate Matter Concentration—Southern Zone (Adopted 10/23/78)
Rule 306 Dust and Fumes—Northern Zone (Adopted 10/23/78)
Rule 307 Particulate Matter Emission Weight Rate—Southern Zone (Adopted 10/23/78)
Rule 308 Incinerator Burning (Adopted 10/23/78)
Rule 309 Specific Contaminants (Adopted 10/23/78)
Rule 310 Odorous Organic Sulfides (Adopted 10/23/78)
Rule 311 Sulfur Content of Fuels (Adopted 10/23/78)
Rule 312 Open Fires (Adopted 10/02/90)
Rule 316 Storage and Transfer of Gasoline (Adopted 01/15/09)
Rule 317 Organic Solvents (Adopted 10/23/78)
Rule 318 Vacuum Producing Devices or Systems—Southern Zone (Adopted 10/23/78)
Rule 321 Solvent Cleaning Operations (Adopted 09/18/97)
Rule 322 Metal Surface Coating Thinner and Reducer (Adopted 10/23/78)
Rule 323 Architectural Coatings (Adopted 11/15/01)
Rule 324 Disposal and Evaporation of Solvents (Adopted 10/23/78)
Rule 325 Crude Oil Production and Separation (Adopted 07/19/01)
Rule 326 Storage of Reactive Organic Compound Liquids (Adopted 01/18/01)

Rule 327 Organic Liquid Cargo Tank Vessel Loading (Adopted 12/16/85)
Rule 328 Continuous Emission Monitoring (Adopted 10/23/78)
Rule 330 Surface Coating of Metal Parts and Products (Adopted 01/20/00)
Rule 331 Fugitive Emissions Inspection and Maintenance (Adopted 12/10/91)
Rule 332 Petroleum Refinery Vacuum Producing Systems, Wastewater Separators and Process Turnarounds (Adopted 06/11/79)
Rule 333 Control of Emissions from Reciprocating Internal Combustion Engines (Adopted 06/19/08)
Rule 342 Control of Oxides of Nitrogen (NO_X) from Boilers, Steam Generators and Process Heaters) (Adopted 04/17/97)
Rule 343 Petroleum Storage Tank Degassing (Adopted 12/14/93)
Rule 344 Petroleum Sumps, Pits, and Well Cellars (Adopted 11/10/94)
Rule 346 Loading of Organic Liquid Cargo Vessels (Adopted 01/18/01)
Rule 352 Natural Gas-Fired Fan-Type Central Furnaces and Residential Water Heaters (Adopted 09/16/99)
Rule 353 Adhesives and Sealants (Adopted 08/19/99)
Rule 359 Flares and Thermal Oxidizers (Adopted 06/28/94)
Rule 360 Emissions of Oxides of Nitrogen from Large Water Heaters and Small Boilers (Adopted 10/17/02)
Rule 361 Small Boilers, Steam Generators, and Process Heaters (Adopted 01/17/08)
Rule 370 Potential to Emit—Limitations for Part 70 Sources (Adopted 06/15/95)
Rule 505 Breakdown Conditions Sections A., B.1, and D. only (Adopted 10/23/78)
Rule 603 Emergency Episode Plans (Adopted 06/15/81)
Rule 702 General Conformity (Adopted 10/20/94)
Rule 801 New Source Review (Adopted 04/17/97)
Rule 802 Nonattainment Review (Adopted 04/17/97)
Rule 803 Prevention of Significant Deterioration (Adopted 04/17/97)
Rule 804 Emission Offsets (Adopted 04/17/97)
Rule 805 Air Quality Impact Analysis and Modeling (Adopted 04/17/97)
Rule 808 New Source Review for Major Sources of Hazardous Air Pollutants (Adopted 05/20/99)
Rule 1301 Part 70 Operating Permits—General Information (Adopted 06/19/03)
Rule 1302 Part 70 Operating Permits—Permit Application (Adopted 11/09/93)
Rule 1303 Part 70 Operating Permits—Permits (Adopted 11/09/93)
Rule 1304 Part 70 Operating Permits—Issuance, Renewal, Modification and Reopening (Adopted 11/09/93)
Rule 1305 Part 70 Operating Permits—Enforcement (Adopted 11/09/93)

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[FR Doc. E9–9014 Filed 4–17–09; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

47 CFR Chapter III

Docket Number: 0810021312-9654-02

RIN 0660-AA18

Low-Power Television and Translator Upgrade Program

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Advanced notice of proposed rulemaking; withdrawal.

SUMMARY: The National Telecommunications and Information Administration (NTIA) is withdrawing the Advanced Notice of Proposed Rulemaking soliciting comments on the implementation of the Low-Power Television and Translator Upgrade Program (Upgrade Program). After reviewing and considering the comments received following two public meetings, the agency has decided not to proceed with regulations to implement the Upgrade Program. NTIA will establish and implement the Upgrade Program through a Notice of Availability of Funds (NOFA) to be published shortly.

EFFECTIVE DATE: April 20, 2009.

FOR FURTHER INFORMATION CONTACT: William Cooperman, Upgrade Program, Director Broadcasting Division, telephone: (202) 482–5802; fax: (202) 482–2156. Information about the Upgrade Program also can be obtained electronically via the Internet at *http://www.ntia.doc.gov/lptv*.

SUPPLEMENTARY INFORMATION:

Background

Section 3009 of the Deficit Reduction Act of 2005, Pub. L. No. 109–171, 120 Stat. 4, 21 (2006), required the National Telecommunications and Information Administration (NTIA) to implement and administer the Low-Power Television and Translator Upgrade Program (Upgrade Program). The Upgrade Program is intended to provide reimbursement to eligible low-power television broadcast stations, Class A television stations, television translator stations, or television booster stations for equipment to upgrade from analog to digital in eligible rural communities. On October 9, 2008, NTIA published an Advanced Notice of Proposed Rulemaking and Notice of Public Meetings, 73 Fed. Reg. 59,586 (2008), to announce two public meetings (October 24 and October 28, 2008) about the Upgrade Program and to provide an opportunity for public comment on the issues to be discussed at these public meetings.

NTIA received 24 public comments on the Upgrade Program through mid–November 2008. Information provided at the October 24, 2008, public meeting and the comments received are available on NTIA's Web site at *http://www.ntia.doc.gov/lptv/upgrade.html.* After reviewing and considering the comments received, NTIA has decided not to proceed with regulations to implement the program. NTIA will issue a NOFA that provides detailed information concerning the implementation of the program in the **Federal Register**. The comments received will be fully discussed in the NOFA.

Dated: April 14, 2009.

Anna M. Gomez,

Acting Assistant Secretary for Communications and Information.

[FR Doc. E9–8989 Filed 4–17–09; 8:45 am]
BILLING CODE 3510–60–S

Notices

Federal Register

Vol. 74, No. 74

Monday, April 20, 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 15, 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.

Rural Business-Cooperative Service

Title: Agriculture Innovation Centers.

OMB Control Number: 0570–0045.

Summary of Collection: The Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171, signed May 13, 2002) authorized the Secretary of the U.S. Department of Agriculture (USDA) to award grant funds for agriculture innovation centers, a demonstration program under which agricultural producers are to be provided with technical and business development assistance enabling them to establish businesses producing and marketing value-added products. This program is administered by Cooperative Programs within USDA's Rural Development. Grants were awarded, on a competitive basis, only in fiscal year 2003. The authorization for this program expired on September 30, 2004; however, centers are required to provide progress reports for the duration of the grant agreement to monitor compliance and measure the success of the program. The 2008 Farm Bill has reauthorized the program through 2012.

Need and Use of the Information: Performance report information is collected semi-annually from the ten agriculture innovation centers funded during the 2003 grant cycle. USDA uses performance reports to confirm that progress is being made toward achieving the stated goals of the project. A final report is submitted at the completion of the grant agreement. Centers may be non-profit corporations, for-profit corporations, institutions of higher learning, and consortia of the aforementioned entities.

Description of Respondents: Not-for-profit Institutions; Business or other for-profit.

Number of Respondents: 10.

Frequency of Responses: Reporting: Semi-annually.

Total Burden Hours: 110.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–9009 Filed 4–17–09; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 15, 2009.

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

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

Animal and Plant Health Inspection Service

Title: Requirements of Recognizing the Animal Health Status of Foreign Regions.

OMB Control Number: 0579–0219.

Summary of Collection: The Animal Health Protection Act (AHPA) of 2002 is the primary Federal law governing the protection of animal health. The AHPA is contained in Title X, subtitle E, sections 10401–18, of Public Law 107–171, May 13, 2002, the Farm Security and Rural Investment Act of 2002. The Animal and Plant Health Inspection Service (APHIS) is responsible for, among other things, protecting the health of our Nation's livestock and poultry populations by preventing the introduction and spread of serious diseases and pests of livestock and poultry and for eradicating such diseases and pests from the United States when feasible. The regulations in 9 CFR part 92, Importation of Animals and Animal Products: Procedures for Requesting Recognition of Regions, set out the process by which a foreign government may request recognition of the animal health status of a region or approval to export animals or animal products to the United States based on the risk associated with animals or animal products from that region. Each request must include information about the region.

Need and Use of the Information: APHIS will collection information that might include: (1) The authority, organization, and infrastructure of the Veterinary Service Organization in the region; (2) disease status; (3) the status of adjacent regions with respect to the agent; (4) the extent of an active disease control program, if any, if the agent is known to exist in the region; (5) the vaccination status of the region, when the last vaccination, what is the extent of vaccination if it is currently used, and what vaccine is being used; (6) the degree to which the region is separated from adjacent regions of higher risk through physical or other barriers; (7) the extent to which movement of animal and animal products is controlled from regions of higher risk, and the level of biosecurity regarding such movements; (8) livestock demographics and marketing practices in the region; (9) the type and extent of surveillance in the region, e.g., is it passive and/or active, what is the quantity and quality of sampling and testing; (10) diagnostic laboratory capabilities, and (11) policies and infrastructure for animal disease control in the region, i.e., emergency response capacity. Without the information the U.S. livestock and poultry industries could suffer serious economic losses as the result of such an incursion, since the value of their products would be diminished both domestically and internationally.

Description of Respondents: Federal Government.

Number of Respondents: 3.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 120.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–9010 Filed 4–17–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designation for the Unassigned Areas of East Texas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: GIPSA is announcing the designation of the following organization to provide official services under the United States Grain Standards Act, as amended (USGSA): Central Illinois Grain Inspection (Central Illinois) d/b/a Lone Star Grain Inspection in Texas.

DATES: *Effective Date:* April 20, 2009.

ADDRESSES: USDA, GIPSA, Karen Guagliardo, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Karen Guagliardo at 202–720–7312, e-mail *Karen.W.Guagliardo@usda.gov.*

Read Applications: All applications and comments will be available for public inspection at the office above during regular business hours (7 CFR 1.27(b)).

SUPPLEMENTARY INFORMATION: In the September 29, 2008, **Federal Register** (73 FR 56546), GIPSA requested applications for designation to provide official services in the geographic area named above. Applications were due by October 29, 2008.

There were two applicants for the east Texas area: Central Illinois and Gulf Country Inspection Service, Inc. (Gulf Country); both applied for the entire area open for designation. Central Illinois is currently designated as an official service provider and has been providing services in the designation area on an interim basis since July 1, 2008. Gulf Country is a proposed official service provider owned by Tyrone Robichaux, Richard Maynard, Pat LaCour, and Dan Williams. GIPSA asked for comments on Central Illinois and Gulf Country in the December 1, 2008, **Federal Register** (73 FR 72762). Comments were due by December 31, 2008. GIPSA received a total of 3 comments by the closing date all in support of Central Illinois. The comments received were from grain companies located in the area of designation.

GIPSA evaluated all available information regarding the designation criteria in section 7(f)(l) of the USGSA (7 U.S.C. 79(f)) and determined that Central Illinois is better able to provide official services in the geographic areas specified in the September 2, 2008, **Federal Register,** for which they applied. This designation action to provide official services in the specified area is effective March 12, 2009. Central Illinois' current designation, which terminates on March 31, 2011, will be amended to include the east Texas area.

Interested persons may obtain official services by calling the telephone numbers listed below.

Official agency	Headquarters location and telephone	Designation start	Designation end
Central Illinois	Bloomington, IL, 309–827–7121. Additional Locations: Pekin, IL, Saginaw, TX, 817–306–8124.	4/1/2008	3/31/2011

Section 7(f)(1) of the USGSA authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services (7 U.S.C. 79 (f)(1)).

Under section 7(g)(1) of the USGSA, designations of official agencies are effective for 3 years unless terminated by the Secretary but may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act.

Authority: 7 U.S.C. 71–87k.

Alan R. Christian,

Acting Administrator, Grain Inspection, Packers, and Stockyards Administration.

[FR Doc. E9–9019 Filed 4–17–09; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Announcement of Grant Application Deadlines and Funding Levels

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of funds availability and solicitation of applications.

SUMMARY: The United States Department of Agriculture's (USDA) Rural Utilities Service (RUS) announces its Community Connect Grant Program application window for Fiscal Year (FY) 2009. In addition, RUS announces the minimum and maximum amounts for Community Connect grants applicable for the fiscal year. The Community Connect Grant Program regulations can be found at 7 CFR 1739, subpart A.

DATES: You may submit completed applications for grants on paper or electronically according to the following deadlines:

- Paper copies must carry proof of shipping *no later* than June 19, 2009 to be eligible for FY 2009 grant funding. Late applications are not eligible for FY 2009 grant funding.
- Electronic copies must be received by June 19, 2009 to be eligible for FY 2009 grant funding. Late applications are not eligible for FY 2009 grant funding.

ADDRESSES: You may obtain application guides and materials for the Community Connect Grant Program via the Internet at the following Web site: *http://www.usda.gov/rus/telecom/commconnect.htm.* You may also request application guides and materials from RUS by contacting the appropriate individual listed in section VII of the **SUPPLEMENTARY INFORMATION** section of this notice.

Submit completed paper applications for grants to the Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 2870, STOP 1599, Washington, DC 20250–1599. Applications should be marked ''Attention: Director, Broadband Division, Rural Utilities Service.''

Submit electronic grant applications at *http://www.grants.gov* (Grants.gov), following the instructions you find on that Web site.

FOR FURTHER INFORMATION CONTACT: Kenneth Kuchno, Director, Broadband Division, Rural Utilities Service, U.S. Department of Agriculture, telephone: (202) 690–4673, fax: (202) 690–4389.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Utilities Service (RUS).

Funding Opportunity Title: Community Connect Grant Program.

Announcement Type: Initial announcement.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.863.

Dates: You may submit completed applications for grants on paper or electronically according to the following deadlines:

- Paper copies must carry proof of shipping no later than June 19, 2009, to be eligible for FY 2009 grant funding. Late applications are not eligible for FY 2009 grant funding.
- Electronic copies must be received by June 19, 2009, to be eligible for FY 2009 grant funding. Late applications are not eligible for FY 2009 grant funding.

Items in Supplementary Information

I. *Funding Opportunity:* Brief introduction to the Community Connect Grant Program.

II. *Award Information:* Available funds and minimum and maximum amounts.

III. *Eligibility Information:* Who is eligible, what kinds of projects are eligible, what criteria determine basic eligibility.

IV. *Application and Submission Information:* Where to get application materials, what constitutes a completed application, how and where to submit applications, deadlines, items that are eligible.

V. *Application Review Information:* Considerations and preferences, scoring criteria, review standards, selection information.

VI. *Award Administration Information:* Award notice information, award recipient reporting requirements.

VII. *Agency Contacts:* Web, phone, fax, e-mail, contact name.

I. Funding Opportunity

The provision of broadband transmission service is vital to the economic development, education, health, and safety of rural Americans. The purpose of the Community Connect Grant Program is to provide financial assistance in the form of grants to eligible applicants that will provide currently unserved areas, on a ''community-oriented connectivity'' basis, with broadband transmission service that fosters economic growth and delivers enhanced educational, health care, and public safety services. Rural Utilities Service will give priority to rural areas that it believes have the greatest need for broadband transmission services, based on the criteria contained herein.

Grant authority will be used for the deployment of broadband transmission service to extremely rural, lower-income communities on a ''community-oriented connectivity'' basis.

The ''community-oriented connectivity'' concept will stimulate practical, everyday uses and applications of broadband facilities by cultivating the deployment of new broadband transmission services that improve economic development and provide enhanced educational and health care opportunities in rural areas. Such an approach will also give rural communities the opportunity to benefit from the advanced technologies that are necessary to achieve these goals. Please see 7 CFR 1739, subpart A for specifics.

This notice has been formatted to conform to a policy directive issued by the Office of Federal Financial Management (OFFM) of the Office of Management and Budget (OMB), published in the **Federal Register** on June 23, 2003. This Notice does not change the Community Connect Grant Program regulation (7 CFR 1739, subpart A).

II. Award Information

A. Available Funds

1. *General.* The Administrator has determined that the following amounts are available for grants in FY 2009 under 7 CFR 1739.2(a).

2. *Grants:*

a. $13,406,000 is available for grants. Under 7 CFR 1739.2, the Administrator has established a minimum grant amount of $50,000 and a maximum grant amount of $1,000,000 for FY 2009.

b. Assistance instrument: Rural Development will execute grant documents appropriate to the project prior to any advance of funds with successful applicants.

B. Community Connect grants cannot be renewed. Award documents specify the term of each award. Applications to extend existing projects are welcomed (grant applications must be submitted during the application window) and will be evaluated as new applications.

III. Eligibility Information

A. Who is eligible for grants? (See 7 CFR 1739.10.)

1. Only entities legally organized as one of the following are eligible for Community Connect Grant Program financial assistance:

a. An incorporated organization,

b. An Indian tribe or tribal organization, as defined in *25 U.S.C. 450b(b) and (c),*

c. A State or local unit of government,

d. A cooperative, private corporation or limited liability company organized on a for-profit or not-for-profit basis.

2. Individuals are not eligible for Community Connect Grant Program financial assistance directly.

3. Applicants must have the legal capacity and authority to own and operate the broadband facilities as proposed in its application, to enter into contracts and to otherwise comply with applicable federal statutes and regulations.

B. What are the basic eligibility requirements for a project?

1. Required matching contributions. Please see 7 CFR 1739.14 for the requirement. Grant applicants must demonstrate a matching contribution, in cash or in kind (new, non-depreciated items), of at least fifteen (15) percent of the total amount of financial assistance requested. Matching contributions must be used for eligible purposes of Community Connect grant assistance (see 7 CFR 1739.12).

2. To be eligible for a grant, the Project must (see 7 CFR 1739.11):

a. Serve a Rural Area where Broadband Transmission Service does not currently exist, to be verified by Rural Development prior to the award of the grant;

b. Serve one Community recognized in the latest U.S. Census or the latest version of the Rand McNally Atlas;

c. Deploy Basic Broadband Transmission Service, free of all charges for at least 2 years, to all Critical Community Facilities located within the proposed Service Area;

d. Offer Basic Broadband Transmission Service to residential and business customers within the proposed Service Area; and

e. Provide a Community Center with at least ten (10) Computer Access Points within the proposed Service Area, and make Broadband Transmission Service available therein, free of all charges to users for at least 2 years.

C. What is a completed application?

See paragraph IV.B of this notice for a discussion of the items that make up a completed application. You may also refer to 7 CFR 1739.15 for completed grant application items.

IV. Application and Submission Information

A. Clarifications to Requirements for FY 2009

1. Rural Development clarifies that the definition of ''Critical Community Facilities'' includes the mandatory Community Center.

2. For all funding commitments, including all matching fund commitments and commitments made by the applicant, that are required to complete the Project in addition to the Rural Development grant, evidence must be submitted demonstrating that funding arrangements have been obtained. If the appropriate funding commitments are not included in the application, the application will be deemed ineligible for consideration. This evidence must:

a. Clearly state the name of the entity that is making the commitment;

b. The amount of the commitment; and

c. The purpose of commitment.

3. Rural Development clarifies that in order to qualify as eligible costs for grant coverage or matching fund contributions, operating expenses incurred in providing Broadband Transmission Service to Critical Community Facilities for the first 2 years of operation and in providing training and instruction must be for the following purposes subject to the specified maximum amounts:

a. Salary for operations manager, not to exceed $30,000 per year.

b. Salary for technical support staff, not to exceed $30,000 per year.

c. Salary for community center staff, not to exceed $25,000 per year.

d. Bandwidth expenses, not to exceed $25,000 per year.

e. Training courses on the use of the Internet, not to exceed $15,000 per year.

The operating costs to be funded by the grant or used as matching contributions cannot exceed in the aggregate $250,000. No other operating expenses are eligible for grant funding or to be considered as matching funds.

4. Community means any incorporated or unincorporated town, village, or borough recognized in the latest decennial census as published by the Bureau of the Census or in the most recent edition of a Rand McNally Atlas that is located in a Rural Area.

5. Rural Development clarifies that the economic need of the applicant's service territory will be based on the median household income (MHI) for the Community serviced and the state in which the Community is located, as determined by the U.S. Bureau of the Census at *http://factfinder.census.gov*. If the community was qualified using the Rand McNally Atlas, the applicant must use the MHI, contained in the latest decennial census, of the county in which the Community resides as the Community MHI. The economic need will no longer be based on the Per Capita Personal Income of the community.

B. Where to Get Application Information

The application guide, copies of necessary forms and samples, and the Community Connect Grant Program regulation are available from these sources:

1. The Internet: *http://www.usda.gov/rus/telecom/commconnect.htm*, or *http://www.grants.gov*.

2. The Rural Utilities Service Broadband Division, for paper copies of these materials: (202) 690–4673.

C. What constitutes a completed application?

1. Detailed information on each item required can be found in the Community Connect Grant Program regulation and the Community Connect Grant Program application guide. Applicants are strongly encouraged to read and apply both the regulation and the application guide. This Notice does not change the requirements for a completed application for any form of Community Connect Grant Program financial assistance specified in the Community Connect Grant Program regulation. The Community Connect Grant Program regulation and the application guide provide specific guidance on each of the items listed and the Community Connect Grant Program application guide provides all necessary forms and sample worksheets.

2. Applications should be prepared in conformance with the provisions in 7 CFR 1739, subpart A, and applicable USDA regulations including 7 CFR parts 3015, 3016, and 3019. Applicants must use the Rural Utilities Service Application Guide for this program containing instructions and all necessary forms, as well as other important information, in preparing their application. Completed applications must include the following:

a. *An Application for Federal Assistance.* A completed Standard Form (SF) 424.

b. *An executive summary of the Project.* The applicant must provide Rural Development with a general project overview.

c. *Scoring criteria documentation.* Each grant applicant must address and provide documentation on how it meets each of the scoring criteria detailed 7 CFR 1739.17.

d. *System design.* The applicant must submit a system design, including, narrative specifics of the proposal, associated costs, maps, engineering design studies, technical specifications and system capabilities, etc.

e. *Scope of work.* The scope of work must include specific activities and services to be performed under the

proposal, who will carry out the activities and services, specific time-frames for completion, and a budget for all capital and administrative expenditures reflecting the line item costs for all grant purposes, the matching contribution, and other sources of funds necessary to complete the project.

f. *Community-Oriented Connectivity Plan.* The applicant must provide a detailed Community-Oriented Connectivity Plan.

g. *Financial information and sustainability.* The applicant must provide financial statements and information and a narrative description demonstrating the sustainability of the Project.

h. *A statement of experience.* The applicant must provide a written narrative describing its demonstrated capability and experience, if any, in operating a broadband telecommunications system.

i. *Evidence of legal authority and existence.* The applicant must provide evidence of its legal existence and authority to enter into a grant agreement with RUS and to perform the activities proposed under the grant application.

j. *Funding commitment from other sources.* If the Project requires additional funding from other sources in addition to the Rural Utilities Service grant, the applicant must provide evidence that funding agreements have been obtained to ensure completion of the Project.

k. *Compliance with other federal statutes.* The applicant must provide evidence of compliance with other federal statutes and regulations, including, but not limited to the following:

(i) 7 CFR part 15, subpart A—Nondiscrimination in Federally Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964.

(ii) 7 CFR part 3015—Uniform Federal Assistance Regulations.

(iii) 7 CFR part 3017—Governmentwide Debarment and Suspension (Non-procurement).

(iv) 7 CFR part 3018—New Restrictions on Lobbying.

(v) 7 CFR part 3021—Governmentwide Requirements for Drug-Free Workplace (Financial Assistance).

(vi) Certification regarding Architectural Barriers.

(vii) Certification regarding Flood Hazard Precautions.

(viii) An environmental report, in accordance with 7 CFR 1794.

(ix) Certification that grant funds will not be used to duplicate lines, facilities, or systems providing Broadband Transmission Service.

(x) Federal Obligation Certification on Delinquent Debt.

3. DUNS Number. As required by the OMB, all applicants for grants must now supply a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying. The SF–424 contains a field for you to use when supplying your DUNS number. Obtaining a DUNS number costs nothing and requires a short telephone call to Dun and Bradstreet. Please see the Community Connect Web site or Grants.gov for more information on how to obtain a DUNS number or how to verify your organization's number.

C. How Many Copies of an Application Are Required?

1. Applications submitted on paper: Submit the original application and two (2) copies to Rural Development.

2. Electronically submitted applications: The additional paper copies are not necessary if you submit the application electronically through Grants.gov.

D. How and Where to Submit an Application

Grant applications may be submitted on paper or electronically.

1. Submitting applications on paper.

a. Address paper applications for grants to the Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 2868, STOP 1599, Washington, DC 20250–1599. Applications should be marked ''Attention: Director, Broadband Division, Rural Utilities Service.''

b. Paper applications must show proof of mailing or shipping consisting of one of the following:

(i) A legibly dated U.S. Postal Service (USPS) postmark;

(ii) A legible mail receipt with the date of mailing stamped by the USPS; or

(iii) A dated shipping label, invoice, or receipt from a commercial carrier.

c. Due to screening procedures at the Department of Agriculture, packages arriving via the USPS are irradiated, which can damage the contents. Rural Development encourages applicants to consider the impact of this procedure in selecting their application delivery method.

2. Electronically submitted applications.

a. Applications will not be accepted via facsimile machine transmission or electronic mail.

b. Electronic applications for grants will be accepted if submitted through the Federal government's Grants.gov initiative at *http://www.grants.gov.*

c. How to use Grants.gov:

(i) Navigate your Web browser to *http://www.grants.gov.*

(ii) Follow the instructions on that Web site to find grant information.

(iii) Download a copy of the application package.

(iv) Complete the package off-line.

(v) Upload and submit the application via the Grants.gov Web site.

d. Grants.gov contains full instructions on all required passwords, credentialing and software.

e. RUS encourages applicants who wish to apply through Grants.gov to submit their applications in advance of the deadline.

f. If a system problem occurs or you have technical difficulties with an electronic application, please use the customer support resources available at the Grants.gov Web site.

E. Deadlines

1. Paper applications must be postmarked and mailed, shipped, or sent overnight no later than June 19, 2009 to be eligible for FY 2009 grant funding. Late applications are not eligible for FY 2009 grant funding.

2. Electronic grant applications must be received by June 19, 2009 to be eligible for FY 2009 funding. Late applications are not eligible for FY 2009 grant funding.

F. Funding Restrictions

1. Eligible Grant Purposes

Grant funds may be used to finance:

a. The construction, acquisition, or leasing of facilities, including spectrum, to deploy Broadband Transmission Service to all participating Critical Community Facilities and all required facilities needed to offer such service to residential and business customers located within the proposed Service Area;

b. The improvement, expansion, construction, or acquisition of a Community Center that furnishes free access to broadband Internet service, provided that the Community Center is open and accessible to area residents before, during, and after normal working hours and on Saturday or Sunday. Grant funds provided for such costs shall not exceed the greater of five percent (5%) of the grant amount requested or $100,000;

c. End-User Equipment needed to carry out the Project;

d. Operating expenses incurred in providing Broadband Transmission Service to Critical Community Facilities for the first 2 years of operation and in providing training and instruction; and

e. The purchase of land, buildings, or building construction needed to carry out the Project.

2. Ineligible Grant Purposes

a. Grant funds may not be used to finance the duplication of any existing Broadband Transmission Service provided by another entity.

b. Facilities financed with grant funds cannot be utilized, in any way, to provide local exchange telecommunications service to any person or entity already receiving such service.

3. Please see 7 CFR 1739.3 for definitions, 7 CFR 1739.12 for eligible grant purposes, and 7 CFR 1739.13 for ineligible grant purposes

V. Application Review Information

A. Criteria

1. Grant applications are scored competitively and subject to the criteria listed below.

2. Grant application scoring criteria (total possible points: 100) See 7 CFR 1739.17 for the items that will be reviewed during scoring and for scoring criteria.

a. The rurality of the Project (up to 40 points);

b. The economic need of the Project's Service Area (up to 30 points); and

c. The ''community-oriented connectivity'' benefits derived from the proposed service (up to 30 points).

B. Review Standards

1. All applications for grants must be delivered to Rural Development at the address and by the date specified in this notice (see also 7 CFR 1739.2) to be eligible for funding. Rural Development will review each application for conformance with the provisions of this part. Rural Development may contact the applicant for additional information or clarification.

2. Incomplete applications as of the deadline for submission will not be considered. If an application is determined to be incomplete, the applicant will be notified in writing and the application will be returned with no further action.

3. Applications conforming with this part will then be evaluated competitively by a panel of Rural Development employees selected by the Administrator of Rural Development Utilities Program, and will be awarded points as described in the scoring criteria in 7 CFR 1739.17. Applications will be ranked and grants awarded in rank order until all grant funds are expended.

4. Regardless of the score an application receives, if Rural Development determines that the Project is technically or financially infeasible, Rural Development will notify the applicant, in writing, and the application will be returned with no further action.

C. Selection Process

Grant applications are ranked by final score. Rural Development selects applications based on those rankings, subject to the availability of funds.

VI. Award Administration Information

A. Award Notices

Rural Development recognizes that each funded project is unique, and therefore may attach conditions to different projects' award documents. Rural Development generally notifies applicants whose projects are selected for awards by faxing an award letter. Rural Development follows the award letter with a grant agreement that contains all the terms and conditions for the grant. An applicant must execute and return the grant agreement, accompanied by any additional items required by the grant agreement.

B. Administrative and National Policy Requirements

The items listed in paragraph IV.B.2.k of this notice, and the Community Connect Grant Program regulation, application guide and accompanying materials implement the appropriate administrative and national policy requirements.

C. Reporting

1. *Performance reporting.* All recipients of Community Connect Grant Program financial assistance must provide annual performance activity reports to Rural Development until the project is complete and the funds are expended. A final performance report is also required; the final report may serve as the last annual report. The final report must include an evaluation of the success of the project. See 7 CFR 1739.19.

2. *Financial reporting.* All recipients of Community Connect Grant Program financial assistance must provide an annual audit, beginning with the first year a portion of the financial assistance is expended. Audits are governed by United States Department of Agriculture audit regulations. Please see 7 CFR 1739.20.

VII. Agency Contacts

A. *Web site: http://www.usda.gov/rus/commconnect.htm.* This Web site maintains up-to-date resources and contact information for the Community Connect Grant Program.

B. *Phone:* 202–690–4673.

C. *Fax:* 202–690–4389.

D. *Main point of contact:* Kenneth Kuchno, Director, Broadband Division, Rural Development Utilities Program, U.S. Department of Agriculture.

Dated: April 2, 2009.

James R. Newby,

Acting Administrator, Rural Utilities Service.

[FR Doc. E9–9006 Filed 4–17–09; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Glenn/Colusa County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Glenn/Colusa County Resource Advisory Committee (RAC) will meet in Willows, California. Agenda items covered include: (1) Introductions, (2) Approve Minutes, (3) Public Comment, (4) Project Presentations, (5) Project Voting by RAC Committee Members, (6) General Discussion, (7) Next Agenda.

DATES: The meeting will be held on April 27, 2009, from 1:30 p.m. and end at approximately 4:30 p.m.

ADDRESSES: The meeting will be held at the Mendocino National Forest Supervisor's Office, 825 N. Humboldt Ave., Willows, CA 95988. Individuals who wish to speak or propose agenda items send their names and proposals to Eduardo Olmedo, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Matt Ellis, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, 825 N. Humboldt Ave., Willows, CA 95988. (530) 934–3316; e-mail *matthewellis@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee will file written statements with the Committee staff before or after the meeting. Public input sessions are provided and individuals who made written requests by April 20, 2009 have the opportunity to address the committee at those sessions.

Dated: April 10, 2009.

Eduardo Olmedo,

Designated Federal Official.

[FR Doc. E9–8800 Filed 4–17–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Proposed Posting, Posting, and Deposting of Stockyards

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice and request for comments.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is taking several actions to post and depost stockyards under the Packers and Stockyards Act (P&S Act). Specifically, we are proposing that 23 stockyards now operating subject to the P&S Act be posted. We are posting 12 stockyards that were identified previously as operating subject to the Act. Eleven other facilities, however, were not posted because they were found to be abandoned or no longer functioning as a stockyard and no longer operating subject to the P&S Act. Finally, we are deposting 19 stockyards that can no longer be used as stockyards.

DATES: For the proposed posting of stockyards, we will consider comments that we receive by May 5, 2009.

For the deposted stockyards, the deposting is effective on April 20, 2009.

ADDRESSES: We invite you to submit comments on this notice. You may submit comments by any of the following methods:

- *E–Mail: comments.gipsa@usda.gov.*
- *Mail:* H. Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1654–S, Washington, DC 20250–3604.
- *Fax:* (202) 690–2755.
- *Hand Delivery or Courier:* H. Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1654–S, Washington, DC 20250–3604.
- *Internet:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

SUPPLEMENTARY INFORMATION: The Grain Inspection, Packers and Stockyards Administration (GIPSA) administers and enforces the P&S Act of 1921 (7 U.S.C. 181 *et seq.*). The P&S Act prohibits unfair, deceptive, and fraudulent practices by livestock market agencies, dealers, stockyard owners, meat packers, swine contractors, and live poultry dealers in the livestock, poultry, and meatpacking industries.

Section 302 of the P&S Act (7 U.S.C. 202) defines the term ''stockyard'' as follows: ''* * * any place, establishment, or facility commonly known as stockyards, conducted, operated, or managed for profit or nonprofit as a public market for livestock producers, feeders, market agencies, and buyers, consisting of pens, or other enclosures, and their appurtenances, in which live cattle, sheep, swine, horses, mules, or goats are received, held, or kept for sale or shipment in commerce.''

Section 302(b) of the P&S Act requires the Secretary of Agriculture to determine which stockyards meet this definition, and to notify the owner of the stockyard and the public of that determination by posting a notice in each designated stockyard. Once the Secretary provides notice to the stockyard owner and the public, the stockyard is subject to the provisions of Title III of the P&S Act (7 U.S.C. 201–203 and 205–217a) until the Secretary deposts the stockyard by public notice. To post a stockyard, we assign the stockyard a facility number, notify the stockyard owner, and send an official posting notice to the stockyard owner to display in a public area of the stockyard. This process is referred to as ''posting.'' The date of posting is the date that the posting notices are physically displayed at the stockyard. A facility that does not meet the definition of a stockyard is not subject to the Act, and therefore cannot be posted. A posted stockyard can be deposted, which occurs when the facility is no longer used as a stockyard.

We are hereby notifying stockyard owners and the public that the following 23 stockyards meet the definition of a stockyard, and that we propose to designate these stockyards as posted stockyards.

Proposed facility no.	Stockyard name and location
AL–197	Screamer 5L Auction, Abberville, Alabama.
AR–182	R. Tucker, LLC, dba Madison County Livestock Auction, Inc., Huntsville, Arkansas.
KS–209	Lyon County Livestock Sales & Services, LLC, dba Admire Livestock Auction, Admire, Kansas.
KY–182	Cattlemen's Livestock Market, LLC, Rockfield, Kentucky.
KY–183	Mill's 31–E Auction Center, Scottsville, Kentucky.
KY–184	Blue Grass South Livestock Market, LLC, Stanford, Kentucky.
MI–151	Tom Moore Sales, Onsted, Michigan.
MI–152	United Producers, Inc., St. Louis, Michigan.
MI–153	United Producers, Inc., Manchester, Michigan.
MI–154	United Producers, Inc., Cass City, Michigan.
NC–178	Taylorsville Lions Club Alexander County Fair, Taylorsville, North Carolina.
NC–179	Edward Johnson Auctioneers, Inc., dba Johnson's Cattle Auction, Canton, North Carolina.
NM–124	Cow House Auction, Kirtland, New Mexico.
OH–153	Larue Horse Sale, LLC, LaRue, Ohio.
OK–215	Old Goat Enterprises, LLC, dba Countryside Auction, Chandler, Oklahoma.
TN–200	Longhorn Auction Company and Livestock Sales, Mountain City, Tennessee.
TN–201	James Linville, dba Scotts Hill Stockyard, Scotts Hill, Tennessee.
TN–202	Tennessee Livestock Producers, Inc., Columbia, Tennessee.
TX–351	Great Western Auctions, LLC, Magnolia, Texas.
TX–352	Texas Cattle Exchange, Inc., Eastland, Texas.
TX–353	Elkhart Horse Center, Elkhart, Texas.
TX–354	Marion County Stockyards, Jefferson, Texas.
VA–164	Victoria Livestock Market, Victoria, Virginia.

We are also notifying the public that the stockyards listed in the following table meet the P&S Act's definition of a stockyard and that we have posted the stockyards. On March 26, 2008, we published a notice in the **Federal**

Register (70 FR 15969–15970) of our proposal to post these 12 stockyards. Since we received no comments to our proposal, we have now assigned the stockyards a facility number, notified the owner of the stockyard facilities, and sent notices to the owner of the stockyard to be displayed in public areas of the stockyard. The table below reflects the date of posting for each stockyard.

Facility No.	Stockyard name and location	Date of posting
AL–196	Clay County Goat & Poultry Auction, Goodwater, Alabama	July 11, 2008.
AR–172	G.P. Rivers, dba Rivers Horse Center, Lewisville, Arkansas	July 21, 2008.
AR–180	King Livestock Goat and Sheep Auction, North Lonoke, Arkansas	July 16, 2008.
CO–156	Western Slope Cattlemen's Livestock Auction, LLC, Loma, Colorado	July 11, 2008.
GA–231	Thomas County Stockyards, Inc., Thomasville, Georgia	July 7, 2008.
MS–176	Cuevas Auction, Picayune, Mississippi	July 10, 2008.
NY–176	Howard W. Visscher, Hilltop Dairy Auction, Savannah, New York	July 16, 2008.
SC–162	Claxton's Auction Co., LLC, Ruffin, South Carolina	July 16, 2008.
TN–197	Jimmy Brown, dba JB Livestock Auction, Gleason, Tennessee	July 16, 2008.
TN–198	Wallace P. Mitchell, dba Mitchell's Trade Center & Auctions, Inc., Castalian Springs, Tennessee.	July 21, 2008.
TX–350	Hereford Livestock Exchange, Hereford, Texas	July 11, 2008.
VA–148	Blythe Livestock, LLC, Courtland, Virginia	July 15, 2008.

We are further notifying the public that the following facilities, which met the definition of a stockyard previously, were not posted. We published notices proposing to post these 11 stockyards in the **Federal Register** on July 25, 2005, (70 FR 42532–42533); April 5, 2006 (71 FR 17071–17072); and March 26, 2008, (73 FR 15969–15970) respectively, however, the facilities were not posted because they no longer meet the definition of a stockyard. The facilities were either abandoned or underwent a change such that they no longer function as stockyards.

Proposed facility No.	Facility name and location
AL–195	R&S Auctions, Clayton, Alabama.
AR–178	B–B Livestock Auction & Sales, Inc., Beebe, Arkansas.
FL–138	Col. Jerry Colvin, dba C.J. Auctions, Lamont, Florida.
IN–167	Northern Indiana Collection Point, LLC, Shipshewana, Indiana.
KY–180	Southern Kentucky Livestock Market, Inc., Rockfield, Kentucky.
KY–181	Wigwam Livestock Market, Inc., Horse Cave, Kentucky.
MO–288	CRS Sales, LLC, Highlandville, Missouri.
TN–196	Country Horse Sales, LLC, Westmoreland, Tennessee.
TN–199	Middle Tennessee Sheep and Goat Sale, LLC, Dickson, Tennessee.
WI–150	Turenne Livestock Market, Thorp, Wisconsin.
WV–120	Meadow View Farm, Thornton, West, Virginia.

Finally, we are notifying the public that the following 19 stockyards no longer meet the definition of a stockyard and they are being deposted. We depost stockyards when the facility can no longer be used as a stockyard. The reasons a facility can no longer be used as a stockyard may include the following: (1) The market agency has moved and the posted facility is abandoned; (2) the facility has been torn down or otherwise destroyed, such as by fire; (3) the facility is dilapidated beyond repair; or (4) the facility has been converted and its function has changed.

Facility No.	Stockyard name and location	Date posted
AR–105	B–B Livestock Sales, Incorporated	February 16, 1959.
AR–131	Morrilton Livestock Auction, Morrilton, Arkansas	September 30, 1959.
AZ–116	Arizona Livestock Auction, Inc., Phoenix, Arizona	May 13, 1997.
CO–152	Garfield Livestock Market, Inc., Silt, Colorado	February 25, 1986.
ID–114	Custer County Livestock Marketing Association, Inc., MacKay, Idaho	August 22, 1961.
KS–108	Cedar Vale Sale Barn, Inc., Cedar Vale, Kansas	May 26, 1959.
KS–113	Coldwater Livestock Sales Co., Inc., Coldwater, Kansas	April 12, 1950.
KS–137	Great Bend Livestock Sales, Inc., Great Bend, Kansas	April 18, 1950.
KS–145	Hutchinson Livestock Commission Co., Inc., Hutchinson, Kansas	April 10, 1950.
KS–169	Onaga Livestock Auction, Inc., Wheaton, Kansas	May 27, 1959.
KS–172	Franklin County Livestock Commission Co., Ottawa, Kansas	February 12, 1963.
KS–186	Smith Center Livestock Auction, Smith Center, Kansas	October 23, 1957.
MO–100	South Central Stockyards, LLC, Alton, Missouri	April 21, 1960.
MO–152	Licking Livestock Auction, Licking, Missouri	May 15, 1959.
TX–280	Weatherford Stockyards Company, Mineral Wells, Texas	August 12, 1960.
UT–112	Spanish Fork Livestock Auction, Co., Spanish Fork, Utah	October 24, 1959.
VA–133	Smithfield Livestock, Inc., Smithfield, Virginia	March 9, 1959.
VA–144	Abingdon Stockyard Exchange, Inc., dba Wytheville Stockyard, Wytheville, Virginia.	March 4, 1959.
VA–149	Central Virginia Livestock Market, Inc., Amherst, Virginia	April 13, 1976.

Effective Date

These depostings are effective upon publication in the **Federal Register** because they relieve a restriction and, therefore, may be made effective in less than 30 days after publication in the **Federal Register** without prior notice or other public procedure.

Authority: 7 U.S.C. 202.

Alan R. Christian,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E9–9012 Filed 4–17–09; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Forest Service

Revised Land and Resource Management Plan; Kaibab National Forest; Arizona

AGENCY: Forest Service, USDA.

ACTION: Notice of Initiation to revise the Kaibab National Forest Land and Resource Management Plan.

SUMMARY: The Forest Service is revising the Kaibab National Forest's Land and Resource Management Plan (hereafter referred to as the forest plan). This notice describes the documents available for review and how to obtain them; summarizes the need to change the forest plan; provides information concerning public participation and collaboration, including the process for submitting comments; provides an estimated schedule for the planning process, including the time available for comments; and includes names and addresses for agency officials who can provide additional information.

DATES: Revision formally begins with the publication of this notice in the **Federal Register**. Many public comments regarding forest plan revision have already been received at public meetings and through e-mail, phone calls, and letters. Comments on the need for change and Comprehensive Evaluation Report (CER) will be of most value to the Forest Service if received by June 15, 2009.

ADDRESSES: Send written comments to Kaibab National Forest, Attention: Forest Plan Revision Team, 800 S. 6th St., Williams, Arizona 86046; via e-mail to *comments-southwestern-kaibab@fs.fed.us;* or via facsimile to (928) 635–8208, with ''Forest Plan Revision'' in the subject line.

FOR FURTHER INFORMATION CONTACT: Ariel Leonard, Assistant Forest Planner at (928) 635–8283 or e-mail: *aleonard@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Documents Available for Review

The Comprehensive Evaluation Report (CER) evaluated how management under the current forest plan is affecting the current conditions and trends related to sustainability. It was developed by integrating information from the Ecological and the Socio-Economic Sustainability Reports. The CER considered the key findings from these two reports and used them to identify where the conditions and trends indicated a need for change in the current forest plan. These documents are available for review and are located on the forest's Web site at *http://www.fs.fed.us/r3/kai/plan-revision/or* by request.

Need for Change

The CER and subsequent Management Review identified four priority topics that will serve to focus the scope of this plan revision. These topics reflect the priority needs and potential changes in program direction that will be emphasized in the development of forest plan components:

1. Modify stand structure and density towards reference conditions and restore historic fire regimes. The multiple ecological, social, and economic benefits of reducing the risk of uncharacteristic fires made this a primary area of focus. Specific tasks include identifying desired conditions for forested ecosystems on the Kaibab National Forest (KNF) consistent with the regionally-developed desired conditions and setting treatment objectives for wildland-urban interface (WUI) and non-WUI areas.

2. Protect and regenerate aspen. The important role that aspen plays in providing local habitat diversity and scenery, combined with the widespread aspen decline in the Southwest, made the protection and regeneration of aspen a priority. Aspen will be addressed within the context of the desired conditions where it occurs.

3. Protect seeps, springs, ephemeral wetlands, and North Canyon Creek. The current forest plan offers little guidance for managing these rare and ecologically important resources. Actions to protect these natural waters are relatively inexpensive, easy to accomplish, and provide important ecological and social benefits.

4. Restore grasslands by reducing tree encroachment in grasslands and meadows. Grasslands are much less abundant than they were historically, which reduces the amount of available habitat for grassland-associated species. The subalpine/montane grasslands on the North Kaibab Ranger District are linear and as a result are at a higher risk of loss because trees encroach more quickly. There is a need to develop desired conditions and set objectives for all grassland ecosystems on the KNF. Currently, these are lacking in the existing forest plan.

There are other topics that need to be addressed with this plan revision. In addition to the priority needs for change topics above, the plan revision process will develop consistent, efficient, and scientifically-based plan components to provide direction for:

- Management response in the years immediately following large disturbance events.
- Managing energy corridors, renewable energy development requests, mining exploration and development, travel management implementation, special-use management, and special forest products collection.
- Managing for a balanced range of recreation opportunities, within the limits of the administrative and resource capacity.

Additionally, the Forest Service will review the results of the Wilderness Needs Assessment and the eligibility of Kanab Creek as a Wild and Scenic River. Where necessary, further evaluation will be conducted to consider and recommend potential wilderness, and to develop plan components in support of Wilderness management. Other needs for change have been and will continue to be identified. These may be addressed in the proposed plan, or incorporated into the plan in the future as amendments. Forest plans are intended to be adaptive, and an update to the CER will be prepared at least every five years. This iterative process facilitates the incorporation of new information and needs for change into the forest plan.

Public Participation and Opportunity to Comment

The revision process is designed to provide continued opportunities for public collaboration and open participation in the development of the revised forest plan. Additional information on the process, documents being produced, and public participation opportunities can be found on the Kaibab National Forest plan revision Web site at: *http://www.fs.fed.us/r3/kai/planrevision/.* The Forest Service is seeking public comments on the need for change

identified in the CER. Substantive comments received prior to by June 15, 2009 will be of the most value in evaluating public response to the adequacy of the need for change topics outlined in the report and for developing the initial proposed draft plan. It is important to participate in the plan revision process as only those parties who participate in the planning process through the submission of written comments may submit an objection later in the proposed plan development process pursuant to 36 CFR 219.13(a). Comments received during the planning process, including names and addresses of those who commented will be part of the public record available for public inspection. The Responsible Official shall accept and consider comments submitted anonymously.

Estimated Schedule

The forest plan revision process for the Kaibab National Forest officially begins with the publication of this notice in the **Federal Register**. Public meetings will be held following release of the initial proposed draft plan, which is scheduled for July 2009. The dates, times, and locations of these meetings will be posted on the forest's Web site: *http://www.fs.fed.us/r3/kai/plan-revision/.* A more refined draft of the proposed forest plan will be available for predecisional review in the fall of 2009, with approval of the final plan scheduled to occur in September 2010.

Responsible Official

The Forest Supervisor of the Kaibab National Forest, Michael R. Williams, is the Responsible Official (36 CFR 219.2(b)(1)).

(Authority: 36 CFR 219.9(b)(2)(i), 73 FR 21509, April 21, 2008)

Dated: April 14, 2009.

Michael R. Williams,

Forest Supervisor.

[FR Doc. E9–8999 Filed 4–17–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Request for Proposals for Two Special Focus Grants From National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Announcement of request for proposals for two special focus grants.

SUMMARY: The National Urban and Community Foresty Advisory Council (NUCFAC) is charged by law to provide recommendations to the Secretary of Agriculture on urban forestry related issues and opportunities. Part of the Council's role is to recommend the criteria for the Forest Service, U.S. Department of Agriculture's (Forest Service) Urban and Community Forestry (U&CF) Challenge Cost Share Grant Program. NUCFAC has recommended two special focus grant proposals for the Forest Service's 2009 U&CF Challenge Cost Share Grant Program. Therefore, the Forest Service is requesting proposals for the following two grants: Outreach Scholarships and Storm Event Protocol. Each grant will be solicited separately.

DATES: Grant proposal applications are due no later than 11:59 p.m., Eastern Time, June 5, 2009.

ADDRESSES: Grant proposal applications must be submitted to *http://www.grants.gov.* Electronic grant instructions and applications are posted on *http://www.grants.gov.* The instructions also are posted on the Forest Service Web site *http://www.fs.fed.us/ucf/nucfac.* An application must be registered in *grants.gov* in order to submit an application. The registration process may take up to two weeks.

Hard copies of the applications are available to applicants who do not have access to a computer. For a copy, contact Nancy Stremple, Executive Staff to National Urban and Community Forestry Advisory Council, 201 14th St., SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151. To ensure timely submittal, it is recommended that all hardcopy applications be delivered through a courier service to the adress noted above.

FOR FURTHER INFORMATION CONTACT: Nancy Stremple or Pamela Williams, U.S. Forest Service, Urban and Community Forestry, 201 14th St., SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151, phone 202–205–1054.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: A brief description of each of the special focus grant proposals follow.

Outreach Scholarships. This grant focuses on funding up to $100,000 for proposals that provide scholarships to non-traditional or underserved participants, and requires significant documentation of implementation of knowledge gained from the urban forestry related event.

Storm Event Protocol. This grant focuses on funding up to $50,000 for the development of a new storm event protocol that blends urban forest programs with emergency management operations. The purpose is to reduce the impact of storms on urban forests, lessen personal injuries and property damage, and decrease emergency management costs.

Dated: April 13, 2009.

Robin L. Thompson,

Associate Deputy Chief, State and Private Forestry.

[FR Doc. E9–8954 Filed 4–17–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

United States Standards for Whole Dry Peas and Split Peas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice; request for public comment.

SUMMARY: The Department of Agriculture's (USDA) Grain Inspection, Packers and Stockyards Administration (GIPSA) is soliciting comments on the proposed revisions to the United States Standards for Whole Dry Peas and Split Peas. The proposal would amend the general definitions, ''Whole Dry Peas'' and ''Split Peas,'' and the following specific definitions: ''Smooth Green Dry Peas,'' ''Smooth Yellow Dry Peas,'' ''Wrinkled Dry Peas,'' ''Green Split Peas'' and ''Yellow Split Peas.'' In addition, GIPSA proposes to modify the classification term and associated definitions, ''Winter Dry Peas'' and ''Winter Split Peas.'' These proposed changes will help facilitate the marketing of new winter pea variety releases and help ensure the purity of class for ''Whole Dry Peas'' and ''Split Peas.''

DATES: GIPSA will consider comments received by May 20, 2009.

ADDRESSES: You may submit your written or electronic comments on this notice to:

- *Mail:* Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1643–S, Washington, DC 20250–3604.
- E-Mail comments to *comments.gipsa@usda.gov.*
- *Fax:* (202) 690–2173
- *Internet:* Go to *http://www.regulations.gov* and follow the On-

Line instruction for submitting comments.

All comments will become a matter of public record and should be identified as ''Whole Dry and Split Pea Notice Comments,'' making reference to the date and page number of this issue of the **Federal Register**. Comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)). Please call the GIPSA Management Support Staff at (202) 720–7486 to make an appointment to read comments.

FOR FURTHER INFORMATION CONTACT:

Beverly A. Whalen at USDA, GIPSA, FGIS, Market and Program Analysis Staff, Beacon Facility, STOP 1404, P.O. Box 419205, Kansas City, Missouri, 64141; Telephone (816) 823–4648; Fax Number (816) 823–4644; e-mail *Beverly.A.Whalen@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 203(c) of the Agricultural Marketing Act of 1946, as amended, (AMA) (7 U.S.C. 1622(c)), directs and authorizes the Secretary of Agriculture ''To develop and improve standards of quality, condition, quantity, grade, and packaging, and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.'' GIPSA is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities.

GIPSA establishes and maintains a variety of quality and grade standards for agricultural commodities that serve as the fundamental starting point to define commodity quality in the domestic and global marketplace. GIPSA provides official procedures for how inspectors determine the various grading factors in supporting handbooks, such as the Pea and Lentil Handbook, which is available on the GIPSA Web site at *http://www.gipsa.usda.gov/GIPSA/webapp?area=home&subject=lr&topic=hb-pl.*

The AMA standards and supporting procedures are voluntary and used widely in private contracts, government procurement and marketing communication. Standards developed under the AMA include those for rice, whole dry peas, split peas, feed peas, lentils and beans. The U.S. standards for whole dry peas, split peas, feed peas, lentils and beans no longer appear in the Code of Federal Regulations, but are now maintained by USDA—GIPSA. The process for developing or reviewing these standards is specified in the AMA regulations (7 CFR 868.102, Procedures for establishing and revising grade standards). The U.S. Standards for Whole Dry Peas and Split Peas are available from the GIPSA Website at *http://www.gipsa.usda.gov,* or by phone, fax or e-mail from the contact listed above.

GIPSA representatives maintain an ongoing working relationship with the USA Dry Pea and Lentil Council (USADPLC), a national organization of producers, processors, and exporters of U.S. dry peas, lentils, and chickpeas; the US Dry Pea and Lentil Trade Association (USPLTA), a national association representing processors, traders, and transporters in the pea and lentil industry, as well as handlers and merchandisers to ensure the effectiveness of the U.S. Standards for whole dry peas, split peas, and lentils in today's marketing environment. According to information received by GIPSA from the USADPLC and USPLTA, the release of and the market's acceptance of new winter pea varieties necessitate several changes in the grading standards for winter dry peas and split peas. As a result, GIPSA is proposing changes to the whole dry and split pea standards to enable new and future winter pea variety releases to be classified and marketed on the basis of cotyledon color and desired usage, not on the basis of growth habit. GIPSA also proposes to modify classification terms and broaden associated working definitions to permit physically and visually similar peas to be included in a common class to help ensure purity.

Whole Dry Pea Definition and Classification Changes

In discussions with pea breeders, producers, processors, and merchandisers, GIPSA is proposing changing the way in which different types and varieties of domestically grown peas are classified and defined. Doing so will improve the effectiveness of the standards so they may better facilitate product marketing. The advent of new winter dry pea varieties, which have improved seed size consistency and lack the distinctive mottling or patterning normally associated with winter dry peas, will be able to compete with smooth yellow and green peas for a share of the food market instead of being limited to feed and forage uses, as has been the case in the past.

The current whole dry pea classification standards serve as an obstacle to marketing new and future winter dry pea varieties as smooth yellow or green peas. The wording used to define ''Winter Dry Peas'' prohibits new variety releases from being included in the class ''Smooth Yellow Dry Peas'' or ''Smooth Green Dry Peas.'' Although the cotyledon color of the new releases is yellow or green, a distinguishing trait for smooth dry peas, it is not an attribute considered in the classification of winter dry peas. In the current classification, the most important factor considered is the planting date, since all ''winter field type'' peas are now classified as ''Winter Dry Peas.'' While the cotyledon color of the new and future varietal releases may meet the general inspection criteria for smooth yellow or green peas, the fact that they are planted in the fall requires that they receive a winter dry pea classification.

In the official inspection system, GIPSA has found that the practical application of this definition is difficult particularly with regard to fall and spring planted peas. In the past, the distinguishing feature that most inspectors relied on was the presence or absence of a mottled or patterned seed coat, a trait commonly associated with traditional winter dry peas. However, new releases have only faint mottling to the extent that some refer to it as ''ghost'' mottling because it is difficult to see. Furthermore, the faint mottling is not uniform within a variety, as some peas are free from any detectible mottling. In addition, identification of new releases as winter dry peas will likely become more improbable in the not too distant future as breeders have indicated that future releases will be void of any seed coat mottling or patterning.

Also of concern has been the release and marketing of a number of spring-planted ''miscellaneous pea'' varieties (*i.e.,* maple peas) that mimic the visual appearance of the conventionally mottled winter dry peas. Because maple peas and traditional winter dry peas have similar shape and seed coat color, they are difficult to distinguish.

In an effort to preserve class purity and permit new and future winter dry pea releases to be certified as being smooth yellow or green dry peas, GIPSA has reviewed the current marketing standards, identified the restrictive language, and rephrased the definitions to be more inclusive. Due to the broadening of the class definitions, the classification term, ''Mottled Peas,'' has been established for winter dry peas to better reflect the type of peas that the class represents.

Split Pea Definition and Classification Changes

If adopted, the proposed definition and classification changes for whole winter dry peas from ''Winter Dry Peas'' to ''Mottled Peas'' would affect the

meaning of the split pea class, ''Winter Split Peas.'' The introduction of an amended whole dry pea class, ''Mottled Peas,'' which includes both spring and fall planted peas, requires that the current winter split pea definition be expanded to be more inclusive, and the descriptive classification term be changed to be more representative of the whole peas used in the production of this type of split pea. GIPSA believes that the classification term, ''Miscellaneous Split Peas,'' would be appropriate. Proposed changes in the general definition of split peas, as well as the specific classification definitions, are also being made to bring them more in line with those being proposed for whole dry peas.

Proposed GIPSA Action

GIPSA is proposing to revise select descriptive classification terms and definitions to allow new and future winter dry pea releases to be marketed as smooth yellow or green dry peas, and preserve purity of class by grouping colored or distinctively mottled peas (*i.e.,* traditional winter dry and maple peas), regardless of planting date. GIPSA is proposing to revise the definitions for the following classes as follows:

1. ''Whole Dry Peas.'' Threshed seeds of the garden type pea plant (*Pisum sativum L.* and *Pisum sativum var. arvense (L.) Poir.*) which after the removal of dockage, contain 50 percent or more of whole peas and not more than 10.0 percent of foreign material.
2. ''Smooth Yellow Dry Peas.'' Dry peas which have smooth seed coats and yellow cotyledons and contain not more than 1.5 percent of other classes.
3. ''Smooth Green Dry Peas.'' Dry peas which have smooth seed coats and green cotyledons and contain not more than 1.5 percent of other classes.
4. ''Wrinkled Dry Peas.'' Dry peas which have wrinkled seed coats and contain not more than 1.5 percent of other classes.
5. ''Split Peas.'' Threshed seeds of the garden type pea plant (*Pisum sativum L.* and *Pisum sativum var. arvense (L.) Poir.*) which have 50 percent or more of the peas split into halves or smaller pieces and contain not more than 10.0 percent of foreign material.
6. ''Green Split Peas.'' Split peas from smooth green dry pea varieties.
7. ''Yellow Split Peas.'' Split peas from smooth yellow dry pea varieties.

In addition, GIPSA proposes to replace the classification term and definition of ''Winter Dry Peas'' and ''Winter Split Peas'' with ''Mottled Dry Peas'' and ''Miscellaneous Split Peas,'' respectively. The proposed changes read as follows:

1. ''Mottled Dry Peas.'' Dry peas of the Austrian winter pea type and other peas which have colored or distinctively mottled seed coats which contain not more than 1.5 percent of other classes.
2. ''Miscellaneous Split Peas.'' Split peas from classes of whole peas other than smooth green or smooth yellow dry pea varieties.

Taking into account the nature of the proposed changes, GIPSA will solicit comments for 30 days in order to help facilitate the marketing of whole dry peas and split peas.

All comments received will be considered by GIPSA before final action is taken on the proposal.

Authority: 7 U.S.C. 1621–1627.

Alan R. Christian,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E9–9017 Filed 4–17–09; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–008]

Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Final Rescission of Antidumping Duty Administrative Review

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

SUMMARY: In response to a request from Allied Tube & Conduit Corporation, a domestic interested party, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Taiwan. This review covers one firm, Yieh Hsing Enterprise Co., Ltd. (Yieh Hsing), for the period May 1, 2007, through April 30, 2008. No interested party commented on the Department's intent to rescind this review based upon its determination that the party subject to this review did not have entries of subject merchandise during the period of review (POR) on which to assess antidumping duties.

EFFECTIVE DATE: April 20, 2009.

FOR FURTHER INFORMATION CONTACT: Steve Bezirganian or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1131 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 21, 2009, the Department published a notice of its intent to rescind this administrative review. *See Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Notice of Intent to Rescind Administrative Review*, 74 FR 3559 (January 21, 2009) (*Intent to Rescind*). We invited interested parties to comment on our preliminary intent to rescind this review based upon our determination that the party subject to this review did not have entries during the POR on which to assess antidumping duties. No interested party submitted comments.

Scope of the Order

The merchandise covered by the order is certain circular welded carbon steel pipes and tubes from Taiwan, which are defined as: welded carbon steel pipes and tubes, of circular cross section, with walls not thinner than 0.065 inch, and 0.375 inch or more but not over 4.5 inches in outside diameter, currently classified under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7306.30.5025, 7306.30.5032, 7306.30.5040, and 7306.30.5055. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Rescission of Administrative Review

The Department issued the Intent to Rescind because it was satisfied that there were no U.S. entries of subject merchandise from the respondent, Yieh Hsing, during the POR as indicated by the record. *See Intent to Rescind*, 74 FR at 3560. As the Department received no comments on its intent to rescind this review, it continues to find that rescission of the review is appropriate. Therefore, pursuant to 19 CFR 351.213(d), the Department is rescinding this review.

Assessment

The Department intends to issue assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after the date of publication of this rescission of administrative review. Because Yieh Hsing certified that it made no POR shipments of subject merchandise for which it had knowledge of U.S. destination, we will instruct CBP to liquidate any entries of merchandise produced by Yieh Hsing at the all–others rate established in the less–than-fair–value investigation if there is no rate for the exporter involved in the transaction. *See Antidumping*

and Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003). *See also Certain Frozen Warmwater Shrimp from India: Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 77610, 77612 (December 19, 2008).

Notification to Importers

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

Notification Regarding Administrative Protective Orders

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: April 13, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–9018 Filed 4–17–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Wooden Bedroom Furniture from the People's Republic of China: Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews

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

EFFECTIVE DATE: April 20, 2009.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or Sergio Balbontín, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4474 or (202) 482–6478.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (''the Department'') published an antidumping duty order on wooden bedroom furniture (''WBF'') from the People's Republic of China (''PRC'') on January 4, 2005. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture From the People's Republic of China*, 70 FR 329 (January 4, 2005). On March 7, 2008, the Department published notices of the initiation of the antidumping duty administrative review and new shipper reviews of WBF from the PRC for the period January 1, 2007, through December 31, 2007. *See Notice of Initiation of Administrative Review of the Antidumping Duty Order on Wooden Bedroom Furniture From the People's Republic of China*, 73 FR 12387 (March 7, 2008) and *Wooden Bedroom Furniture From the People's Republic of China; Initiation of New Shipper Reviews*, 73 FR 12392 (March 7, 2008). On August 22, 2008, the Department aligned the deadlines and the time limits of the new shipper reviews with the administrative review. *See* Memorandum to the File ''Wooden Bedroom Furniture from the People's Republic of China: Alignment of the 1/1/2007 – 12/31/2007 Annual Administrative Review and the 1/1/2007 – 12/31/2007 New Shipper Review,'' dated August 22, 2008. On February 9, 2009, the Department published the preliminary results of the administrative review and the new shipper reviews. *See Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews and Partial Rescission of Review*, 74 FR 6372 (February 9, 2009). The final results of the administrative and new shipper reviews are currently due no later than June 9, 2009.

Extension of Time Limit of Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to issue the final results of an administrative review within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time period to a maximum of 180 days. Completion of the final results of these reviews within the 120-day period is not practicable because the Department will conduct verification in the administrative review and one new shipper review after publication of the preliminary results and, therefore, needs additional time to complete verification reports, to provide an opportunity for comments by interested parties, and to analyze these comments by interested parties on the preliminary results and verification reports, and analyze information gathered at verification. Because it is not practicable to complete these reviews within the time specified under the Act, we are fully extending the time period for issuing the final results of the administrative and new shipper reviews in accordance with section 751(a)(3)(A) of the Act. Therefore, the final results will be due August 8, 2009, which is 180 days from publication of the preliminary results. Because August 8, 2009, falls on a Saturday, however, the final results are now due on the next business day, Monday, August 10, 2009. This notice is published pursuant to sections 751(a) and 777(i) of the Act.

Dated: April 13, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–9042 Filed 4–17–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–533–820)

Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On December 19, 2008, the Department of Commerce (''Department'') published the preliminary results of the antidumping duty administrative review of certain hot-rolled carbon steel flat products from India. *See Certain Hot-Rolled Carbon Steel Flat Products From India: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 77618 (December 19, 2008) (''*Preliminary Results*''). The review covers one respondent, Essar

Steel Limited (''Essar''). The period of review (''POR'') is December 1, 2006, through November 30, 2007. We invited parties to comment on our *Preliminary Results*. Based on our analysis of the comments received, we have made changes to the margin calculations. Therefore, the final results differ from the preliminary results. For the final dumping margins see the ''Final Results of Review'' section below.

EFFECTIVE DATE: April 20, 2009.

FOR FURTHER INFORMATION CONTACT: Joy Zhang, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1168.

SUPPLEMENTARY INFORMATION:

Background

On December 19, 2008, the Department published the *Preliminary Results*. Since the *Preliminary Results*, we have received comments from interested parties. On January 29, 2009, petitioners United Steel Corporation and Nucor Corporation filed their case briefs. On February 5, 2009, Essar filed a rebuttal brief. No interested parties requested a hearing.

Scope of the Order

The merchandise subject to the order is certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of the order.

Specifically included in the scope of the order are vacuum-degassed, fully stabilized (commonly referred to as interstitial-free (''IF'')) steels, high-strength low-alloy (''HSLA'') steels, and the substrate for motor lamination steels. IF steels are recognized as low-carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of the order, regardless of definitions in the Harmonized Tariff Schedule of the United States (''HTSUS''), are products in which: i) iron predominates, by weight, over each of the other contained elements; ii) the carbon content is 2 percent or less, by weight; and iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of the order unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of the order:

- Alloy hot-rolled carbon steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, American Society for Testing and Materials (''ASTM'') specifications A543, A387, A514, A517, A506)).
- Society of Automotive Engineers (''SAE'')/American Iron & Steel Institute (''AISI'') grades of series 2300 and higher.
- Ball bearings steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- United States Steel (''USS'') Abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to the order is currently classifiable in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot–rolled carbon steel covered by the order, including: vacuum–degassed fully stabilized; high–strength low–alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise subject to the order is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Memorandum from John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, Issues and Decision Memorandum for the Final Results of the Sixth Administrative Review of the Antidumping Duty Order on Certain Hot-Rolled Carbon Steel Flat Products from India (''Decision Memorandum''), dated concurrently with this notice, and hereby adopted by this notice. Parties can find a complete discussion of the issues raised in this review in this public memorandum, which is on file in

the Central Records Unit, room 1117 of the Department of Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at: *http://ia.ita.doc.gov/frn*. The paper copy and the electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on the comments received from the interested parties, we have made changes to the margin calculations used in the *Preliminary Results*. Specifically, for the final results, we have revised the calculations to use the invoice date as the date of sale for all of Essar's U.S. sales. As a result of the date of sales change, the margin increased from the *Preliminary Results*.

The adjustments are discussed in detail in the Decision Memorandum.

Final Results of Review

We determine that the following weighted average antidumping margin exists:

Producer/Manufacturer	Weighted–Average Margin
Essar	5.01%

Assessment Rates

The Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries, pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (''the Act'') and 19 CFR 351.212(b). The Department calculated an assessment rate for each importer of the subject merchandise covered by the review. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by Essar for which Essar did not know the merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no company-specific rate for an intermediary involved in the transaction. *See id.*, for a full discussion of this clarification.

Cash–Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of hot-rolled carbon steel flat products from India entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by sections 751(a)(1) and (a)(2)(C) of the Act: (1) for companies covered by this review, the cash deposit rate will be the rate listed above; (2) for previously reviewed or investigated companies other than those covered by this review, the cash deposit rate will be the company-specific rate established for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the producer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) if neither the exporter nor the manufacturer has its own rate, the cash deposit rate will be 38.72 percent, the all-others rate published in the *Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Hot–Rolled Carbon Steel Flat Products From India*, 66 FR 60194 (December 3, 2001).[1] These deposit requirements shall remain in effect until further notice.

Notification to Interested Parties

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

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

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 13, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

APPENDIX Issues in Decision Memorandum

Comment 1: Date of Sales
Comment 2: Commission
Comment 3: Duty Drawback
Comment 4: Treatment of Sales Tax
Comment 5: Interest Expense Ratio Calculation

[FR Doc. E9–9046 Filed 4–17–09; 8:45 am]

BILLING CODE 3510–DS–S

[1] The all-others cash deposit rate, applied by CBP, is reduced to account for the export subsidy rate found in the countervailing duty investigation. *See Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From India*, 66 FR 49635 (September 28, 2001). The adjusted all-others rate is 23.87 percent.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 16–2009]

Foreign-Trade Zone 17—Kansas City, KS Area; Application for 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 17, requesting authority to expand the zone in the Kansas City, Kansas, area, adjacent to 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 13, 2009.

FTZ 17 was approved by the Board on December 20, 1973 (Board Order 97, 39 FR 26, 1/2/74) and expanded on January 31, 1989 (Board Order 428, 54 FR 5992, 2/7/89), on January 15, 1993 (Board Order 631, 58 FR 6122 1/26/93), and, on October 14, 1997 (Board Order 925, 62 FR 55574, 10/27/97). The general-purpose zone project currently consists of 7 sites (3,411 acres total): *Site 1* (7 acres)—located at 6500 Inland Drive in Kansas City; *Site 2* (5 acres)—located at 5203 Speaker Road in Kansas City; *Site 3* (5 acres)—within the Fairfax Industrial Park located at 30 Funston Road in Kansas City; *Site 4* (1 acre)—within the Fairfax Industrial Park located at 830 Kindleberger Road in Kansas City; *Site 5* (21 acres, 2 parcels)—within the Leavenworth Area

Business Center located at 13th and Eisenhower Road in Leavenworth; *Site 6* (2,400 acres)—located at the Forbes Field Airport/Topeka Air Industrial Park in Topeka; and, *Site 7* (972 acres)—the Philip Billard Airport/Industrial Park located at 6700 South Topeka Boulevard in Topeka.

The applicant is now requesting authority to expand the general-purpose zone to include the Midwest Commerce Center, located at 17150 Mercury Street in Gardner, Kansas (Johnson County). The proposed new site (156 acres) would be designated as *Site 8.* The site is owned by U.S. Industrial REIT II, and will be used for warehousing, storage and distribution activities. 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 19, 2009. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to July 6, 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 13, 2009.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–9041 Filed 4–17–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–X061

New England Fishery Management Council; Public Meeting; Correction

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

ACTION: Notice; public meeting; correction.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scientific and Statistical Committee on April 30–May 1, 2009 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate. This document corrects the meeting time for the scheduled April 30, 2009 meeting and both meeting agendas.

DATES: This meeting will be held on Thursday, April 30, 2009 at 9 a.m. and Friday, May 1, 2009 at 9 a.m.

ADDRESSES: *Meeting address*: The meeting will be held at the Sheraton Ferncroft Hotel, 55 Ferncroft Road, Danvers, MA 01923; telephone: (978) 777–2500; fax: (978) 750–7959.

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

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

SUPPLEMENTARY INFORMATION:

Need for Correction

The original document published at 74 FR 16364, April 10, 2009. The time change for the April 30, 2009 meeting has been corrected in the **DATES** section in this document. The agendas are corrected as follows:

Thursday, April 30, 2009

The SSC will review methods proposed by the Groundfish Plan Development Team for determining acceptable biological catch, annual catch limits and accountability measures for the 19 stocks in the Northeast Multispecies complex and possibly discuss proposed rebuilding strategies for overfished groundfish stocks.

Friday, May 1, 2009

The Scientific and Statistical Committee (SSC) will review the Monkfish Plan Development Team's analyses for determining monkfish acceptable biological catch, annual catch limits and accountability measures and proposed methods for the development of Atlantic herring acceptable biological catch, annual catch limits and accountability measures.

No additional changes have been made to the original and the text will not be repeated here.

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

Dated: April 14, 2009

Tracey L. Thompson,

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

[FR Doc. E9–8893 Filed 4–17–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XO79

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting/workshop.

SUMMARY: The Groundfish Stock Assessment Review (STAR) Panel for petrale sole and splitnose rockfish will hold a work session which is open to the public.

DATES: The petrale sole and splitnose rockfish STAR Panel will be held beginning at 8:30 a.m., Monday, May 4, 2009. The meeting will continue on Tuesday, May 5, 2009 beginning at 8:30 a.m. through Friday, May 8, 2009. The meeting will end at 5:30 p.m. each day, or as necessary to complete business.

ADDRESSES: The petrale sole and splitnose rockfish STAR Panel meeting will be held at the NMFS Northwest Fisheries Science Center, Hatfield Marine Science Center, Captain R. Barry Fisher Building, Room 101, 2032 S.E. Oregon State University Drive, Newport, OR 97365–5296; telephone: (541) 867–0501.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Ms. Stacey Miller, Northwest Fisheries Science Center (NWFSC); telephone: (206) 437–5670; or Mr. John DeVore, Pacific Fishery Management Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the STAR Panel meeting is to review draft stock assessment documents for petrale sole and splitnose rockfish and any other pertinent information, work with the Stock Assessment Teams to make necessary revisions, and produce STAR Panel reports for use by the Council family and other interested persons. No management actions will be decided by this STAR Panel. The STAR Panel's role will be development of recommendations and reports for consideration by the Council at its June meeting in Spokane, WA.

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

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: April 15, 2009.

Tracey L. Thompson,

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

[FR Doc. E9–8966 Filed 4–17–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

Correction

In notice document E9–8119 appearing on page 16191 in the issue of Thursday, April 9, 2009, make the following correction:

In the third column, in the eighth line, ''*Title: .*'' should read ''*Title:* Federal Perkins Loan Program Master Promissory Note''.

[FR Doc. Z9–8119 Filed 4–17–09; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: U.S. Department of Energy.

ACTION: Notice and Request for OMB Review and Comment.

SUMMARY: The Department of Energy (DOE) has submitted to the Office of Management and Budget (OMB) for clearance, a proposal for collections of information under the provisions of the Paperwork Reduction Act of 1995. The proposed collection will determine: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before May 20, 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, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4650.

ADDRESSES: Written comments should be sent to the:

DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC 20503.

And to:

Douglas E. George, IN–10 (Ops), 1000 Independence Avenue, SW., Washington, DC 20585, *Douglas.George@in.doe.gov*, Fax: 202–586–0342.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection and instructions should be directed to: Douglas E. George, IN–10 (Ops), 1000 Independence Avenue, SW., Washington, DC 20585, *Douglas.George@in.doe.gov*, Fax: 202–586–0342.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No. ''New''; (2) Information Collection Request Title: Office of Intelligence Customer Survey; (3) Type of Collection: New; Voluntary (4) Purpose: To track, on a monthly basis, the internal and external organizational use of and satisfaction and/or dissatisfaction with DOE Office of Intelligence and Counterintelligence products. It provides senior managers with information revealing the relative success and utility of DOE intelligence products; (5) Estimated annual number of respondents: 100; (6) Estimated annual number of Burden Hours: 25 hours; (6) Authority: National Intelligence Production Board, Office of the United States Director of Central Intelligence, *Strategic Investment Plan for Intelligence Community Analysis,* Chapter 5: Customer Support, at 53–58 (2000).

SUMMARY: The information collection request assists DOE in responding to the Intelligence Community's number one priority, which is to provide its customers with the best possible custom-tailored intelligence. It provides the agency with a better ability to understand and respond to client needs. It enhances direct linkages between DOE analysts and clients; encourages continuous dialogue and substantive feedback; helps better manage customer expectations; assists DOE analysts stay better aware of client expectations; and provides a means by which to develop common metrics and methods of assessing DOE customer satisfaction with its intelligence products. The collection of information is a 25-question survey that seeks three essential types of information from current and potential DOE intelligence product customers. First, the survey asks customers to identify their organization type, intelligence competency, and to provide a point of contact. Second, it asks how customers define success and how change affects their organization. Third, and finally, it asks for the frequency and purpose of customers' use of DOE intelligence products, asks how DOE products may be improved, and seeks customers' budget and product choice information.

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

Marie Falkowski,

Director of Operations, IN–10 (Ops), Department of Energy.

[FR Doc. E9–9032 Filed 4–17–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13283–000]

The Nevada Hydro Company, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

April 13, 2009.

On September 2, 2008, The Nevada Hydro Company, Inc. filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the 600-megawatt (MW) River Mountain Pumped Storage Project, located on Lake Dardanelle on the Arkansas River in Logan County, Arkansas. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project works consist of: (a) A 183-acre upper reservoir, lined with an impermeable membrane, having 11,580 acre-feet gross storage capacity, excavated within a 225-acre site and formed by a rockfill embankment with a height ranging from 25 to 120 feet above existing topography; (b) a reinforced concrete intake/outlet structure in the upper reservoir; (c) a 30-foot diameter, concrete-lined vertical shaft approximately 680 feet long connecting the upper reservoir's intake and outlet structure to an underground, horizontal power tunnel; (d) a 30-foot-diameter, concrete-lined, power tunnel that extends 1,250 feet from the vertical shaft to the penstocks; (e) three 16-foot diameter penstocks approximately 450 feet long, 250 feet of which are steel-lined; (f) an underground powerhouse, approximately 560 feet below the ground surface, containing three reversible pump-turbine generator units, each nominally rated at 200 MW, generating with up to 13,200 cfs and pumping with up to 10,560 cfs; (g) an underground transformer gallery, surge chamber, access tunnel and vent shaft located near the powerhouse; (h) a horseshoe-shaped tailrace tunnel, 40 feet high by 40 feet wide extending 4,800 feet from the powerhouse to a submerged intake/outlet structure in Lake Dardanelle; (i) a 500-kV transmission line originating from the powerhouse and extending approximately 1.8 miles to an existing 500-kV transmission line owned by Arkansas Power and Light; (j) approximately five miles of new project access roads; and appurtenant equipment and facilities. The project would generate approximately 6,000 megawatt-hours per day. The project would utilize the 34,300-acre Lake Dardanelle, managed by the U.S. Army Corps of Engineers for navigation, recreation, and hydropower generation, as the lower reservoir, however, Lake Dardanelle would not be a licensed facility of the proposed project.

Applicant Contact: Rexford Wait, The Nevada Hydro Company, Inc., 2416 Cades Way, Vista, CA 92083; phone 760–599–0086; fax 760–599–1815.

FERC Contact: Monte TerHaar, 202–502–6035.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp*. More information about this project can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–13283) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–8955 Filed 4–17–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–810–009]

Maritimes & Northeast Pipeline, LLC; Notice of Application

April 13, 2009.

Take notice that on April 8, 2009, Maritimes & Northeast Pipeline, LLC (Maritimes), 890 Winter Street, Suite 300, Waltham, Massachusetts 02451, filed an application in Docket No. CP96–810–009 pursuant to section 3 of the Natural Gas Act (NGA), seeking an amendment to its authorization under NGA section 3 and its Presidential Permit to allow it to export natural gas from the United States to Canada utilizing Maritimes' existing cross-border facilities. Maritimes proposes no new facilities in its application. The full design capacity of the cross-border facilities is 833,317 dekatherms per day plus the quantity necessary for system fuel requirements.

Any questions regarding the applications should be directed to Garth Johnson, General Manager, Certificates and Reporting, M&N Management Company, 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77251–1642.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in

determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the eLibrary link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: May 4, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–8959 Filed 4–17–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR09–6–000]

Suncor Energy Marketing Inc. and Suncor Energy (U.S.A.) Inc., Complainants, v. Platte Pipe Line Company, Respondent; Notice of Complaint

April 13, 2009.

Take notice that on April 10, 2009, pursuant to sections 3(1), 9, 13(1), 15(1), and 16(1) of the Interstate Commerce Act, 49 U.S.C. App. 3(1), 9, 13(1), 15(1), and 16(1), Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206, and section 343.1(a) of the Commission's Procedural Rules Applicable to Oil Pipeline Proceedings, 18 CFR 343.1, Suncor Energy Marketing Inc. (SEMI) and Suncor Energy (U.S.A.) Inc. (Complainants) filed a complaint against Platte Pipe Line Company (Respondent) challenging the Respondent's failure to implement its prorationing policy as stated in its Supplement No. 13 to Tariff No. 1456, filed with the Commission on November 13, 2007 in Docket No. IS08–39–000 (''Prorationing Policy'') and the resulting discrimination which short-haul shippers, such as SEMI have suffered as a result of Respondent's actions.

The Complainants states that a copy of the complaint has been served on the Respondent.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on April 30, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–8958 Filed 4–17–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–511–001]

PacifiCorp; Notice of Filing

April 13, 2009.

Take notice that on April 1, 2009, PacifiCorp filed a revised section 1 to its LGIA Facilities Maintenance Agreement with Tasco Engineering, Inc., Service Agreement 537 under PacifiCorp's Seventh Revised Volume No. 11 Open Access Transmission Tariff, pursuant to the Commission's letter order issued March 2, 2009.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on April 22, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–8956 Filed 4–17–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–856–000]

Grayling Generating Station Limited Partnership; Notice of Filing

April 13, 2009.

Take notice that on March 16, 2009, Grayling Generating Station Limited Partnership filed an application seeking approval of a proposed rate tariff and supporting cost data for an annual Reactive Support and Voltage Control from Generation Sources Service tariff for its generation facility to be collected pursuant to Schedule 2 of the Open Access Transmission Tariff of the Midwest Independent System Transmission Operator, Inc.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on April 20, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–8957 Filed 4–17–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8893–8]

Cross-Media Electronic Reporting Rule State Approved Program Revision Approval: State of North Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval, under regulations for Cross-Media Electronic Reporting, of the State of North Dakota's request to revise their EPA-authorized National Primary Drinking Water Regulations Implementation authorized program to allow electronic reporting of specific reports; this notice also announces an opportunity to request a public hearing on this action.

DATES: EPA's approval is effective on May 20, 2009 if no timely request for a public hearing is received and accepted by the Agency.

FOR FURTHER INFORMATION CONTACT: Evi Huffer, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 566–1697, *huffer.evi@epa.gov,* or David Schwarz, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 566–1704, *schwarz.david@epa.gov.* All requests for a hearing should be submitted to both of the above contacts.

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as Part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Under Subpart D of CROMERR, State, tribe or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and get EPA approval. Subpart D also provides standards for such approvals based on consideration of the electronic document receiving systems that the State, tribe, or local government will use to implement the electronic reporting. Additionally, in § 3.1000(b) through (e) of 40 CFR part 3, Subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the State, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the Subpart D procedures must show that the State, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable Subpart D requirements.

On September 30, 2008, the State of North Dakota Department of Public Health (NDDPH) submitted an application for their Environmental Health Section Electronic Reporting Information System (ERIS) addressing revisions to their EPA-authorized 40 CFR Part 142 National Primary Drinking Water Regulations Implementation program.

EPA has reviewed NDDPH's request to revise their EPA-authorized program and, based on this review, EPA has determined that the application for the program and specific reports identified in this Notice, when compared to the Federal regulations, meet the standards for approval of authorized program revisions set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve NDDPH's request for revision to their authorized program is being published in the **Federal Register**.

Specifically, EPA has approved NDDPH's request for revision to the following authorized program to allow electronic reporting for the specified reports:

• *Program:* Part 142—National Primary Drinking Water Regulations Implementation; *Reports:* drinking water data that does not require signature or includes an electronic signature, submitted under section 141.31.

NDDPH was notified of EPA's determination to approve its application with respect to the authorized program and specific reports listed above in a letter dated April 10, 2009.

Also, in today's notice, EPA is informing interested persons that they may request a public hearing on EPA's

action to approve the State of North Dakota's request to revise its authorized public water system program under 40 CFR part 142, in accordance with 40 CFR 3.1000(f). Requests for hearings must be submitted to EPA within 30 days of publication of today's **Federal Register** notice. Such requests must include the following information:

(1) The name, address and telephone number of the individual, organization or other entity requesting a hearing;

(2) A brief statement of the requesting person's interest in EPA's determination, information demonstrating why this determination should be rescinded, and any other information that the requesting person intends to submit at such hearing; and

(3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

In the event a hearing is requested and accepted, EPA will provide notice of the hearing in the **Federal Register** not less than 15 days prior to the scheduled hearing date. Frivolous or insubstantial requests for hearing may be denied by EPA. Following such a public hearing, EPA will review the record of the hearing and issue an order either affirming today's determination or rescinding such determination. If no timely request for a hearing is received and accepted, this action will become effective 30 days after today's notice is published, pursuant to CROMERR section 3.1000(f)(4).

Dated: April 8, 2009.

Lisa Schlosser,

Director, Office of Information Collection.

[FR Doc. E9–9013 Filed 4–17–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

DATE AND TIME: Tuesday, April 21 2009, And Wednesday, April 22. 2009 At 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, *Telephone:* (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. E9–8980 Filed 4–17–09; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of March 17 and 18, 2009

In accordance with § 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on March 17 and 18, 2009.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long–run objectives, the Committee seeks conditions in reserve markets consistent with federal funds trading in a range of 0 to ¼ percent. The Committee directs the Desk to purchase GSE debt GSE–guaranteed MBS, and longer–term Treasury securities during the intermeeting period with the aim of providing support to private credit markets and economic activity. The timing and pace of these purchases should depend on conditions in the markets for such securities and on a broader assessment of private credit market conditions. The Committee anticipates that the combination of outright purchases and various liquidity facilities outstanding will cause the size of the Federal Reserve's balance sheet to expand significantly in coming months. The Desk is expected to purchase up to $200 billion in housing–related GSE debt by the end of this year. The Desk is expected to purchase at least $500 billion in GSE–guaranteed MBS by the end of the second quarter of this year and is expected to purchase up to $1.25 trillion of these securities by the end of this year. The Committee also directs the Desk to purchase longer–term Treasury securities during the intermeeting period. Over the next six months, the Desk is expected to purchase up to $300 billion of longer–term Treasury securities. The System Open Market Account Manager and the Secretary will keep the Committee informed of ongoing developments regarding the System's balance sheet that could affect the attainment over time of the Committee's objectives of maximum employment and price stability.

By order of the Federal Open Market Committee, April 9, 2009.

Brian F. Madigan,

Secretary, Federal Open Market Committee.

[FR Doc. E9–9035 Filed 4–17–09; 8:45 am]

BILLING CODE 6210–01–S

[1] Copies of the Minutes of the Federal Open Market Committee at its meeting held on March 17 and 18, 2009, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0262]

General Services Administration Acquisition Regulation; Submission for OMB Review; Identification of Products With Environmental Attributes

AGENCY: General Services Administration.

ACTION: Notice of request for public comments regarding a extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding identification of products with environmental attributes. A request for public comments was published at 73 FR 74721, December 9, 2008. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: May 20, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. Warren Blankenship, Procurement Analyst, Contract Policy Division, at telephone (202) 501–1900.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect

of this 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, and a copy to the GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503. Please cite OMB Control No. 3090–0262, Identification of Products with Environmental Attributes, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

General Services Administration (GSA) requires contractors submitting Multiple Award Schedule Contracts to identify in their GSA price lists those products that they market commercially that have environmental attributes. The identification of these products will enable Federal agencies to maximize the use of these products to meet the responsibilities expressed in statutes and executive orders.

B. Annual Reporting Burden

Respondents: 18,000.
Responses Per Respondent: 1.
Annual Responses: 18,000.
Hours Per Response: 5.
Total Burden Hours: 90,000.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 3090–0262, Identification of Products with Environmental Attributes, in all correspondence.

Dated: April 14, 2009.

Edward Loeb,

Acting Director, Acquisition Policy Division.

[FR Doc. E9–8976 Filed 4–17–09; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

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

Proposed Project: Jail Diversion and Trauma Recovery—Priority to Veterans Program Evaluation—(OMB No. 0930–0277)—Revision

The Substance Abuse and Mental Health Services Administration's (SAMHSA), Center for Mental Health Services (CMHS) has implemented the Targeted Capacity Expansion Grants for Jail Diversion Programs, and the Jail Diversion and Trauma Recovery Program represents the newest cohort of grantees. The Program currently collects client outcome measures from program participants who agree to participate in the evaluation. Data collection consists of interviews conducted at baseline, 6- and 12-month intervals.

The current proposal requests:

1. Substituting CMHS NOMS items for GPRA items. At the time of the previous OMB submission, the NOMS measures were not finalized.

2. Replacing the DC trauma Screen with a new set of traumatic event questions. The new trauma questions better reflect the experiences of the target population.

3. Replacing the Colorado Symptom Index with the BASIS 24.

4. Adding questions related to military service experience at the baseline. These items will be added to capture characteristics of the target population of the new grantee cohort, veterans.

5. Adding questions on military combat experience at the six month interview only. These items will capture the types of traumatic experiences among clients with a combat history.

6. Adding questions on lifetime mental health/substance use and service use and the CAGE to the baseline. These questions will be added to capture client's history of involvement with mental health and substance abuse systems, and the four CAGE items assess alcohol dependence.

7. Adding several lifetime criminal justice questions. These questions will assess client's lifetime involvement with the criminal justice system.

8. Adding the Recovery Enhancing Environment (REE) instrument to all interviews. The REE is a consumer oriented measure of recovery, a new and important program outcome.

9. Removing the MacArthur Perceived Coercion Scale from all instruments.

10. Removing the Mental Health Statistics Improvement Program questions from follow-up interviews. (These are replaced by a similar, but shorter, NOMS scale.)

The NOMS measures that are proposed for substitution of the GPRA measures have the same administration time and do not lengthen the interview. Two of the proposed additions (the REE and the lifetime MH/SA) will add 5 minutes each and the criminal justice questions will add 3 minutes. The military service questions will add an average of 4 minutes, as not all respondents are expected to answer these questions because grantees may serve non-veteran clients. The removal of the MacArthur Coercion Instrument reduces the baseline interview by 5 minutes and removal of the MHSIP reduces the follow-up interview by 5 minutes. The net lengthening of the instrument is 12 minutes for the baseline interview, and there is no net increase in length to the 6- and 12-month interviews.

The Program also collects data on program participants from records. The revisions to these instruments are formatting in nature.

New grantees were awarded on September 30, 2008 under the Jail Diversion and Trauma Recovery Program will commence data collection efforts in FY 2009; anticipated grantees awarded on September 30, 2009 would commence data collection in FY 2010; and anticipated grantees awarded on September 30, 2010would commence data collection in FY 2011. The following tables summarize the burden for the data collection.

CY 2009 ANNUAL REPORTING BURDEN

Data collection activity	Number of respondents	Responses per respondent	Total responses	Average hours per response	Total hour burden
Client Interviews for FY2008: Revised Instrument					
Baseline (at enrollment)	510	1	510	0.95	485
6 months	408	1	408	0.92	375
12 months	102	1	102	0.92	94
Sub Total	1,020		1,020		954
Client Interviews for FY2007 Grantees: Current Instrument					
Baseline (at enrollment) [1]	0	1	0	0.83	0
6 months	20	1	20	0.92	18
12 months	15	1	15	0.92	14
Sub Total	35		35		32
Record Management by FY2007 and FY2008 Grantee Staff					
Events Tracking	8	800	6,400	0.03	192
Person Tracking	8	70	560	0.1	36
Service Use	8	25	200	0.17	34
Arrest History	8	25	200	0.17	34
Sub Total	32		7,360		296
FY2006 Grantees					
Interview and Tracking data submission	8	12	48	0.17	8
Overall	1,095		1,733		1,290

CY 2010 ANNUAL REPORTING BURDEN

Data collection activity	Number of respondents	Responses per respondent	Total responses	Average hours per response	Total hour burden
Client Interviews for FY2008 and Anticipated FY2009: Revised Instrument					
Baseline (at enrollment)	1,110	1	1,110	0.95	1,105
6 months	888	1	888	0.92	817
12 months	491	1	491	0.92	451
Sub Total	2,489		2,489		2,323
Record Management by FY2008 and Anticipated FY2009 Grantee Staff					
Events Tracking	12	800	9,600	0.03	288
Person Tracking	12	80	960	0.1	62
Service Use	12	50	600	0.17	102
Arrest History	12	50	600	0.17	102
Sub Total	48		11,760		554
FY2008 and FY2009 Grantees					
Interview and Tracking data submission	12	12	48	0.17	8
Overall Total	2,549		14,297		2,885

CY 2011 ANNUAL REPORTING BURDEN

Data collection activity	Number of respondents	Responses per respondent	Total responses	Average hours per response	Total hour burden
Client Interviews for FY2008 and Anticipated FY2009 and 2010: Revised Instrument					
Baseline (at enrollment)	1,710	1	1,710	0.83	1,419
6 months	1,368	1	1,368	0.92	1,259

CY 2011 ANNUAL REPORTING BURDEN—Continued

Data collection activity	Number of respondents	Responses per respondent	Total responses	Average hours per response	Total hour burden
12 months	879	1	879	0.92	809
Sub Total	3,957		3,957		3,487
Record Management by FY2008 and anticipated FY2009 and FY2010 Grantee Staff					
Events Tracking	18	800	14,400	0.03	432
Person Tracking	18	80	1,440	0.1	94
Service Use	18	50	900	0.17	153
Arrest History	18	50	900	0.17	153
Sub Total	72		17,640		832
FY2008 and FY2009 Grantees					
Interview and Tracking data submission	18	12	48	0.17	8
Overall Total	4047		21,645		4,327

CY 2012 ANNUAL REPORTING BURDEN

Data collection activity	Number of respondents	Responses per respondent	Total responses	Average hours per response	Total hour burden
Client Interviews for anticipated FY2009 and 2010: Revised Instrument					
Baseline (at enrollment)	1,200	1	1,200	0.83	996
6 months	1,080	1	1,080	0.92	994
12 months	1,084	1	1,084	0.92	998
Sub Total	3,364		3,364		2,987
Record Management by anticipated FY2009 and FY2010 Grantee Staff					
Events Tracking	12	800	9,600	0.03	288
Person Tracking	12	70	840	0.1	55
Service Use	12	25	300	0.17	51
Arrest History	12	25	300	0.17	51
Sub Total	48		11,040		445
FY2008 and FY2009 Grantees					
Interview and Tracking data submission	18	12	48	0.17	8
Overall Total	3,424		14,452		3,440

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, One Choke Cherry Road, Rockville, MD 20857 *and* e-mail her a copy at *summer.king@samhsa.hhs.gov.* Written comments should be received within 60 days of this notice.

Dated: April 13, 2009.

Elaine Parry,

Director, Office of Program Services.

[FR Doc. E9–8984 Filed 4–17–09; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0163]

Agency Information Collection Activities; Proposed Collection; Comment Request; Draft Guidance, Emergency Use Authorization of Medical Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the proposed extension of the collection of information related to emergency use authorizations (EUAs) by the agency.

DATES: Submit written or electronic comments on the collection of information by June 19, 2009.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3794.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Reporting and Recordkeeping for Emergency Use Authorization of Medical Products (OMB Control Number 0910–0595—Extension)

The draft guidance describes the agency's general recommendations and procedures for issuance of EUAs under section 564 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360bbb–3), which was amended by the Project BioShield Act of 2004 (Public Law 108–276). The act permits the FDA Commissioner (the Commissioner) to authorize the use of unapproved medical products or unapproved uses of approved medical products during an emergency declared under section 564 of the act. The data to support issuance of an EUA must demonstrate that, based on the totality of the scientific evidence available to the Commissioner, including data from adequate and well-controlled clinical trials (if available), it is reasonable to believe that the product may be effective in diagnosing, treating, or preventing a serious or life-threatening disease or condition (21 U.S.C. 360bbb–3(c)). Although the exact type and amount of data needed to support an EUA may vary depending on the nature of the declared emergency and the nature of the candidate product, FDA recommends that a request for consideration for an EUA include scientific evidence evaluating the product's safety and effectiveness, including the adverse event profile for diagnosis, treatment, or prevention of the serious or life-threatening disease or condition, as well as data and other information on safety, effectiveness, risks and benefits, and (to the extent available) alternatives.

Under section 564 of the act, the Commissioner may establish conditions on the approval of an EUA. Section 564(e) of the act requires the Commissioner (to the extent practicable given the circumstances of the emergency) to establish certain conditions on an authorization that the Commissioner finds necessary or appropriate to protect the public health and permits the Commissioner to establish other conditions that he finds necessary or appropriate to protect the public health. Conditions authorized by section 564(e) of the act include, for example: (1) Requirements for information dissemination to health care providers or authorized dispensers and product recipients; (2) adverse event monitoring and reporting; (3) data collection and analysis; (4) recordkeeping and records access; (5) restrictions on product advertising, distribution, and administration; and (6) limitations on good manufacturing practices requirements. Some conditions, the statute specifies, are mandatory to the extent practicable for authorizations of unapproved products and discretionary for authorizations of unapproved uses of approved products. Moreover, some conditions may apply to manufacturers of an EUA product, while other conditions may apply to any person who carries out any activity for which the authorization is issued. Section 564 of the act also gives the Commissioner authority to establish other conditions on an authorization that he finds to be necessary or appropriate to protect the public health.

For purposes of estimating the burden of reporting, FDA has established six categories of respondents: (1) Those who file a Request for Consideration for an EUA after a determination of actual or potential emergency and, in lieu of submitting the data, provide reference to a pending or approved application; (2) those who file a Request for Consideration for an EUA and the data after a determination of actual or potential emergency, without reference to a pending or approved application; (3) those who submit data to FDA on a candidate EUA product, which is subject to a pending or approved application, prior to a determination of actual or potential emergency; (4) those who submit data to FDA prior to a determination of actual or potential emergency about a candidate EUA product for which there is no pending or approved application; (5) manufacturers of an unapproved EUA product who must report to FDA regarding such activity; and (6) state and local public health officials who carry out an activity related to an unapproved EUA product (e.g., administering the product to civilians) and who must report to FDA regarding such activity.

For purposes of estimating the burden of recordkeeping, FDA has calculated the anticipated burden on manufacturers of unapproved products authorized for emergency use. The Agency anticipates that the federal government will perform some of the additional recordkeeping necessary for unapproved products (e.g., related to the administration of unapproved EUA products to military personnel). FDA also anticipates that some state and local public health officials may be required to perform additional recordkeeping (e.g., related to the administration of unapproved EUA products to civilians) and calculated a recordkeeping burden for those activities.

No burden was attributed to reporting or recordkeeping for unapproved uses of approved products, since those products already are subject to approved collections of information (Adverse Experience Reporting for biological products is approved under OMB Control No. 0910–0308 through September 30, 2011; Adverse Drug

Experience Reporting is approved under OMB Control No. 0910–0230 through April 30, 2009; and IND regulations are approved under OMB Control No. 0910–0014 through May 31, 2009) and any additional burden imposed by this proposed collection would be minimal. Thus, FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Request for Consideration; Pending Application on File	1	1	1	15	15
Request for Consideration; No Application Pending	1	1	1	50	50
Pre-Emergency Submissions; Pending Application on File	10	1	10	20	200
Pre-Emergency Submissions; No Application Pending	3	1	3	75	225
Manufacturers of an Unapproved EUA Product	3	4	12	2	24
State and Local Public Health Officials; Unapproved EUA Product	30	4	120	2	240
Total					754

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED RECORDKEEPING ANNUAL BURDEN[1]

	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
Manufacturers of an Unapproved EUA Product	3	4	12	25	300
State and Local Public Health Officials; Unapproved EUA Product	30	4	120	3	360
Total					660

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The annual burden estimate for this information collection is 1,414 hours. The estimated reporting burden for this collection is 754 hours and the estimated recordkeeping burden is 660 hours.

Dated: April 10, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–8922 Filed 4–17–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Evaluation of Networking Suicide Prevention Hotlines (OMB No. 0930–0274)—Revision

This project revision includes the continuation of two previously approved data collection activities [Evaluation of Networking Suicide Prevention Hotlines Follow-Up Assessment (OMB No. 0930–0274) and Call Monitoring of National Suicide Prevention Lifeline Form (OMB No. 0930–0275)], and a revision to expand the scope of the ongoing evaluation in an effort to advance the understanding of crisis hotline utilization and its impact. The Substance Abuse and Mental Health Services Administration's (SAMHSA), Center for Mental Health Services (CMHS) funds a National Suicide Prevention Lifeline Network (NSPL), consisting of two toll-free telephone numbers, that route calls from anywhere in the United States to a network of local crisis centers. In turn, the local centers link callers to local emergency, mental health, and social service resources.

The overarching purpose of the proposed Evaluation of the Networking Suicide Prevention Hotlines—Revision is to (1) continue to monitor and ensure quality of calls and gather follow-up information from the callers themselves, (2) expand the number of centers participating in order to assess whether the two national suicide prevention hotline numbers (*i.e.,* 1–800–273–TALK and 1–800–SUICIDE) reach similar or complimentary populations of at risk callers, and, (3) to evaluate additional but related activities (*e.g.,* motivational interviewing and safety planning) recently funded through a new cooperative agreement between

SAMHSA and crisis hotline centers in the NSPL. In total this effort's proposed evaluation includes six data collection activities.

Clearance is being requested to continue the following two previously approved data collection activities to continue call quality monitoring and caller follow-up assessment activities. The number of centers proposed to participate in these continuing activities is sufficient to address the additional question related to use of the two existing hotline numbers.

(1) To ensure quality, the vast majority of crisis centers conduct on-site monitoring of selected calls by supervisors or trainers using unobtrusive listening devices. To monitor the quality of calls and to inform the development of training for networked crisis centers, the national Suicide Prevention Lifeline proposes to remotely monitor calls routed to sixteen crisis centers during the shifts of consenting staff. The procedures are anonymous in that neither staff nor callers will be identified on the *Call Monitoring Form.* The monitor, a trained crisis worker, will code the type of problem presented by the caller, the elements of a suicide risk assessment that are completed by the crisis worker as well as what action plan is developed with and/or what referral(s) are provided to the caller. No centers will be identified in the reports.

During the shifts of consenting crisis staff, a recording will inform callers that some calls may be monitored for quality assurance purposes. Previous comparisons of matched centers that did and did not play the recordings found no difference in hang-up rates before the calls were answered or within the first 15 seconds of the calls.

The 18 centers to be monitored are selected based on the geographic region(s) they serve and center call volume. A total of 1,320 calls will be monitored during year 1 of the proposed three year clearance period.

(2) With input from multiple experts in the field of suicide prevention, a telephone interview survey was created to collect data on follow-up assessments from consenting individuals calling the Lifeline network.

During year 1 of the proposed three year clearance period, a total of 1,095 callers will be recruited from 18 of the approximately 100 crisis hotline centers that participate in the Lifeline network. Trained crisis workers will conduct the follow-up assessment (''*Crisis Hotline Telephone Follow-Up Assessment''*) within one month of the initial call. Assessments will be conducted only one time for each client. Strict measures to ensure privacy will be followed.

Telephone scripts provide potential participants with standardized information to inform their consent decision. Using the *Crisis Hotline Telephone Initial Script,* trained crisis counselors will ask for permission to have the evaluation staff re-contact the caller. The *Crisis Hotline Telephone Consent Script,* used at the time of re-contact, incorporates the required elements of a written consent form,

The resulting data will measure (a) suicide risk status at the time and since the call, (b) depressive symptoms at follow-up, (c) service utilization since the call, (d) barriers to service access, and (e) the client's perception of the efficacy of the hotline intervention.

Clearance is also being requested for *four new activities* are being proposed to evaluate the process and impact of motivational training and safety planning (MI/SP) with callers who have expressed suicidal desire. Five centers will train counselors to implement an intervention with callers during the initial call to a center, which incorporates aspects of motivational interviewing and safety planning (MI/SP) and utilizes an evidence-based practice model to provide follow-up to callers who have expressed a suicidal desire. An assessment of MI/SP fidelity and process measures will be incorporated into the design through the observation of calls via silent monitoring and the administration of two self-administered questionnaires to crisis center counselors. The impact assessment of MI/SP counselor training will include silent monitoring of calls and follow-up telephone interviews with callers to assess their emotions and behaviors following their interaction with the MI/SP trained counselor.

(1) Research monitors, trained crisis counselors not affiliated with the centers in the project, will access a remote ''real-time'' monitoring system through the Internet to conduct silent monitoring. Monitors will complete the ''MI/SP Silent Monitoring Form,'' to gather: (a) Call specifics for each call such as date, time, and length; (b) suicide risk status of the caller; (c) information on elements of safety planning, such as making the environment safe and identifying triggers that led to the caller's suicidality; (d) types of referrals the counselor gave and to what services; (e) ratings of counselor behaviors and caller behavioral changes that occurred; and (f) re-contact permission status. At the end of the call and once the counselor deems the intervention to be complete, counselors will ask all appropriate callers, using the MI/SP Caller Initial Script, for permission to be re-contacted by research staff for a follow-up interview. Only a caller whose call has been silently monitored is eligible to be followed by the research team; thus, counselors will state that the caller *may* be contacted by the research team if randomly selected for a follow-up call. A total of 1110 calls will be monitored across the 3-year data collection period. Prior to monitoring and collecting of the data, crisis counselors must have read and signed a *MI/SP Counselor Consent.* This form explains the purpose of the research, privacy, risks and benefits, what the study entails, and participant rights.

(2) The ''*MI/SP Counselor Attitude Questionnaire''* attitude questionnaire will be administered to counselors at the conclusion of their MI/SP training and be used as a possible predictor of fidelity of the MI//SP intervention. Information to be gathered includes (a) counselors' views of the applicability of the MI/SP for preparing them to conduct safety planning and follow up with callers; (b) possible anticipated challenges (*i.e.,* impeding factors) to applying the MI/SP training in their centers; (c) the relationship of the MI/SP model to their centers; (d) the extent to which trainees are provided with or obtain adequate resources to enable them to use MI/SP on the job; (h) impeding and facilitating factors; and (9) attitudes about counselors' self-efficacy to use MI/SP and views on its utility. It is expected that a total of 225 counselors will be trained over the course of 3 years in an effort to maintain 175 counselors at any given time. Thus, a total of 225 counselors are expected to complete this questionnaire during the 3-year data collection period.

(3) Counselors will be asked to complete the ''*MI/SP Counselor Follow-up Questionnaire''* for each call that is monitored. The questionnaire will incorporate an assessment of the outreach, telephonic follow up and/or other strategies that the center has proposed to implement, and whether the counselor was able to implement the center's site plan as originally conceived. The questionnaire will also include items on the demographic characteristics of the caller, whether contact was successfully made with the caller, whether the caller followed through with the safety plan and/or referral given by the counselor, whether MI/SP was re-implemented during the follow-up contact, whether another follow-up is scheduled, the educational and crisis experience of the person attempting re-contact with the caller, and that person's prior experience with

follow-up. Barriers to implementing the follow-up, as well as types of deviation from the site's follow-up plan will also be assessed. Open-ended questions about what led to deviations from the site's follow-up plan will also be included. In total, it is expected that counselors will complete the questionnaire for each of the calls that were monitored.

(4) Researchers will begin conducting follow-up interviews with callers approximately 6 weeks after the initial call to the center. This follow-up telephone interview (''*MI/SP Caller Follow-up Interview''*) will be conducted to collect information on demographic characteristics, gather caller feedback on the initial call made to the center, suicide risk status at the time of and since the call, current depressive symptomatology, follow through with the safety plan and referrals made by the crisis counselor, and barriers to service. Taking into account attrition and the number of callers who do not give consent, it is expected that the total number of follow-up interviews conducted by the research team will not exceed 885. The *MI/SP Caller Initial Script* protects the privacy of callers by asking the caller how and when they want to be contacted, and what type of message (if any) can be left on an answering machine or with the person picking up the telephone. The caller also has the option of not providing contact information to the crisis center if he/she prefers to call the evaluation team back directly. The telephone script used when the evaluation team contacts the participant for their follow-up interview (*MI/SP Caller Follow-up Consent Script,* see Attachment H) includes (1) the fact that the information collection is sponsored by an agency of the Federal Government, (2) the purpose of the information collection and the uses which will be made of the results, (3) the voluntary nature of participation, and (4) the extent to which responses will be held confidential.

The estimated response burden to collect this information is as follows annualized over the requested three year clearance period is presented below:

TOTAL AND ANNUALIZED AVERAGES: RESPONDENTS, RESPONSES AND HOURS

Instrument	Number of respondents	Number of responses per respondent*	Hours/ response	Response burden*
National Suicide Prevention Lifeline—Call Monitoring Form	10	44	.58	249
Crisis Hotline Telephone Initial Script	365	1	.08	29
Crisis Hotline Telephone Consent Script	365	1	.17	62
Crisis Hotline Telephone Follow-up Assessment	365	1	.67	245
MI/SP Silent Monitoring Form	10	37	.58	214
MI/SP Caller Initial Script	368	1	.08	29
MI/SP Caller Follow-up Consent Script	368	1	.17	63
MI/SP Caller Follow-up Interview	295	1	.67	198
MI/SP Counselor Consent	75	1	.08	6
MI/SP Counselor Attitudes Questionnaire	75	1	.25	19
MI/SP Counselor Follow-up Questionnaire	175	2	.17	89
Total	2,471			1,181

* Rounded to the nearest whole number.

Written comments and recommendations concerning the proposed information collection should be sent by May 20, 2009 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: April 13, 2009.

Elaine Parry,

Director, Office of Program Services.

[FR Doc. E9–8974 Filed 4–17–09; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Criteria for Vaccination Requirements for U.S. Immigration Purposes [Correction]

A notice ''Criteria for Vaccination Requirements for U.S. Immigration Purposes'' was published in the **Federal Register** on April 8, 2009 (74 FR 15986). This notice is corrected as follows: On page 15986 second column, under **DATES**, second sentence should read: Comments received after May 8, 2009, will be considered to the extent possible.

Dated: April 13, 2009.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–8981 Filed 4–17–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 Interagency Autism Coordinating Committee.

The meeting will be open to the public, with attendance limited to space availability, and will be accessible by videocast. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below at least 5 business days in advance of the meeting.

Name of Committee: Interagency Autism Coordinating Committee (IACC).

Date: May 4, 2009.

Time: 9 a.m. to 4 p.m.

Agenda: To discuss the annual strategic plan updating process and services and supports activities.

Place:

In Person: National Institutes of Health, William H. Natcher Conference Center, 45 Center Drive/Building 45, Conference Rooms E1/E2, Bethesda Campus, Bethesda, MD 20892.

Videocast: http://videocast.nih.gov.

Contact Person: Ms. Lina Perez, Office of Autism Research Coordination, Office of the Director, National Institute of Mental Health, NIH, 6001 Executive Boulevard, Bethesda, MD 20892–9669, (301) 443–6040. *IACCpublicinquiries@mail.nih.gov.*

Any member of the public interested in presenting oral comments to the Committee should notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations should submit a letter of intent, a brief description of the organization represented, and a written/electronic copy of the oral presentation in advance of the meeting. Only one representative of an organization will be allowed to present oral comments and presentations will be limited to a maximum of five minutes. Both printed and electronic copies are requested following the presentation for the public record. In addition, any interested person may submit written comments to the Committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

NIH has instituted stringent security procedures for entrance onto the NIH campus. All visitors must enter through the NIH Gateway Center. This center combines visitor parking, non-commercial vehicle inspection and visitor ID processing, all in one location. The NIH will process all visitors in vehicles or as pedestrians. You will be asked to submit to a vehicle or personal inspection and will be asked to state the purpose of your visit. Visitors over 15 years of age must provide a form of government-issued ID such as a driver's license or passport. All visitors should be prepared to have their personal belongings inspected and to go through metal detection inspection.

When driving to NIH, plan some extra time to get through the security checkpoints. Be aware that visitor parking lots on the NIH campus can fill up quickly. The NIH campus is also accessible via the metro Red Line, Medical Center Station. The Natcher Conference Center is a 5-minute walk from the Medical Center Metro Station.

Additional NIH campus visitor information is available at: *http://www.nih.gov/about/visitor/index.htm.* Information about the IACC and a registration link for this meeting are available on the Web site: *http://www.iacc.hhs.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: April 13, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–9033 Filed 4–17–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control

Special Emphasis Panel: Pilot Lifestyle Interventions for Pregestational Diabetes or Gestational Diabetes, Potential Extramural Project, PEP 2009–R–02

Correction: This notice was published in the **Federal Register** on March 25, 2009, Volume 74, Number 56, page 12873. The original notice was published with an incorrect Potential Extramural Project number.

Contact Person for More Information: Linda Shelton, Public Health Analyst, Coordinating Center for Health and Information Service, Office of the Director, CDC, 1600 Clifton Road NE., Mailstop E21, Atlanta, GA 30333. Telephone (404) 498–1194.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 9, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–8947 Filed 4–17–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0143]

Risk Evaluation and Mitigation Strategies for Certain Opioid Drugs; Notice of Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to obtain input on developing Risk Evaluation and Mitigation Strategies (REMS) for certain opioid drugs. The REMS would be intended to ensure that the benefits of these drugs continue to outweigh certain risks. The agency has long been concerned about adverse events associated with this class of drug and has taken steps in cooperation with drug manufacturers to address these risks. We intend to use the agency's REMS authority under the Food and Drug Administration Amendments Act of 2007 (FDAAA) to mitigate the risks of these drugs. The purpose of the public meeting is to receive information and comments on this topic.

DATES: The public meeting will be held on May 27 and 28, 2009, from 8 a.m. to 5 p.m. Register to attend the meeting by May 15, 2009. See section III of this document for information on how to register or make an oral presentation at the meeting. Written or electronic comments will be accepted until June 30, 2009.

ADDRESSES: The public meeting will be held at the Hilton Washington, DC North/Gaithersburg Hotel, 620 Perry Pkwy., Gaithersburg, MD 20877. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061. Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov.* All comments should be identified with the docket number found in brackets in the heading of this document. Transcripts of the meeting will be available for review at the Division of Dockets Management and on the Internet at *http://www.regulations.gov* approximately 30 days after the meeting.

FOR FURTHER INFORMATION CONTACT: Theresa (Terry) Martin, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6184, Silver Spring, MD 20993–0002, 301–796–3448, FAX: 301–847–8752, or Anne Henig, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg 51, rm. 6176, Silver Spring, MD 20993–0002, 301–796–3442, FAX: 301–847–8753, email: *OpioidREMS@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDAAA (Public Law 110–85) created section 505–1 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355–1). Under section 505–1 of the act,

FDA may require a REMS when FDA determines that a REMS is necessary to ensure the benefits of a drug outweigh the risks associated with the drug. On February 6, 2009, FDA sent letters to manufacturers of certain opioid drug products, indicating that these drugs will be required to have a REMS to ensure that the benefits of the drugs continue to outweigh the risks. An example of the text of these letters is available on the agency's Web site at *http://www.fda.gov/cder/drug/infopage/opioids/meeting_template.pdf*. A table of opioid products that may be required to have REMS is also available on the agency's Web site at *http://www.fda.gov/cder/drug/infopage/opioids/Opioid_Products_chart.htm*. Copies of these documents may also be requested from Terry Martin or Anne Henig (see **FOR FURTHER INFORMATION CONTACT**).

The affected opioid drugs include brand name and generic products and are formulated with the following active ingredients: Fentanyl, hydromorphone, methadone, morphine, oxycodone, and oxymorphone. The REMS would be intended to ensure that the benefits of these drugs continue to outweigh the risks associated with: (1) Use of high doses of long acting opioids and extended release opioid products in non-opioid tolerant and inappropriately selected individuals; (2) abuse; (3) misuse; and (4) overdose, both accidental and intentional. REMS for opioids would likely include elements to assure safe use to ensure that prescribers, dispensers, and patients are aware of and understand the risks and how these products should be used. The purpose of this meeting is to examine specific features of REMS for these drugs and provide interested persons an opportunity to comment. The meeting will also address issues associated with creating and implementing the REMS and evaluating its effectiveness.

A. Opioids

Opioid drugs have effects similar or identical to those of opiates produced naturally in the opium poppy. On the molecular level, they act at protein sites called opioid receptors, which are found in the brain, spinal cord, gastrointestinal tract, peripheral nerve terminals, and other peripheral sites. The actions of these drugs at certain opioid receptors in the brain, spinal cord, and other sites can effectively block the transmission of pain messages to the brain. Opioid drugs currently marketed in the United States for pain relief include products formulated with active ingredients such as fentanyl, hydromorphone, methadone, morphine, oxycodone, and oxymorphone. Individual patients respond differently to different opioid drug substances, and some patients develop tolerance to the effects of a particular opioid after chronic exposure. Physicians use a technique known as ''opioid rotation'' whereby they switch a patient from one opioid to another if the patient develops tolerance to the drug's analgesic effects and cannot get adequate pain relief from any single drug.

Some opioids are naturally long acting; others are incorporated into extended release formulations. Long acting opioids and extended release opioid formulations are often useful for the management of persistent, moderate to severe pain in patients requiring continuous, around-the-clock pain relief for an extended period of time. Long acting products allow these patients to have their pain controlled for long periods of time without the need for another dose and to significantly reduce the number of tablets the patient must take each day. Therefore, having long acting opioids and extended release opioid formulations available provides important pain relief options for patients who require management of persistent, moderate to severe pain.

The expected duration of treatment with long acting opioids and extended release opioid formulations ranges from a few weeks to months or longer. In some cases, moderate to severe pain requiring continuous, around-the-clock opioid therapy is associated with a serious condition that is unlikely to improve.

These types of opioids are widely prescribed, posing challenges for the development of REMS for these products. Long acting and extended release opioid formulations were used by nearly 4 million patients in the United States in 2007. Physicians who prescribe and administer long acting and extended release opioid drugs practice in a wide variety of areas including family practice, anesthesiology, internal medicine, orthopedic surgery, physiatry, neurology, rheumatology, oncology, and other areas. A REMS, to adequately manage the risks of these products without unduly burdening the health care system or reducing patient access to these medications, must be carefully designed.

B. Adverse Events Associated With Opioids

The most serious of the known adverse events associated with opioid pain relievers are: Respiratory depression, central nervous system depression, addiction, and death. Adverse events are associated with improper dosing, indication, and patient selection, as well as with abuse and addiction. For example, some products and doses are indicated only for the management of persistent moderate to severe pain in patients who have demonstrated opioid tolerance. Use of these products in non-opioid-tolerant patients may result in fatal respiratory depression. In other cases, when extended release products are intentionally crushed or dissolved, the controlled-release mechanism may be defeated, allowing a large dose to be taken at once. This presents a risk of fatal overdose, particularly in individuals who are not tolerant to opioids.

C. Efforts to Address the Risks of Opioid Use

FDA and drug manufacturers have taken steps to decrease abuse and misuse of long acting opioids and extended release opioids while seeking to ensure that they remain available for patients who suffer daily from chronic pain. Since 2001, FDA has required boxed warnings, the agency's strongest warning, on the labeling of long acting opioid drugs to educate physicians and patients on the risks and proper uses of these products. The agency has also required risk management plans for many of these products. These plans have incorporated educational programs for prescribers, pharmacists, and patients, and surveillance systems to monitor for signals of increasing abuse, misuse, and diversion, as well as plans for intervention when these signals are noted. In addition, drug manufacturers have sought to incorporate features into their products intended to deter abuse. For example, the active ingredient may be incorporated into a matrix from which it cannot easily be extracted or that is not easily ground into powder. In other cases, an opioid antagonist is sequestered in the inner core of an extended release tablet, designed to be released if the tablet is crushed or dissolved.

D. REMS for Long Acting and Extended Release Opioids

Despite existing efforts to address the risks associated with opioid drugs, misuse and abuse are increasing. Data from multiple sources, including the Centers for Disease Control (CDC) and the Substance Abuse and Mental Health Services Administration (SAMHSA), indicate increasing misuse and abuse of prescription opioid analgesic medications over the past decade. For example, SAMHSA's National Survey on Drug Use and Health estimates that

11 million Americans over the age of 12, or 4.7 percent of that population, took pain relievers for nonmedical use in 2002. That number increased to 12.5 million, or 5.0 percent of the population over 12, in 2007. Likewise, data compiled by SAMHSA show a significant increase from 2000 to 2006 in admissions to substance abuse treatment services for individuals abusing opioid analgesics. Much of this misuse has involved the extended release opioid analgesics and methadone. To address this public health problem, the agency has indicated it will require REMS for certain opioid products.

Section 505–1 of the act authorizes FDA to require persons submitting certain drug approval applications to submit a proposed REMS as part of the application. FDA may require a REMS when FDA determines that a REMS is necessary to ensure the benefits of the drug outweigh the risks associated with the drug. Section 505–1 of the act also authorizes FDA to require holders of certain drug applications approved without a REMS to submit a proposed REMS if the agency becomes aware of new safety information and makes a determination that a REMS is necessary to ensure the benefits of the drug outweigh the risks. Once FDA notifies the holder of an approved covered application that a REMS is necessary, the holder must submit a proposed REMS within 120 days, or within such other reasonable time as FDA requires.

Every REMS must include a timetable for the submission of assessments of the REMS. A REMS may also include a Medication Guide (as provided in 21 CFR part 208), a patient package insert, a communication plan, and certain ''elements to assure safe use.'' The elements to assure safe use must include one or more goals to mitigate a specific serious risk listed in the labeling of the drug. These elements may include the following requirements:

- Health care providers who prescribe the drug have particular training or experience, or are specially certified.
- Pharmacies, practitioners, or health care settings that dispense the drug are specially certified.
- The drug is dispensed to patients only in certain health care settings.
- The drug is dispensed to patients with evidence of safe use conditions, such as laboratory test results.
- Each patient using the drug is subject to certain monitoring.
- Each patient using the drug is enrolled in a registry.

The elements to assure safe use may also include an implementation plan, whereby the applicant monitors, evaluates, and works to improve the implementation of certain of these elements. FDAAA states that when elements to assure safe use are required for a drug that is also marketed in one or more generic forms, the pioneer drug and the generic(s) shall use a single, shared system unless the generic applicant obtains a waiver in accordance with statutory criteria. A waiver may be granted if the burden of creating a single, shared system outweighs the benefits of a single, shared system or if an aspect of the elements to assure safe use is entitled to protection as a trade secret or is protected by a patent for which the generic applicant has unsuccessfully sought a license (section 505–1(i)(1) of the act).

We are mindful of the provisions in FDAAA that state the elements to assure safe use must be, among other things, commensurate with the specific serious risk listed in the labeling of the drug, not be unduly burdensome on patient access to the drug, and be designed to be compatible with established distribution, procurement, and dispensing systems (section 505–1(f)(2) of the act). Marketed opioid products include both innovator and generic drugs. FDAAA requires, with limited exception, that innovator and generic drugs use a single, shared system for a REMS that contains elements to assure safe use. Putting together a workable system will involve innovator and generic sponsors working together to develop a single, shared system.

II. Scope of Meeting

FDA is holding this public meeting to allow affected sponsors and other interested persons to present comments and information on what a REMS should look like for these products, how to minimize the burden on the health care community and patients while achieving the objective of ensuring that the benefits of these drugs continue to outweigh the risks, and how FDA should evaluate the REMS to determine whether it is achieving these objectives.

FDA is interested in obtaining information and public comment on the following issues:

A. Elements of the REMS

1. FDA believes that one key element to assure safe use for these products will be prescriber certifications to ensure prescribers are educated about the risks of these products and proper patient selection, and the importance of counseling patients on the safe and appropriate use of their prescription medication. Please comment on what type of education should be provided to prescribers and how this certification should be administered (e.g., through state Medical Boards, DEA (Drug Enforcement Agency), other Federal or state systems, or privately, through a contractor established to administer the REMS). Some combination of administration could also be considered.

2. FDA believes that another key element to assure safe use for these products will be certifications of pharmacists, prescribers, and other health care providers or institutions that dispense or directly administer covered opioid products to ensure these representatives of the health care system also are educated about the risks of these products and the importance of counseling patients on the safe and appropriate use of their prescription medication. These representatives of the health care system could be asked to check that the prescriber has obtained the certification necessary to prescribe these products. Please comment on what type of education should be provided to pharmacists and other health care providers who dispense or directly administer covered products and how this certification should be administered (e.g., through state Boards of Pharmacy, DEA, other Federal or state systems, or privately, through a contractor established to administer the REMS). Some combination of administration could also be considered.

3. FDA believes patient education, in conjunction with a prescriber-patient agreement, is another key element of the REMS. What education should be provided to patients, and should the system be designed to ensure such education is provided? For example, other REMS programs require prescriber-patient agreements that patients sign before receiving a prescription to acknowledge that they have been advised about the risks and appropriate use of the products and received a Medication Guide or other appropriate patient information. Is such a system necessary for opioid products?

4. Are other REMS elements necessary to support the safe use of approved opioids? A list of possible REMS elements is provided in section I.D of this document.

B. System Issues

1. How restrictive a system should be designed? For example, in some previously approved risk management systems, covered drugs are provided only when prescribers, pharmacists, and patients are all enrolled in a program designed to ensure that all understand the risks and appropriate use of the

products. Such systems have been put in place for drugs that are or are suspected to be teratogenic, and the programs are designed to ensure patients are not pregnant and will not become pregnant while taking the drug. Such systems create burdens on patients and the health care system. Is such a system necessary for opioids? How would such a program be implemented given the number of patients, prescribers, and other health care providers involved in their use?

2. Should the REMS include controls on distributors who distribute products to pharmacies and other health care providers? What controls are necessary, and how can they be efficiently provided without being unduly burdensome on the health care system?

3. What existing systems (for example, in pharmacies) already exist that could be used to implement a REMS? For example, could patient information be provided through existing pharmacy systems to patients? Are there systems for providing education to prescribers that could be used to provide the educational component of a REMS?

4. FDAAA requires that innovator and generic application holders use a single, shared system to provide a REMS with elements to assure safe use. What obstacles need to be addressed before such a system could be developed?

5. What metrics should be used to assess the success of the REMS? Please comment on the metrics that should be applied to measure the success of each of the components of the REMS (e.g., educational requirements) as well as metrics to assess the impact of the overall REMS on decreasing abuse and misuse of long acting opioids and extended release opioids while seeking to ensure that they remain available for patients who suffer daily from chronic pain.

III. Attendance and Registration

Register via email to *OpioidREMS@fda.hhs.gov* by providing complete contact information for each attendee (including name, title, affiliation, address, email address, and phone number(s)) by May 15, 2009. Registration is free and will be on a first-come, first-served basis. Early registration is recommended because seating is limited. Please send no more than two individuals from your organization. Registration on the first day of the meeting will be provided on a space available basis beginning at 8 a.m.

If you wish to make an oral presentation at the meeting, you must indicate this at the time of registration. FDA has included questions for comment in section II of this document. You should also identify by number each question you wish to address in your presentation. FDA will do its best to accommodate requests to speak. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and to request time for a joint presentation. FDA will determine the amount of time allotted to each presenter and the approximate time that each oral presentation is scheduled to begin. If you need special accommodations because of disability, please e-mail *OpioidREMS@fda.hhs.gov* at least 7 days before the meeting.

IV. Comments

Regardless of attendance at the public meeting, interested persons may submit written or electronic comments to the Division of Dockets Management (see **ADDRESSES**). Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. To ensure consideration, submit comments by June 30, 2009. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Transcripts

Transcripts of the meeting will be available for review at the Division of Dockets Management and on the Internet at *http://www.regulations.gov* approximately 30 days after the meeting. A transcript will also be made available in either hard copy or on CD–ROM, upon submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (HFI–35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857.

Dated: April 14, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–8992 Filed 4–17–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Amended Notice

The purpose of this notice is to inform the public that the National Institutes of Health (NIH) is cancelling the May 5, 2009 meeting of the NIH Blue Ribbon Panel to Advise on the Risk Assessment of the National Emerging Infectious Diseases Laboratories at Boston University Medical Center. The announcement for the May 5, 2009 meeting was previously published in the **Federal Register** on April 3, 2009 (74 FR 15296).

The meeting will be rescheduled and the new date for the meeting will be announced and published in the **Federal Register**.

Dated: April 14, 2009.

Kelly Fennington,

Special Assistant to the Acting Director, Office of Science Policy, National Institutes of Health.

[FR Doc. E9–9037 Filed 4–17–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Advisory Council.

Date: June 10, 2009.

Open: 8 a.m. to 12 p.m.

Agenda: To discuss program policies and issues.

Place: National Institutes of Health, Building 31, 31 Center Drive, C–Wing, Room 10, Bethesda, MD 20892.

Closed: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, C–Wing, Room 10, Bethesda, MD 20892.

Contact Person: Stephen C. Mockrin, Phd, Director, Division of Extramural Research Activities, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7100, Bethesda, MD 20892, (301) 435–0260, *mockrins@nhlbi.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, drivers license, or passport) and to state the purpose of their visit.

Information is also available on the Institutes/Center's home page: *www.nhlbi.nih.gov/meetings/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 13, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–8903 Filed 4–17–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2009–0001]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; revision of a currently approved information collection; OMB No. 1660–0073; FEMA Form 089–10, Narrative Statement, and FEMA Form 089–11, Performance Reports, and FEMA Form 089–12, Extensions/Budget Changes, and FEMA Form 089–13, Memorandum of Agreement Revisions, and FEMA Form 089–14, Self Evaluations, and FEMA Form 089–15, Task Force Deployment Data.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before May 20, 2009.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or e-mail address *FEMA–Information-Collections@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: National Urban Search and Rescue Grant Program.

Type of information collection: Revision of a currently approved information collection.

OMB Number: 1660–0073.

Form Titles and Numbers: FEMA Form 089–10, Narrative Statement, and FEMA Form 089–11, Performance Reports, and FEMA Form 089–12, Extensions/Budget Changes, and FEMA Form 089–13, Memorandum of Agreement Revisions, and FEMA Form 089–14, Self Evaluations, and FEMA Form 089–15, Task Force Deployment Data.

Abstract: The information collection activity is the collection of financial, program and administrative information for US&R Sponsoring Organizations relating to preparedness and response Cooperative Agreement awards. This information includes a narrative statement that FEMA uses to evaluate a grantee's proposed use of funds, progress reports to monitor overall progress on managing FEMA grant program, extension or change requests used to consider changing or extending the time or the performance period of the preparedness or response cooperative agreement, evaluation and information to assess and ensure operational readiness and a memorandum of agreement between DHS/FEMA and the Sponsoring Organizations of US&R task forces.

Affected Public: State, Local or Tribal Government.

Estimated Number of Respondents: 28.

Frequency of Response: Semi-annually.

Estimated Average Hour Burden per Respondent: 17 Hours.

Estimated Total Annual Burden Hours: 476 hours.

Estimated Cost: There are no start-up, operational or other costs associated with this information collection.

Larry Gray,

Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E9–9008 Filed 4–17–09; 8:45 am]

BILLING CODE 9110–69–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2009–0001]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; revision of a currently approved information collection; OMB No. 1660–0083; FEMA Form 116–0–1, Promissory Note, FEMA Form 085–0–1, Local Government Resolution Collateral Security, FEMA Form 090–0–1, Certification of Eligibility for Community Disaster Loans, and FEMA Form 090–0–2, Application for Community Disaster Loan.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the

requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before May 20, 2009.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Community Disaster Loan (CDL) Program is authorized by Section 417 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended, and provides loans to any local government which has suffered a substantial loss of tax or other revenues as a result of a major disaster or emergency and which demonstrates a need for Federal financial assistance in order to perform its governmental functions. FEMA regulations at 44 CFR 206.360–206.367 contain the procedures and requirements that implement the statutory authority for this program.

The title (Formerly titled Application for Community Disaster Loan (CDL) and the Special Community Disaster Loan (SCDL) Program) previously reported in the 60-Day **Federal Register** Notice (73 FR 76370, Dec. 16, 2008) has been changed because the Special Community Disaster Loan (SCDL) Program was only authorized to provide loans to communities affected by Hurricanes Katrina and/or Rita. The application period for that program closed at the end of fiscal year 2006 (October 1, 2006). Because FEMA is no longer accepting applications for the SCDL Program, it has been removed from this collection.

Collection of Information

Title: Application for Community Disaster Loan (CDL) Program.

Type of information collection: Revision of a currently approved collection.

OMB Number: 1660–0083.

Form Titles and Numbers: FEMA Form 116–0–1, Promissory Note, FEMA Form 085–0–1, Local Government Resolution Collateral Security, FEMA Form 090–0–1, Certification of Eligibility for Community Disaster Loans, and FEMA Form 090–0–2, Application for Community Disaster Loan. These form numbers previously reported in the 60-Day **Federal Register** Notice (73 FR 76370, Dec. 16, 2008) have been changed in accordance with the Federal Enterprise Architecture (FEA) numbering system. FEMA Form 090–0–2 (Former FEMA Form 90–7), Application for Community Disaster Loan was inadvertently not included in the 60-Day **Federal Register** Notice mentioned above and has since been added to this collection.

Abstract: The Loan Package for the Community Disaster Loan Program provides States, Local and Tribal governments that have suffered substantial loss of tax or other revenues as a result of a major disaster or emergency, the opportunity to obtain financial assistance in order to perform their governmental functions. Local governments can submit a loan package for the Community Disaster Loan Program. This loan must be justified on the basis of need and actual expenses.

Affected Public: ''State, Local, or Tribal Government''.

Estimated Number of Respondents: 50.

Frequency of Response: Once.

Estimated Average Hour Burden per Respondent: 19.5 hours.

Estimated Total Annual Burden Hours: 975. The estimated total annual burden hours previously reported in the 60-day **Federal Register** Notice (73 FR 76370, Dec. 16, 2008) has been increased.

Estimated Cost: The estimated total annual respondent administrative cost based on wage rate categories is $44,892.32. The estimated total annual respondent administrative cost based on wage rate categories previously reported in the 60-day **Federal Register** Notice (73 FR 76370, Dec. 16, 2008) has been increased. There are no capital expenditure costs associated with this collection.

Larry Gray,

Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E9–8996 Filed 4–17–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Assistance to Firefighters Grant Program

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of guidance.

SUMMARY: This Notice provides guidelines that describe the application process for grants and the criteria for awarding grants in the 2009 Assistance to Firefighters Grant program year, as well as an explanation for any differences with the guidelines recommended by representatives of the Nation's fire service leadership during the annual Criteria Development meeting. The program makes grants directly to fire departments and nonaffiliated emergency medical services organizations for the purpose of enhancing first-responders' abilities to protect the health and safety of the public as well as that of first-responder personnel facing fire and fire-related hazards. In addition, the authorizing statute requires that a minimum of 5 percent of appropriated funds be expended for fire prevention and safety grants, which are also made directly to local fire departments and to local, regional, State or national entities recognized for their expertise in the field of fire prevention and firefighter safety research and development.

Authority: 15 U.S.C. 2229, 2229a.

FOR FURTHER INFORMATION CONTACT: Brian Cowan, Director, Assistance to Firefighters Program Office, U.S. Department of Homeland Security/ FEMA, Assistance to Firefighters Grant Program, TechWorld Building—5th Floor South Tower, 800 K Street, NW., Washington, DC 20472–3620.

SUPPLEMENTARY INFORMATION: The purpose of the Assistance to Firefighters Grant (AFG) Program is to provide grants directly to fire departments and nonaffiliated Emergency Medical Services (EMS) organizations to enhance their ability to protect the health and safety of the public, as well as that of

first-responder personnel, with respect to fire and fire-related hazards.

Appropriations

For fiscal year 2009, Congress appropriated $565,000,000 to carry out the activities of the AFG Program. The Department of Homeland Security (DHS) is authorized to use up to $28,250,000 for administration of the AFG program (5 percent of the appropriated amount); however, the Executive Branch has limited the funds available for administration to 4 percent of the appropriation ($22,600,000). In addition, DHS must set aside no less than $28,250,000 of the funds (5 percent of the appropriation) for the Fire Prevention and Safety Grants (FP&S). However, for fiscal year 2009, DHS will award $35,000,000 for FP&S. Under FP&S, DHS may make grants to, or enter into contracts or cooperative agreements with, national, State, local or community organizations or agencies, including fire departments, for the purpose of carrying out fire prevention grants and firefighter safety research and development grants.

The $507,400,000 will be used for competitive grants to fire departments and nonaffiliated EMS organizations for equipment, training and first responders' safety. Within the portion of funding available for these competitive grants, DHS must assure that no less than 3.5 percent of the appropriation, or $19,775,000, is awarded for EMS equipment and training. However, awards to nonaffiliated EMS organizations are limited to no more than 2 percent of the appropriation or $11,300,000. Therefore, at least the balance of the requisite awards for EMS equipment and training must go to fire departments.

Background

DHS awards the grants on a competitive basis to the applicants that best address the AFG program's priorities and provide the most compelling justification. Applicants whose requests best address the program's priorities will be reviewed by a panel composed of fire service personnel. The panel will review the narrative and evaluate the application in four different areas: (1) The clarity of the proposed project description, (2) the organization's financial need, (3) the benefit to be derived from the proposed project relative to the cost, and (4) the extent to which the grant would enhance the applicant's daily operations and/or how the grant would positively impact the applicant's ability to protect life and property.

The AFG program for 2009 generally mirrors previous years' AFG programs. The program will again segregate the FP&S program from the AFG. DHS will have a separate application period devoted solely to FP&S tentatively scheduled to occur in the Fall of 2009. All applications will be accessible from *https://portal.fema.gov.*

Congress has enacted statutory limits to the amount of funding that a grantee may receive from the AFG program in any fiscal year (15 U.S.C. 2229(b)(10)). These limits are based on population served. A grantee that serves a jurisdiction with 500,000 people or less may not receive grant funding in excess of $1,000,000 in any fiscal year. A grantee that serves a jurisdiction with more than 500,000 but not more than 1,000,000 people may not receive grants in excess of $1,750,000 in any fiscal year. A grantee that serves a jurisdiction with more than 1,000,000 people may not receive grants in excess of $2,750,000 in any fiscal year. DHS may waive these established limits to any grantee serving a jurisdiction of 1,000,000 people or less if DHS determines that extraordinary need for assistance warrants the waiver. No grantee, under any circumstance, may receive ''more than the lesser of $2,750,000 or one half of one percent of the funds appropriated under this section for a single fiscal year.'' (15 U.S.C. 2229(b)(10)(B)).

Grantees must share in the costs of the projects funded under this grant program (15 U.S.C. 2229(b)(6)). Fire departments and nonaffiliated EMS organizations that serve populations of less than 20,000 must match the Federal grant funds with an amount of non-Federal funds equal to 5 percent of the total project cost. Fire departments and nonaffiliated EMS organizations serving areas with a population between 20,000 and 50,000, inclusive, must match the Federal grant funds with an amount of non-Federal funds equal to 10 percent of the total project cost. Fire departments and nonaffiliated EMS organizations that serve populations of over 50,000 must match the Federal grant funds with an amount of non-Federal funds equal to 20 percent of the total project costs. All non-Federal funds must be in cash, *i.e.,* in-kind contributions are not eligible. The only waiver granted for this requirement will be for applicants located in Insular Areas as provided for in 48 U.S.C. 1469a.

The authorizing statute imposes additional requirements on ensuring a distribution of grant funds among career, volunteer, and combination (volunteer and career personnel) fire departments, and among urban, suburban and rural communities. More specifically with respect to department types, DHS must ensure that all-volunteer or combination fire departments receive a portion of the total grant funding that is not less than the proportion of the United States population that those departments protect (15 U.S.C. 2229(b)(11)). There is no corresponding minimum for career departments. Therefore, subject to the other statutory limitations on DHS ability to award funds, DHS will ensure that, for the 2009 program year, no less than 34 percent of the funding available for grants will be awarded to combination departments, and no less than 21 percent will be awarded to all-volunteer departments. These figures were obtained from the National Fire Protection Association report entitled *U.S. Department Profile Through 2007,* issued October 2008. If, and only if, other statutory limitations inhibit DHS ability to ensure this distribution of funding, DHS will ensure that the aggregate combined total percent of funding provided to both combination and volunteer departments is no less than 55 percent.

DHS generally makes funding decisions using rank order resulting from the panel evaluation. However, DHS may deviate from rank order and make funding decisions based on the type of department (career, combination, or volunteer) and/or the size and character of the community the applicant serves (urban, suburban, or rural) to the extent it is required to satisfy statutory provisions.

Fire Prevention and Safety Grant Program

In addition to the grants available to fire departments in fiscal year 2009 through the competitive grant program, DHS will set aside $35,000,000 of the funds available under the AFG program to make grants to, or enter into contracts or cooperative agreements with, national, State, local or community organizations or agencies, including fire departments, for the purpose of carrying out fire prevention and injury prevention projects, and for research and development grants that address firefighter safety.

In accordance with the statutory requirement to fund fire prevention activities, support to Fire Prevention and Safety Grant activities concentrates on organizations that focus on the prevention of injuries to children from fire. In addition to this priority, DHS places an emphasis on funding innovative projects that focus on protecting children under 14, seniors over 65, and firefighters. Because the

victims of burns experience both short- and long-term physical and psychological effects, DHS places a priority on programs that focus on reducing the immediate and long-range effects of fire and burn injuries.

DHS will issue an announcement regarding pertinent details of the Fire Prevention and Safety Grant portion of this program prior to the application period.

Application Process

Prior to the start of the application period, DHS will conduct applicant workshops across the country to inform potential applicants about the AFG program for 2009. In addition, DHS will provide applicants an online Web-based tutorial and other information to use in preparing a quality application. Applicants are advised to access the application electronically at *https://portal.fema.gov.* New applicants will have to register and establish a username and password for secure access to their application. Applicants that have applied to any AFG funding opportunities in the past will have to use their established username and passwords. In completing the application, applicants will provide relevant information on the applicant's characteristics, call volume, and existing capacities. Applicants will answer questions regarding their assistance request that reflects the funding priorities (iterated below). In addition, each applicant will complete a narrative addressing statutory competitive factors: financial need, benefits/costs, and improvement to the organization's daily operations. During the application period, applicants will be encouraged to contact DHS via a toll free number or online help desk with any questions. The electronic application process will permit the applicant to enter data and save the application for further use, and will not permit the submission of incomplete applications. Except for the narrative, the application uses a ''point-and-click'' selection process, or requires the entry of information (*e.g.,* name and address, call volume numbers, *etc.*).

The application period for the AFG grants will open on or about April 16, 2009, and close on or about May 15, 2009. Interested applicants are encouraged to read the Program Guidance for more details. During the approaching application season, the program office expects to receive between 20,000 and 25,000 applications.

Application Review Process

DHS evaluates all applications in the preliminary screening process to determine which applications best address the program's announced funding priorities. This preliminary screening evaluates and scores the applicants' answers to the activity specific questions. Applications containing multiple activities will be given prorated scores based on the amount of funding requested for each activity. The best applications as determined in the preliminary step are deemed to be in the ''competitive range.''

Once the competitive range is established DHS will review the list of applicants that are not included in the competitive range to determine if any of those applicants are responsible for protecting DHS-specified critical infrastructure or key resources. If it is determined that an applicant has responsibility for protecting one or more critical infrastructure or key resources but is not included in the competitive range, DHS will determine whether it is appropriate to place that application before the peer review panel due to the importance of its mission to protect these critical resources. Adding additional applications to peer review will not affect the number of applications that would have been reviewed by the peer reviewers or otherwise undermine the process used to determine the competitive range. Peer review panelists will not be aware of which applications may have been added to the universe of applications at panel as a result of this initiative. All applications will be peer reviewed against the criteria described in this document.

All applications in the competitive range are subject to a second level review by a technical evaluation panel made up of individuals from the fire service including, but not limited to, firefighters, fire marshals, and fire training instructors. The panelists will assess the application's merits with respect to the clarity and detail provided about the project, the applicant's financial need, the project's purported benefit to be derived from the cost, and the effectiveness of the project to enhance the health and safety of the public and fire service personnel.

Using the evaluation criteria included here, the panelists will independently score each application before them and then discuss the merits and shortcomings of the application in an effort to reconcile any major discrepancies. A consensus on the score is not required. The panelists will assign a score to each of the elements detailed above. DHS will then consider the highest scoring applications resulting from this second level of review for awards. Applications that involve interoperable communications projects will undergo a separate review by the State Administrative Agency to assure that the communications project is consistent with the Statewide Communications Interoperability Plan (SCIP). If the State determines that the project is inconsistent with the State SCIP, the project will not be funded.

After the completion of the reviews, DHS will select a sufficient number of awardees from this application period to obligate all of the available grant funding. DHS will announce the awards over several months and will notify non-successful applicants as soon as feasible. DHS will not make awards in any specified order, *i.e.,* not by State, program, nor any other characteristic.

Modification to facility projects (including renovations associated with equipment installations) are subject to all applicable environmental and historic preservation requirements. Applicants seeking assistance to modify their facilities or to install equipment requiring renovations may undergo additional screening. Specifically, DHS is required to ascertain to what degree the proposed modifications and renovations might affect an applicant's facility relative to the National Environmental Policy Act, National Historic Preservation Act of 1966, National Flood Insurance Program regulations, and any other applicable laws and Executive Orders. No project that involves a modification to facility can proceed—except for project planning—prior to formal written approval from DHS. If your award includes a modification to a facility, you are responsible for contacting the Program Office so you can be given direction on how to proceed. Noncompliance with these provisions may jeopardize an applicant's award and subsequent funding.

Criteria Development Process

Each year, DHS conducts a criteria development meeting to develop the program's priorities for the coming year. DHS brings together a panel of fire service professionals representing the leadership of the nine major fire service organizations:

- Congressional Fire Service Institute (CFSI),
- International Association of Arson Investigators (IAAI),
- International Association of Fire Chiefs (IAFC),

• International Association of Firefighters (IAFF),
• International Society of Fire Service Instructors (ISFSI),
• National Association of State Fire Marshals (NASFM),
• National Fire Protection Association (NFPA),
• National Volunteer Fire Council (NVFC), and
• North American Fire Training Directors (NAFTD).

The criteria development panel is charged with making recommendations to the grants program office regarding the creation and/or modification of program priorities as well as development of criteria and definitions as necessary.

The governing statute requires that DHS publish each year in the **Federal Register** the guidelines that describe the application process and the criteria for grant awards. DHS must also include an explanation of any differences between the published guidelines and the recommendations made by the criteria development panel. The guidelines and the statement regarding the differences between the guidelines and the criteria development panel recommendations must be published in the **Federal Register** prior to making any grants under the program. 15 U.S.C. 2229(b)(14).

The Fiscal year 2009 criteria development panel meeting occurred July 9–10, 2008. For the 2009 program year, DHS implemented all recommendations presented by the criteria development panel. However, DHS implemented additional program changes that were not considered during the criteria development panel's deliberations. Those changes are as follows:

• In determining when to allow applicants to request funding for video conferencing systems, the criteria development group recommended that DHS limit eligibility of the systems to organizations that planned to use said systems for asynchronous training *only.* Asynchronous training enables students to increase knowledge and skills through self-paced and self-directed modules when convenient for the student versus systems that support synchronous training. They recommended that video conferencing systems not be eligible for synchronous training as synchronous training is too inflexible. In considering this recommendation, DHS determined that the delivery of asynchronous training does not need elaborate video conferencing systems; rather, asynchronous training only requires a computer. Since computers are already eligible and asynchronous training delivery does not require video conferencing systems, DHS expanded the criteria development panel's recommendation to deem video conferencing systems ineligible in their entirety.

• In review of the priorities under vehicle acquisition, the criteria development panel recommended adjusting the emphasis placed on call volume. The panel's recommendation was based on the belief that any emphasis on call volume is a disadvantage for small departments (*e.g.,* volunteer departments). However, the AFG authorizing legislation requires DHS to take into account the benefit to be derived from the costs of the grant activity when considering each application for award. Previous criteria development panels have recommended, and DHS has agreed, that a risk-based focus achieves this cost/benefit consideration and that the frequency of use is a legitimate measure of risk as well as indicator of the benefit that could be derived from an award. Also, there is no empirical data to show that small departments are disadvantaged by the consideration of call volume. Statistically, volunteer departments have received 87 percent of all AFG vehicle awards. Finally, criteria for all grant activities include consideration for call volume for reasons cited above but the panel only recommended changing the consideration for the vehicle category. This is inconsistent. Due to the legislative requirement to take cost/benefit into consideration; the realization that call volume is a measure of cost/benefit; the lack of data that shows any group is disadvantaged by the measure; and for the sake of consistent implementation of the program, DHS elected to leave the level of consideration call volume unchanged from that in previous years.

• Also under the vehicle acquisition activity, the criteria development panel recommended that DHS provide extra consideration for vehicles that do not have seatbelts and that cannot be economically retrofitted with seatbelts under the belief that such vehicles are inherently unsafe. The criteria development panel did not provide any guidance to assess what was meant by the term ''economical,'' but it is the opinion that any retrofitting effort would be far more economical than the purchase of a new vehicle. For this reason DHS has elected not to implement this recommendation.

• In their deliberations on firefighting equipment, the criteria development panel recommended that DHS highlight the eligibility of, and place more emphasis on, ''alternative'' fuel firefighting foam and equipment (over the consideration provided for ''conventional'' fuel firefighting foam and equipment). DHS believes this to be a difference without a distinction. Foam firefighting equipment and supplies have always been eligible, thus DHS saw no need to differentiate between the various uses of foam and foam firefighting equipment.

• Across all activities, the criteria development panel recommended that all applicants base their pricing on formal bids. DHS believed that this would be too onerous a task for an application and too onerous to enforce, thus DHS did not implement the recommendation. However, DHS provides more instruction and guidance regarding Federal procurement requirements in the 2009 program guidance.

• The criteria development panel recommended that DHS require applicants to request vehicle mounted exhaust control devices under the firefighting equipment acquisition activity rather than under modifications to facility activity. DHS agrees that, by definition, the devices are more ''equipment'' than they are part of a ''facility.'' However, the function of the devices is absolutely relative to the affect that the devices will have on the facility. Therefore, DHS will continue to require applicants to apply for the devices under modifications to facilities and to answer the questions regarding their facility in order to qualify.

• Finally, the criteria development group recommended that DHS add a question to the application whereby the applicant could declare that they have temporary, transient population in their first-due over and above their permanent resident population. DHS did not believe this to be necessary as there are very few jurisdictions in this Nation that do not have fluctuations in their populations and because the applicants are free to discuss their fluctuating population in their narrative.

Review Considerations

Fire Department Priorities

Specific rating criteria for each of the eligible programs and activities are discussed below. The funding priorities described in this Notice have been recommended by a panel of representatives from the Nation's fire service leadership and have been accepted by DHS for the purposes of implementing the AFG. These rating criteria provide an understanding of the grant program's priorities and the

expected cost-effectiveness of any proposed project(s). The activities listed below are in no particular order of priority. Within each activity, DHS will consider the population served by the applicant with higher populations afforded a higher consideration than applicants with lower populations. DHS will further explain program priorities in program guidance to be published separately.

(1) Operations and Firefighter Safety Program

(i) *Training Activities.* In implementing the fire service's recommendations, DHS has determined that the most benefit will be derived from instructor-led, hands-on training that leads to a nationally sanctioned or State certification. Training requests that include Web-based home study or distance learning or the purchase of training materials, equipment, or props are a lower priority. Therefore, applications focused on national or State certification training, including train-the-trainer initiatives, will receive a higher competitive rating. Training that (1) involves instructors, (2) requires the students to demonstrate their grasp of knowledge of the training material via testing, and (3) is integral to a certification will receive a high competitive rating. Instructor-led training that does not lead to a certification, and any self-taught courses, are of lower benefit, and therefore will not receive a high priority.

DHS will give higher priority, within the limitations imposed by statute, to training proposals which improve coordination capabilities across disciplines (Fire, EMS, and Police), and jurisdictions (local, State, and Federal). Training related to coordinated incident response (*i.e.,* bomb threat or Improvised Explosive Device response), tactical emergency communications procedures, or similar types of inter-disciplinary, inter-jurisdictional training will receive the highest competitive rating.

Due to the inherent differences between urban, suburban, and rural firefighting characteristics, DHS has accepted the recommendations of the criteria development panel for different priorities in the training activities of departments that service these different types of communities. CBRNE awareness training has a high benefit, however, and will receive the highest consideration regardless of the type of community served and regardless of the absence of any national standard.

For fire departments serving rural communities, DHS has determined that funding basic, operational-level firefighting, operational-level rescue, driver training, and first-responder EMS, Emergency Medical Technician-Basic (EMT–B), and Emergency Medical Technician—Intermediate (EMT–I) training (*i.e.,* training in basic firefighting, EMS, and rescue duties) has greater benefit than funding officer training, safety officer training, or incident-command training. In rural communities, after basic training, there is a greater cost-benefit ratio for officer training than for other specialized types of training such as mass casualty, hazardous materials (HAZMAT), advanced rescue and Emergency Medical Technician—Paramedic (EMT–P), or inspector training.

Conversely, for departments that are serving urban or suburban communities, DHS has determined that, due to the number of firefighters and the relatively high percentage of the population protected, any training requests will receive a high priority rating regardless of the level of training requested. As such, when considering applications for training from departments serving urban and suburban communities, DHS will give higher priority to training proposals which improve coordination capabilities across first-responder disciplines (fire, EMS, and law enforcement), and jurisdictions (local, State, and Federal). Training related to coordinated incident response (*e.g.,* weapons of mass destruction awareness and incident operations, chemical or biological operations, or bomb threats), tactical emergency communications procedures, or similar types of inter-disciplinary, inter-jurisdictional training will receive the highest competitive rating.

(ii) *Wellness and Fitness Activities.* In implementing the criteria panel's recommendations, DHS has determined that fire departments must offer periodic health screenings, entry physical examinations, and an immunization program to have an effective wellness/fitness program. Accordingly, applicants for grants in this category must currently offer or plan to offer with grant funds *all three benefits* to receive funding for any other initiatives in this activity. After the provision of the three requisite benefits, the criteria development panel recommended providing the highest consideration to candidate physical agility evaluations. DHS will give a lower priority to formal fitness and injury prevention programs. DHS will give the lowest priority to stress management, injury/illness rehabilitation, and employee assistance.

DHS has determined the greatest relative benefit will be realized by supporting new wellness and fitness programs. Therefore, applicants for new wellness/fitness programs will receive higher competitive ratings when compared with applicants whose wellness/fitness programs lack one or more of the three top priority items cited above, and applicants that already employ the requisite three activities of a wellness/fitness program. Finally, because participation is critical to achieving any benefits from a wellness or fitness program, applications that mandate participation and are open to all personnel or provide incentives for participation will receive higher competitive ratings.

(iii) *Equipment Acquisition.* As stated in the AFG statute, DHS administers this grant program to protect the health and safety of firefighters and the public from fire and fire-related hazards. As such, equipment that has a direct effect on the health and safety of either firefighters or the public will receive a higher competitive rating than equipment that has no such effect. Equipment that promotes interoperability with neighboring jurisdictions (especially for communications equipment interoperable with a regional shared system) will receive additional consideration in the cost-benefit assessment if the application makes it into the competitive range.

The criteria development panel concluded that this grant program will achieve the greatest benefits if the grant program provides funds to purchase firefighting equipment (including rescue, EMS, and/or CBRNE preparedness) that the applicant has not owned prior to the grant, or to replace used or obsolete equipment.

According to the panel, a department takes on a ''new mission'' when it expands its services into areas not previously offered, such as a fire department seeking funding to provide emergency medical services for the first time. A ''new risk'' presents itself when a department must address risks that have materialized in the department's area of responsibility, *e.g.,* the construction of a plant that uses significant levels of certain chemicals could constitute a ''new risk.'' An organization taking on ''new risks'' should be afforded higher consideration than departments taking on a ''new mission.'' New missions receive a lower priority due to the potential that an applicant will not be able to financially support and sustain the new mission beyond the period of the grant.

Departments responding to high call volumes will be afforded a higher competitive rating than departments

responding to lower call volumes. In other words, those departments that are required to respond more frequently will receive a higher competitive rating then those that respond less frequently.

The purchase of equipment that brings the department into statutory or regulatory compliance will provide the highest benefit and therefore will receive the highest consideration. The purchase of equipment that brings a department into voluntary compliance with national standards will also receive a high competitive rating, but not as high as for the purchase of equipment that brings a department into statutory compliance. The purchase of equipment that does not affect statutory compliance or voluntary compliance with a national standard will receive a lower competitive rating.

(iv) *Personal Protective Equipment (PPE) Acquisition.* The primary purpose of AFG is to protect the health and safety of the public and of firefighters. To achieve this goal and maximize the benefit to the firefighting community, the FY 2009 AFG will give higher priority to funding applicants needing to purchase PPE for the first time (*i.e.,* for new firefighters) than departments replacing old and obsolete or substandard equipment (*e.g.,* equipment not meeting current NFPA and Occupational Safety and Health Administration standards). In applications that request funding to replace equipment, the age and condition of the PPE that is to be replaced will be the primary consideration with the replacement of older or worn-out equipment receiving higher consideration than requests for replacement of newer equipment.

For departments replacing equipment such as ''turnout gear,'' the condition of the equipment to be replaced will be factored into the score with a higher priority given to replacing equipment that is damaged, torn, or contaminated over equipment that is worn but usable. For departments replacing old or damaged equipment, departments with the oldest equipment will receive the highest priority, and departments with the newest equipment will receive a low priority.

Finally, DHS takes into account the number of fire response calls that a department makes in a year with the higher priority going to departments with higher call volumes, while applications from departments with low call volumes are afforded lower competitive ratings.

(v) *Modifications to Fire Stations and Facilities.* DHS believes that more benefit is derived from modifying fire stations than by modifying fire-training facilities or other fire-related facilities. The highest priority has been assigned to sprinkler systems, exhaust evacuation systems, and fire/smoke alarm systems. Lower priority has been assigned to generators, vehicle mounted exhaust filtration systems and air-quality systems. The frequency of use for any structure has a bearing on the benefits derived from grant funds. As such, DHS will afford facilities occupied 24-hours-per-day/7-days-a-week the highest consideration when contrasted with facilities used on a part-time or irregular basis. Fire stations with sleeping quarters will receive higher consideration than stations where there are no sleeping quarters for firefighters. Facilities open for broad usage and have a high occupancy capacity receive a higher competitive rating than facilities that have limited use and/or low occupancy capacity. The frequency and duration of a facility's occupancy have a direct relationship to the benefits realized from funding in this activity.

(2) Firefighting Vehicle Acquisition Program

Due to the inherent differences between urban, suburban, and rural firefighting conventions, DHS has developed different priorities in the vehicle program for departments that service different types of communities. The following chart delineates the priorities in this program area for each type of community. Due to the competitive nature of this program and the imposed limits of funding available for this program, it is unlikely that DHS will fund many vehicles not listed as a Priority One during the 2009 program year.

FIREFIGHTING VEHICLE PROGRAM PRIORITIES

Priority	Urban communities	Suburban communities	Rural communities
Priority One	Pumper	Pumper	Pumper
	Aerial	Aerial	Brush/Attack
	Quint (Aerial < 76′)	Quint (Aerial > 76′)	Tanker/Tender
	Quint (Aerial < 76′)	Quint (Aerial > 76′)	Quint (Aerial > 76′)
	Rescue		
Priority Two	Command	Command	HAZMAT
	HAZMAT	HAZMAT	Rescue
	Light/Air	Rescue	Aerial
	Rehab	Tanker/Tender	(Aerial > 76′)
	Foam Truck	Brush/Attack	
		Foam Truck	
Priority Three	ARFFV [1]	ARFFV [1]	ARFFV [1]
	Brush/Attack	Rehab	Rehab
	Tanker/Tender	Light/Air	Command
	Ambulance	Ambulance	Ambulance
	Fire Boat	Fire Boat	Fire Boat
			Light/Air

[1] Airport Rescue and Firefighting Vehicle.

DHS will evaluate the marginal value derived from an additional vehicle of any given type on the basis of call volume. As a result, departments with fewer vehicles of a given type than other departments who service comparable call volumes are more likely to score competitively than departments with more vehicles of that type and comparable call volume unless the need for an additional vehicle of such type is made apparent in the application.

Applicants from urban and suburban communities may submit requests for more than one vehicle. Applicants must supply sufficient justification for each vehicle contained in the request. For those applications with multiple vehicles, the panelists will be instructed to evaluate the marginal benefit to be derived from funding the additional

vehicle(s) given the potential use and the population protected. DHS anticipates that the panels will only recommend an award for a multiple-vehicles application when the cost-benefit justification is adequately compelling.

DHS believes that a greater benefit will be derived from funding an additional vehicle(s) to departments that own fewer or no vehicles of the type requested. As such, DHS assigns a higher competitive rating in the apparatus category to fire departments that own fewer firefighting vehicles relative to other departments serving similar types of communities (*i.e.,* urban, suburban, and rural). DHS assesses all vehicles with similar functions when assessing the number of vehicles a department possesses within a particular type. For example, the ''pumper'' category includes: pumpers, engines, pumper/tankers (apparatus that carries a minimum of 300 gallons of water and has a pump with a capacity to pump a minimum of 750 gallons per minute), rescue-pumpers, quints (with aerials less than 76 feet in length), and urban interface vehicles (Type I). Apparatus that has water capacity in excess of 1,000 gallons and a pump with pumping capacity of less than 750 gallons per minute are considered to be a tanker/tender.

DHS assigns a higher competitive rating to departments possessing an aged fleet of firefighting vehicles. In evaluating the age of an applicant's fleet, DHS will take into account the oldest vehicle in the class requested as well as the youngest vehicle in the class requested. DHS will also take into account the average age of the applicants' fleet. In each of these instances, older vehicles will receive higher consideration. DHS will also assign a higher competitive rating to departments that respond to a high volume of incidents.

DHS will give lower priority to funding departments seeking apparatus with the goal to expand into new mission areas unless the applicant demonstrates that they will be able to support and sustain the new mission or service area beyond the grant program.

DHS will assign no competitive advantage to the purchase of standard model commercial vehicles relative to custom vehicles, or the purchase of used vehicles relative to new vehicles in the preliminary evaluation of applications. DHS has noted that, depending on the type and size of department, the peer review panelists often prefer low-cost vehicles when evaluating the cost-benefit section of the project narratives. DHS also reserves the right to consider current vehicle costs within the fire service vehicle manufacturing industry when determining the level of funding that will be offered to the potential grantee, particularly if those current costs indicate that the applicant's proposed purchase costs are excessive.

DHS will allow departments serving urban or suburban communities to apply for more than one vehicle. DHS, however, will only allow departments serving rural communities to apply for one vehicle. DHS will limit applications from suburban or urban departments to one vehicle per station as well as per statutory funding limits. DHS will not limit 2009 applications because of a vehicle award from previous AFG program years.

(3) Administrative Costs

Panelists will assess the reasonableness of the administrative costs requested in any application and determine if the request is reasonable and in the best interest of the program.

Nonaffiliated EMS Organization Priorities

DHS may make grants for the purpose of enhancing the provision of emergency medical services by nonaffiliated EMS organizations. The authorizing statute limits funding for these organizations to no more than 2 percent of the appropriated amount. DHS has determined that it is more cost-effective to enhance or expand an existing emergency medical service organization by providing training and/or equipment than to create a new service. Communities that do not currently offer emergency medical services but are turning to this grant program to initiate such a service received the lowest competitive rating. DHS does not believe creating a nonaffiliated EMS program is a substantial and sufficient benefit under the program.

Specific rating criteria and priorities for each of the grant categories are provided below following the descriptions of this year's eligible programs. The rating criteria, in conjunction with the program description, provide an understanding of the evaluation standards. In each activity, the amount of the population served by the applicant will be taken into consideration with higher populations afforded more consideration than low populations served. DHS will further explain program priorities in the Program Guidance upon publication thereof.

(1) EMS Operations and Safety Program

Five different activities may be funded under this program area: EMS training, EMS equipment, EMS personal protective equipment, wellness and fitness, and modifications to facilities. Requests for equipment and training to prepare for response to incidents involving CBRNE were available under the applicable equipment and training activities.

(i) *Training Activities.* DHS believes that EMS training is a prerequisite to the effective use of EMS equipment, organizations whose requests are more focused on training activities will receive a higher competitive rating than organizations whose requests are more focused on equipment. A higher competitive rating will be given to nonaffiliated EMS organizations that are planning to upgrade services to Advanced Life Support (ALS) level of response. Specifically, organizations that are seeking to elevate their response level from EMT–B to EMT–I will receive the highest priority and organizations that are seeking to elevate their response level from EMT–I to EMT–P will receive a high priority. Our second priority is to elevate emergency responders' capabilities from first-responder to a Basic Life Support (BLS) level of response (*i.e.* EMT–B). Due to the time and cost, upgrading an organization's response level from EMT–B to EMT–P is a lower priority. Organizations seeking training in rescue or HAZMAT or rescue operations will receive lower consideration than organizations seeking training for medical services. Our lowest priority is to fund first responder training. Organizations that are seeking to train a high percentage of their active first responders will receive additional consideration when applying under the training activity.

(ii) *EMS Equipment Acquisition.* As noted above, training received a higher competitive rating than equipment. DHS believes that equipment is of no use if the operator is not trained to use it. As such, applicants must demonstrate that users of equipment purchased with the grant either are or will be sufficiently trained to use the equipment. Inability to demonstrate and fulfill this training requirement will result in ineligibility for equipment funding.

Organizations that request training to the ALS level of response, along with basic support equipment, will receive a higher priority. Requests seeking assistance to purchase equipment to support BLS level of response are a secondary priority. Organizations seeking equipment for rescue or HAZMAT operations will receive lower

consideration than organizations seeking equipment used to provide medical services. Our lowest priority is to fund first responder training.

As discussed previously, organizations taking on ''new risks'' will be afforded much higher consideration than an organization taking on a ''new mission.''

(iii) *EMS Personal Protective Equipment.* DHS gives the same priorities for EMS PPE as it did for fire department PPE discussed above. Acquisition of Personal Alert Safety Systems or any firefighting PPE is not eligible, however, for funding for EMS organizations.

(iv) *Wellness and Fitness Activities.* DHS believes that to have an effective wellness/fitness program, nonaffiliated EMS organizations must offer periodic health screenings, entry physical examinations, and an immunization program similar to the programs for fire departments discussed previously. Accordingly, applicants for grants in this category must currently offer or plan to offer with grant funds *all three benefits* (periodic health screenings, entry physical examinations, and an immunization program) to receive funding for any other initiatives in this activity. The priorities for EMS wellness/fitness programs are the same as for fire departments as discussed above.

(v) *Modification to EMS Stations and Facilities.* DHS believes that the competitive rankings and priorities applied to modification of fire stations and facilities, discussed above, apply equally to EMS stations and facilities.

(2) EMS Vehicle Acquisition Program

DHS gives the highest funding priority to acquisition of ambulances and transport vehicles due to the inherent benefits to the community and EMS service provider. Due to the costs associated with obtaining and outfitting non-transport rescue vehicles relative to the benefits derived from such vehicles, DHS will give non-transport rescue vehicles a lower competitive rating than transport vehicles. DHS anticipates that the EMS vehicle awards will be very competitive due to very limited available funding. Accordingly, DHS will likely only fund vehicles that are listed as a ''Priority One'' in the 2009 program year.

The following chart delineates the priorities in this program area for EMS vehicle program. The priorities are the same regardless of the type of community served.

EMS VEHICLE PROGRAM PRIORITIES

Priority one	Priority two	Priority three
• Ambulance or transport unit to support EMS functions.	• First responder non-transport vehicles • Special operations vehicles	• Command vehicles • Hovercraft • Other special access vehicles

Along with the priorities illustrated above, DHS has accepted the fire service recommendation that emerged from the criteria development process that funding applicants that own few or no vehicles of the type sought will be more beneficial than funding applicants that own numerous vehicles of that same type. DHS assesses the number of vehicles an applicant owns by including all vehicles of the same type. For example, transport vehicles will be considered the same as ambulances. DHS will give a higher competitive rating to applicants that have an aged fleet of emergency vehicles, and to applicants with old, high-mileage vehicles. DHS will give a higher competitive rating to applicants that respond to a significant number of incidents relative to applicants responding less often. Finally, DHS will afford applicants with transport vehicles with high mileage more consideration than applicants with vehicles that are not driven extensively.

(3) Administrative Costs

Panelists assess the reasonableness of the administrative costs requested in each application and determined whether the request will be reasonable and in the best interest of the program.

Dated: April 14, 2009.

David Garratt,

Acting Deputy Administrator, Federal Emergency Management Agency.

[FR Doc. E9–9024 Filed 4–17–09; 8:45 am]

BILLING CODE 9111–64–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG 2009–0257]

National Maritime Security Advisory Committee; Meeting

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The National Maritime Security Advisory Committee (NMSAC), established as a discretionary committee in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463), will meet in Washington, DC to discuss various issues relating to national maritime security. This meeting will be open to the public in the morning and will be closed to the public in the afternoon.

DATES: The Committee will meet on Monday, May 4, 2009 from 9 a.m. to 4 p.m. This meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before April 24, 2009. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before April 15, 2008.

ADDRESSES: The Committee will meet at Coast Guard Headquarters, Room 4202, 2100 2nd Street SW., Washington, DC 20593. A government-issued photo identification (for example, driver's license) will be required for entrance to the building. Additionally, this meeting will be broadcast via a Web enabled interactive online format. Send written material and requests to make oral presentations to Mr. Ryan Owens, Deputy Designated Federal Officer (DFO) of the National Maritime Security Advisory Committee, 2100 2nd Street SW., Room 6228, Washington, DC 20593. You may also e-mail material to *ryan.f.owens@uscg.mil.* This notice may be viewed in our online docket, USCG–2009–0257, at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Ryan Owens, Deputy DFO of NMSAC, telephone 202–372–1108 or *ryan.f.owens@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463).

Agenda of Public Meeting

The agenda for the public portion of the May 4 Committee meeting is as follows:

(1) Update on Transportation Workers Identification Credential.

(2) Update on Seafarers' Access to Shore leave.

(3) Discussion of USCG 5 year review of the International Ship and Port Facility Security (ISPS) code.

(5) Discussion of Tiering Maritime Transportation Security Act (MTSA) regulated facilities.

(6) Discussion of the eNOAD process.

The purpose of the second half of the meeting is to discuss national security matters. Because these matters are of a sensitive and classified nature, it has been determined that this portion of the committee meeting will be closed to the public pursuant to subsection (c)(1)of section 552b of Title 5 U.S.C.

Procedural

This meeting is open to the public for the morning session and will also be conducted via an online meeting format. Please note that the public portion of the meeting may close early if all business is finished. Seating is very limited, and members of the public will require additional screening and an escort while in Coast Guard Headquarters. Members of the public wishing to attend should register with Mr. Ryan Owens, Deputy DFO of NMSAC, telephone 202–372–1108 or *ryan.f.owens@uscg.mil* no later than April 29, 2009. Parking near the building is limited. Public transportation to the building (Bus Route 71) is limited to rush hours, approximately 6 to 9:30 a.m. and 3 to 6 p.m. Contact the Washington Metropolitan Area Transit Authority at 202–637–7000 or *http://www.wmata.com/* for additional public transit information.

Additionally, if you would like to participate in this meeting via the online web format, please log onto *https://fedgov.webex.com/fedgov/onstage/g.php?t=a&d=690008779* and follow the online instructions to register for this meeting. Public libraries offer free Internet access to members of the public. A recording of the meeting will also be available through a link in our online docket. The docket may be accessed by going to *http://www.regulations.gov*, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0257 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column.

At the Chair's discretion, members of the public may make oral presentations during the public portion of the meeting. If you would like to make an oral presentation at the public portion of the meeting, please notify the Deputy DFO no later than Friday, April 24. Written material for distribution at a meeting should reach the Coast Guard no later than Friday, April 24. If you would like a copy of your material distributed to each member of the committee in advance of a meeting, please submit 25 copies to the Deputy DFO no later than Friday, April 24.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, please contact Mr. Ryan Owens, the Deputy DFO, as soon as possible at telephone 202–372–1108 or *ryan.f.owens@uscg.mil.*

Dated: April 14, 2009.

Ryan F. Owens,

U.S. Coast Guard, Office of Port and Facility Activities.

[FR Doc. E9–8975 Filed 4–17–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No. USCBP–2009–0007]

Notice of Meeting of the Advisory Committee on Commercial Operations of Customs and Border Protection (COAC)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security (DHS).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Advisory Committee on Commercial Operations of U.S. Customs and Border Protection (COAC) will meet on May 6, 2009 in Washington, DC. The meeting will be open to the public.

DATES: COAC will meet Wednesday, May 6, 2009 from 9 a.m. to 1 p.m. Please note that the meeting may close early if the committee has completed its business. If you plan to attend, please contact Ms. Wanda Tate by e-mail at *tradeevents@dhs.gov* on or before Friday, May 1, 2009.

ADDRESSES: The meeting will be held at the Ronald Reagan Building in the Horizon Ballroom, 1300 Pennsylvania Avenue, NW., Washington, DC. Written material and comments should reach the contact person listed below by May 1, 2009. Requests to have a copy of your material distributed to each member of the committee prior to the meeting should reach the contact person at the address below by May 1, 2009. Comments must be identified by USCBP–2009–0007 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: tradeevents@dhs.gov.* Include the docket number in the subject line of the message.
- *Fax:* 202–325–4290.
- *Mail:* Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, 1300 Pennsylvania Avenue, NW., Room 5.2A, Washington, DC 20229.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received by COAC, go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, 1300 Pennsylvania Avenue, NW., Room 5.2A, Washington, DC 20229; *tradeevents@dhs.gov*; telephone 202–344–1440; facsimile 202–325–4290.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. App.), DHS hereby announces the meeting of the Advisory Committee on Commercial Operations of Customs and Border Protection (COAC). COAC is tasked with providing advice to the Secretary of Homeland Security, the Secretary of the Treasury, and the Commissioner of U.S. Customs and Border Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within DHS or the Department of Treasury.

The first meeting of the eleventh term of COAC will be held at the date, time and location specified above. A tentative agenda for the meeting is set forth below.

Tentative Agenda

1. Trade Facilitation Subcommittee.
2. Import Safety Initiatives.
3. Importer Security Filing (''10+2'').
4. World Customs Organization.
5. Intellectual Property Rights Enforcement Subcommittee.

6. Customs Bond Subcommittee.
7. Agriculture Programs Update.
8. Air Cargo Security.
9. ACE (Automated Commercial Environment) Update.

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished.

Participation in COAC deliberations is limited to committee members, Department of Homeland Security officials, and persons invited to attend the meeting for special presentations.

All visitors to the Ronald Reagan Building will have to go through a security checkpoint to be admitted to the building. Since seating is limited, all persons attending this meeting should provide notice, preferably by close-of-business Friday, May 1, 2009, to Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, 1300 Pennsylvania Avenue, NW., Washington, DC 20229; *tradeevents@dhs.gov;* telephone 202–344–1440; facsimile 202–325–4290.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Wanda Tate as soon as possible.

Dated: April 14, 2009.

Kimberly Marsho,

Director, Office of Trade Relations, U.S. Customs and Border Protection.

[FR Doc. E9–8948 Filed 4–17–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–30]

FHA-Insured Mortgage Loan Servicing of Delinquent, Default and Foreclosure With Service Members Act

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information collection involves mortgage loan servicers, ''mortgagees'' that service Federal Housing Administration ''FHA'' insured mortgage loans and the home owners, ''mortgagors'' who are involved with those activities. The new information request for OMB review seeks to combine a couple of existing OMB collections under one comprehensive collection for mortgagees that service FHA-insured mortgage loans and the mortgagors who are the home owners.

DATES: *Comments Due Date:* May 20, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–Pend) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice Also Lists the Following Information

Title of Proposal: FHA-Insured Mortgage Loan Servicing of Delinquent, Default and Foreclosure with Service Members Act.

OMB Approval Number: 2502–Pend.

Form Numbers: Delinquency and Default–HUD–PA 416 Avoiding Foreclosure Pamphlet, HUD–9539 Request for Occupied Conveyance, HUD–50012 Lenders Request for Extension of Time, HUD–92070 Servicemembers Civil Relief Act Notice Disclosure, HUD–27011, Claim for Insurance Benefits.

Description of the Need for the Information and ITS Proposed Use: This information collection involves mortgage loan servicers, ''mortgagees'' that service Federal Housing Administration ''FHA'' insured mortgage loans and the home owners, ''mortgagors'' who are involved with those activities. The new information request for OMB review seeks to combine a couple of existing OMB collections under one comprehensive collection for mortgagees that service FHA-insured mortgage loans and the mortgagors who are the home owners.

Frequency of Submission: On occasion, Monthly.

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	223	....	310	....	.0788	....	5,456,245

Total Estimated Burden Hours: 5,456,245.

Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 10, 2009.

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E9–9029 Filed 4–17–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–29]

FHA-Insured Mortgage Loan Servicing for Performing Loans; MIP Processing, Escrow Administration, Customer Service, Servicing Fees and 235 Loans

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information collection involves mortgage loan servicers, ''mortgagees'' that service Federal Housing Administration ''FHA'' insured mortgage loans and the home owners, ''mortgagors'' who are involved with those activities. The information collection request for OMB review seeks to combine the requirements of an existing OMB collection under this collection.

DATES: *Comments Due Date:* May 20, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–Pend) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: FHA-Insured Mortgage Loan Servicing for Performing Loans; MIP Processing, Escrow Administration, Customer Service, Servicing Fees and 235 Loans.

OMB Approval Number: 2502–Pend.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: This information collection involves mortgage loan servicers, ''mortgagees'' that service Federal Housing Administration ''FHA'' insured mortgage loans and the home owners, ''mortgagors'' who are involved with those activities. The information collection request for OMB review seeks to combine the requirements of an existing OMB collection under this collection.

Frequency of Submission: On occasion, Monthly.

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	223		310,216		.0788		5,456,245

Total Estimated Burden Hours: 5,456,245.

Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 10, 2009.

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E9–9031 Filed 4–17–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Agency Information Collection; Request for Extension of a Currently Approved Information Collection; Comment Request

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of renewal of currently approved collection (OMB No. 1006–0015).

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intentions of the Bureau of Reclamation to seek extension of the information collection for OMB 1006–0015, Diversions, Return Flow, and Consumptive Use of Colorado River Water in the Lower Colorado River Basin. The current OMB approval expires on August 31, 2009.

DATES: Comments on this notice must be received by *June 19, 2009.*

ADDRESSES: To obtain copies of the information collection forms and to submit comments on this information collection contact: Nancy DiDonato (BCOO–4445), PO Box 61470, Boulder City, NV 89006. Comments may also be submitted by e-mail to *ndidonato@usbr.gov.*

FOR FURTHER INFORMATION CONTACT: Margot Selig, Team Leader, Water Contracts Team, Boulder Canyon Operations Office, Bureau of Reclamation, 702–293–8192.

SUPPLEMENTARY INFORMATION:

Title: Diversions, Return Flow, and Consumptive Use of Colorado River Water in the Lower Colorado River Basin.

OMB No.: OMB No. 1006–0015.

Abstract: Reclamation delivers Colorado River water to water users for diversion and beneficial consumptive use in the States of Arizona, California, and Nevada. The Consolidated Decree of the United States Supreme Court in the case of *Arizona* v. *California, et al.,* entered March 27, 2006, (547 U.S. 150 (2006)) requires the Secretary of the Interior to prepare and maintain complete, detailed, and accurate records of diversions of water, return flow, and consumptive use and make these records available at least annually. This information is needed to ensure that a State or a water user within a State does not exceed its authorized use of Colorado River water. Water users are obligated by provisions in their water delivery contracts to provide Reclamation information on diversions and return flows. Reclamation determines the consumptive use by subtracting return flow from diversions or by other engineering means. Without the information collected, Reclamation could not comply with the order of the United States Supreme Court to prepare and maintain detailed and accurate records of diversions, return flow, and consumptive use.

Description of Respondents: The respondents will include the Lower Basin States (Arizona, California, and Nevada), local and tribal entities, water districts, and individuals that use Colorado River water.

Frequency: Monthly, annually, or otherwise as determined by the Secretary of the Interior.

Estimated Total Number of Respondents: 54.

Estimated Number of Responses per Respondent: 1 annually or 12 monthly.

Estimated Total Number of Annual Responses: 330.

Estimated Total Annual Burden Hours: 290.

Estimated Burden for Each Form:

Form No.	Estimated Number of respondents	Total responses per year	Estimated annual burden hours per form
LC–72	6	78	54
LC–72A	8	20	30
LC–72B	15	51	78
Custom Forms	25	181	128

Comments:

Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical use;

(b) The accuracy of our burden estimate for the proposed collection of information;

(c) Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

We will summarize all comments received regarding this notice. We will publish that summary in the **Federal Register** when the information collection request is submitted to OMB for review and approval.

Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Steven C. Hvinden,

Area Manager, Boulder Canyon Operations Office, Lower Colorado Region, Bureau of Reclamation.

[FR Doc. E9–8983 Filed 4–17–09; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES956000–L14200000–BJ0000–LXSITRST0000] Group No. 182, Wisconsin

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plat of Survey; Wisconsin.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below at the BLM–Eastern States office in Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. *Attn:* Cadastral Survey.

SUPPLEMENTARY INFORMATION: This survey was requested by the Bureau of Indian Affairs.

The lands we surveyed are:

Fourth Principal Meridian, Wisconsin

T. 39 N., R. 8 W.

The plat of survey represents the dependent resurvey of a portion of the North boundary, a portion of the subdivisional lines and the survey of the subdivision of Section 5, Township 39 North, Range 8 West, of the Fourth Principal Meridian, in the State of Wisconsin, and was accepted January 29, 2009. We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest concerning this survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: April 14, 2009.

Dominica Van Koten,

Chief Cadastral Surveyor.

[FR Doc. E9–9005 Filed 4–17–09; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY–957400–09–L14200000–BJ0000–TRST]

Notice of Filing of Plats of Survey, Nebraska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Survey, Nebraska.

SUMMARY: The Bureau of Land Management (BLM) is scheduled to file the plat of survey of the lands described below thirty (30) calendar days from the date of this publication in the BLM Wyoming State Office, Cheyenne, Wyoming.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Bureau of Indian Affairs and is necessary for the management of these lands. The lands surveyed are:

The plat and field notes representing the dependent resurvey of portions of the First Guide Meridian East, through T. 24 N., between Rs. 8 and 9 E., the east boundary, subdivisional lines and subdivision of certain sections, and the corrective dependent resurvey of a portion of the subdivisional lines and subdivision of section 22, and the survey of the subdivision of certain sections, Township 24 North, Range 9 East, of the Sixth Principal Meridian, Nebraska, was accepted April 13, 2009.

Copies of the preceding described plat are available to the public at a cost of $1.10 per page.

Dated: April 14, 2009.

John P. Lee,

Chief Cadastral Surveyor, Division of Support Services.

[FR Doc. E9–9003 Filed 4–17–09; 8:45 am]

BILLING CODE 4467–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES956000–L14200000–BJ0000]

Group No. 16, Illinois; Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plat of survey; Illinois.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below at the BLM–Eastern States office in Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153; Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: This survey was requested by the U.S. Army Corps of Engineers, St. Louis District.

The lands we surveyed are:

Third Principal Meridian, Illinois

T. 4 N., R. 1 W.

The plat of survey represents an amended portion of the Carlyle Reservoir Acquisition boundary in Township 4 North, Range 1 West of the Third Principal Meridian, in the State of Illinois, and was accepted February 23, 2009. We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest concerning this survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: April 14, 2009.

Dominica Van Koten,

Chief Cadastral Surveyor.

[FR Doc. E9–8986 Filed 4–17–09; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice on Outer Continental Shelf Oil and Gas Lease Sales

AGENCY: Minerals Management Service, Interior.

ACTION: List of restricted joint bidders.

SUMMARY: Pursuant to the authority vested in the Director of the Minerals Management Service by the joint bidding provisions of 30 CFR 256.41, each entity within one of the following groups shall be restricted from bidding with any entity in any other of the following groups at Outer Continental Shelf oil and gas lease sales to be held during the bidding period May 1, 2009 through October 31, 2009. The List of Restricted Joint Bidders published in the **Federal Register** October 9, 2008, covered the period November 1, 2008 through April 30, 2009.

Group I.
- Exxon Mobil Corporation.
- ExxonMobil Exploration Company.

Group II.
- Shell Oil Company.
- Shell Offshore Inc.
- SWEPI LP.
- Shell Frontier Oil & Gas Inc.
- Shell Consolidated Energy Resources Inc.
- Shell Land & Energy Company.
- Shell Onshore Ventures Inc.
- Shell Offshore Properties and Capital II, Inc.
- Shell Rocky Mountain Production LLC.
- Shell Gulf of Mexico Inc.

Group III.
- BP America Production Company.
- BP Exploration & Production Inc.
- BP Exploration (Alaska) Inc.

Group IV.
- TOTAL E&P USA, Inc.

Group V.
- Chevron Corporation.
- Chevron U.S.A. Inc.
- Chevron Midcontinent, LP.
- Unocal Corporation.
- Union Oil Company of California.
- Pure Partners, LP.

Group VI.
- ConocoPhillips Company.
- ConocoPhillips Alaska, Inc.
- ConocoPhillips Petroleum Company.
- Phillips Pt. Arguello Production Company.
- Burlington Resources Oil & Gas Company LP.
- Burlington Resources Offshore Inc.
- The Louisiana Land and Exploration Company.
- Inexeco Oil Company.

Group VII.
- Eni Petroleum Co. Inc.
- Eni Petroleum US LLC.
- Eni Oil US LLC.
- Eni Marketing Inc.
- Eni BB Petroleum Inc.
- Eni US Operating Co. Inc.
- Eni BB Pipeline LLC.

Group VIII.
- Petroleo Brasileiro S.A.
- Petrobras America Inc.

Group IX.
- StatoilHydro ASA.
- Statoil Gulf of Mexico LLC.
- StatoilHydro USA E&P, Inc.
- StatoilHydro Gulf Properties Inc.

Dated: March 29, 2009.

Walter D. Cruickshank,

Acting Director, Minerals Management Service.

[FR Doc. E9–8943 Filed 4–17–09; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—DVD Copy Control Association

Notice is hereby given that, on March 6, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), DVD Copy Control Association (''DVD CCA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Fluendo S.A., Barcelona, SPAIN; Kenmec Mechanical Engineering Co., Ltd., Taipei, TAIWAN; Swank Motion Pictures, Inc., St. Louis, MO; and Tamul Multimedia Co., Ltd., AnYang-City, REPUBLIC OF KOREA have been added as parties to this venture.

Also, AMLogic, Inc., San Jose, CA; Changzhou XingQui Electric Co., Ltd., Changzhou Jiangsu, PEOPLE'S REPUBLIC OF CHINA; Chunglam Digital Co., Ltd., Gyunggi-do, REPUBLIC OF KOREA; Columbia Digital Media, Inc., Kanagawa, JAPAN; Dailystar Technology Limited, Hong Kong, HONG KONG–CHINA; Digeo Interactive, LLCI, Palo Alto, CA; Express Luck Industrial, Ltd., Shatin, HONG KONG–CHINA; Guangdong Cosmic Digital Technology Co., Ltd., Guangdong, PEOPLE'S REPUBLIC OF CHINA; Hamg Shing Technology Corp., Chu Pei City, TAIWAN; Honest Technology Co., Ltd., Daejeon, REPUBLIC OF KOREA; Intech Electronics (HK) Co., Ltd., Hong Kong, HONG KONG–CHINA; Le Hong Po Company Limited, Hong Kong, HONG KONG–CHINA; Microservice Tecnologia Digital S/A, Sao Paulo, BRAZIL; and Yung Fu Electrical Appliances Corp., Tianan City, TAIWAN have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DVD CCA intends to file additional written notifications disclosing all changes in membership.

On April 11, 2001, DVD CCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 3, 2001 (66 FR 40727).

The last notification was filed with the Department on December 5, 2008. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 21, 2009 (74 FR 3640).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E9–8821 Filed 4–17–09; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Comment Request; Prohibited Transaction Class Exemption 2002–12, Cross-Trades of Securities by Index and Model-Driven Funds

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95). This program helps to ensure that respondents can provide the requested data in the desired format, that the reporting burden (time and financial resources) on the public is minimized, that the public can understand the Department's collection instruments, and that the Department can properly assess the impact of its information collection requirements on respondents. Currently, the Employee Benefits Security Administration (EBSA) is soliciting comments on a proposed extension of the information collection provisions of Prohibited Transaction Class Exemption 2002–12, Cross-Trades of Securities by Index and Model-Driven Funds. A copy of the information collection request (ICR) can be obtained by contacting the individual shown in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section on or before June 19, 2009.

ADDRESSES: Direct all written comments to G. Christopher Cosby, Office of Policy and Research, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5718, Washington, DC 20210, (202) 693–8410, FAX (202) 219–4745 (These are not toll-free numbers.). Comments may also be submitted electronically to the following Internet e-mail address: *ebsa.opr@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

PTE 2002–12 exempts certain transactions that would be prohibited under the Employee Retirement Income Security Act of 1974 (the Act or ERISA) and the Federal Employees' Retirement System Act (FERSA), and provides relief from certain sanctions of the Internal Revenue Code of 1986 (the Code). The exemption permits cross-trades of securities among Index and Model-Driven Funds (Funds) managed by managers (Managers), and among such Funds and certain large accounts (Large Accounts) that engage such Managers to carry out a specific portfolio restructuring program or to otherwise act as a ''trading adviser'' for such a program. By removing existing barriers to these types of transactions, the exemption increases the incidences of cross-trading, thereby lowering the transaction costs to plans in a number of ways from what they would be otherwise.

In order for the Department to grant an exemption for a transaction or class of transactions that would otherwise be prohibited under ERISA, the statute requires the Department to make a finding that the exemption is administratively feasible, in the interest of the plan and its participants and beneficiaries, and protective of the rights of the participants and beneficiaries. To ensure that Managers have complied with the requirements of the exemption, the Department has included in the exemption certain recordkeeping and disclosure obligations that are designed to safeguard plan assets by periodically providing information to plan fiduciaries, who generally must be independent, about the cross-trading program. Initially, where plans are not invested in Funds, Managers must furnish information to plan fiduciaries about the cross-trading program, provide a statement that the Manager will have a potentially conflicting division of loyalties, and obtain written authorization from a plan fiduciary for a plan to participate in a cross-trading program. For plans that are currently invested in Funds, the Manager must provide annual notices to update the

plan fiduciary and provide the plan with an opportunity to withdraw from the program. For Large Accounts, prior to the cross-trade, the Manager must provide information about the cross-trading program and obtain written authorization from the fiduciary of a Large Account to engage in cross-trading in connection with a portfolio restructuring program. Following completion of the Large Account's restructuring, information must be provided by the Manager about all cross-trades executed in connection with a portfolio-restructuring program. Finally, the exemption requires that Managers maintain for a period of 6 years from the date of each cross-trade the records necessary to enable plan fiduciaries and certain other persons specified in the exemption (*e.g.,* Department representatives or contributing employers), to determine whether the conditions of the exemption have been met.

EBSA previously submitted the information collection provisions of PTE 2002–12 to the Office of Management and Budget (OMB) for review in connection with promulgation of the prohibited transaction exemption. OMB approved the information collection request (ICR) under OMB Control No. 1210–0115. The ICR approval is currently scheduled to expire on August 31, 2009.

II. Desired Focus of Comments

The Department of Labor (Department) is particularly interested in comments that:

- Provide information related to the number of entities offering Index and Model-Driven Funds and their client plans, and the number of Large Accounts that may make use of the exemption;
- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluate the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

This notice requests comments on an extension of the information collections in PTE 2002–12. After considering comments received in response to this notice, the Department intends to submit the ICR to OMB for continuing approval. Extension of the information collection provision of the exemption is important because, without the disclosures and recordkeeping provided for in the exemption, participants' and beneficiaries' investments in a pension plan might not be adequately protected. In addition, Managers that cross trade securities among Funds or cross trade securities in connection with the restructuring of a portfolio of a Large Account would be subject to statutorily imposed sanctions under ERISA. Lastly, the exemption provides a benefit to plans and participants through savings that result from index/model cross-trading. No change to the existing ICR is being proposed or made at this time. A summary of the ICR and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Prohibited Transaction Class Exemption 2002–12, Cross-Trades of Securities by Index and Model-Driven Funds.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0115.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 60.

Responses: 960.

Estimated Total Burden Hours: 855.

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

Dated: April 13, 2009.

Joseph S. Piacentini,

Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. E9–8904 Filed 4–17–09; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection; Comment Request; Prohibited Transaction Exemption 97–41, Collective Investment Funds Conversion Transactions

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95). This program helps to ensure that the Department can properly assess the impact of its information collection requirements on respondents and minimize the reporting burden (in both time and financial resources) on the public and that the public can clearly understand the Department's information collection instruments and provide the requested data in the desired format. Currently, the Employee Benefits Security Administration (EBSA) is soliciting comments on a proposed extension of the information collection provisions of Prohibited Transaction Class Exemption 97–41, Collective Investment Funds Conversion Transactions. A copy of the Information Collection Request (ICR) may be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section below on or before June 19, 2009.

ADDRESSES: Direct all written comments to G. Christopher Cosby Lahne, Office of Policy and Research, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5718, Washington, DC 20210, (202) 693–8410, FAX (202) 219–4745 (the foregoing are not toll-free numbers). Comments may also be submitted electronically to the following Internet e-mail address: *ebsa.opr@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Prohibited Transaction Exemption (PTE) 97–41 provides an exemption from the prohibited transaction provisions of the Employment

Retirement Income Security Act of 1974 (ERISA) and from certain taxes imposed by the Internal Revenue Code of 1986. The exemption permits employee benefit plans to purchase shares of one or more open-end investment companies (funds) registered under the Investment Advisers Act of 1940 by transferring in-kind, to the investment company, assets of the plan that are part of a collective investment fund (CIF) maintained by a bank or plan advisor that is both a fiduciary of the plan and an investment advisor to the investment company offering the fund.

The exemption requires that an independent fiduciary receive advance written notice of any covered transaction, as well as specific written information concerning the mutual funds to be purchased. The independent fiduciary must also provide written advance approval of conversion transactions and receive written confirmation of each transaction, as well as additional on-going disclosures as defined in PTE 97–41. These disclosures are the basis for this ICR.

EBSA previously submitted the information collection provisions of PTE 2002–12 to the Office of Management and Budget (OMB) for review in connection with promulgation of the prohibited transaction exemption. OMB approved the information collection request (ICR) under OMB Control No. 1210–0115. The ICR approval is currently scheduled to expire on June 30, 2009.

II. Desired Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

III. Current Action

This notice requests comments on the extension of the ICR included in PTE 97–41. The Department is not proposing or implementing changes to the existing ICR at this time. The following summarizes the ICR and the current burden estimates:

Type of Review: Extension of a currently approved collection of information.

Agency: Employee Benefits Security Administration, Department of Labor.

Titles: Prohibited Transaction Class Exemption 97–41, Collective Investment Funds Conversion Transactions.

OMB Number: 1210–0104.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Estimated Total Burden Hours: 1,756.

Respondents: 105.

Frequency of Response: On occasion.

Responses: 105.

Total Burden Cost (Operating and Maintenance): $282,000.

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

Dated: April 13, 2009.

Joseph S. Piacentini,

Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. E9–8908 Filed 4–17–09; 8:45 am]

BILLING CODE 4510–20–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection; Comment Request; Prohibited Transaction Class Exemption 2004–07, Transactions With Trust REIT Shares

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that the Department can properly assess the impact of its information collection requirements on respondents and minimize the reporting burden (in both time and financial resources) on the public and that the public can clearly understand the Department's collection instruments and provide the requested data in the desired format. Currently, the Employee Benefits Security Administration (EBSA) is soliciting comments on a proposed extension of the information collection provisions in Prohibited Transaction Class Exemption (PTE) 2004–07, which concerns publicly traded shares of beneficial interest in real estate investment trusts structured under State law as business trusts. A copy of the information collection request (ICR) may be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted on or before June 19, 2009.

ADDRESSES: Direct all written comments to G. Christopher Cosby, Office of Policy and Research, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–4745. These are not toll-free numbers. Comments may also be submitted electronically to the following Internet e-mail address: *ebsa.opr@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

PTE 2004–07 exempts from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA) and from certain taxes imposed by the Internal Revenue Code of 1986 (the Code), the acquisition, holding, sale, and contribution in kind of publicly traded shares of beneficial interest in a real estate investment trust that is structured under State law as a business trust (Trust REIT), on behalf of and to individual account plans sponsored by the REIT or its affiliates, provided that certain conditions are met.

The exemption allows individual account plans (Plans) established by Trust REITs to offer a beneficial interest in the Trust REIT in the form of Qualifying REIT Shares, as defined in the exemption, to participants in Plans sponsored by the REIT or its employer affiliates, to require that employer contributions be used to purchase such shares, and to permit ''contributions in kind'' of such shares to these Plans by employers.

The exemption conditions relief on compliance with a number of information collection requirements. These information collections are to be provided or made available to plan

participants and fiduciaries in order to inform them about investments in Qualifying REIT Shares and the conditions of the exemption permitting share transactions. Records sufficient to allow them to determine whether the exemption conditions are met must also be maintained, and made available to them upon request, for a period of six years. These records must also be made available on request to employers and employee organizations with employees and members covered by a Plan of the Trust REIT or one of its employer affiliates, and to authorized employees and representatives of the Department and the Internal Revenue Service. EBSA submitted an ICR for the information collections in PTE 2004–07 to the Office of Management and Budget (OMB) for review and clearance in connection with proposal of the class exemption, which was published in the **Federal Register** on June 3, 2003 (68 FR 33185). OMB approved the ICR under OMB control number 1210–0124. The ICR approval is currently scheduled to expire on August 31, 2009.

II. Desired Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting electronic submission of responses.

III. Current Action

This notice requests comments on an extension of the information collections included in PTE 2004–07. The Department is not proposing or implementing changes to the existing ICR at this time. A summary of the ICR and the current burden estimates follows:

Type of Review: Extension of a currently approved collection of information.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Prohibited Transaction Exemption 2004–07, Transactions with Trust REIT Shares.

OMB Number: 1210–0124.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 45.

Frequency of Response: On occasion; quarterly; annually.

Responses: 104,545.

Estimated Annual Hours: 4,733.

Estimated Total Annual Cost: $40,000.

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

Dated: April 13, 2009.

Joseph S. Piacentini,

Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. E9–8910 Filed 4–17–09; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection; Comment Request; Prohibited Transaction Class Exemption 91–38, Bank Collective Investment Funds

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95). This program helps to ensure that the Department can properly assess the impact of its information collection requirements on respondents and minimize the reporting burden (in both time and financial resources) on the public and that the public can clearly understand the Department's information collection instruments and can provide the requested data in the desired format. Currently, the Employee Benefits Security Administration (EBSA) is soliciting comments on a proposed extension of the information collection provisions of Prohibited Transaction Class Exemption (PTE) 91–38, Bank Collective Investment Funds. A copy of the Information Collection Request (ICR) can be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section below on or before June 19, 2009.

ADDRESSES: Direct all written comments to G. Christopher Cosby, Office of Policy and Research, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5718, Washington, DC 20210, (202) 693–8410, FAX (202) 219–4745 (the foregoing are not toll-free numbers). Comments may also be submitted electronically to the following Internet e-mail address: *ebsa.opr@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

PTE 91–38 provides an exemption from the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974 (ERISA) for certain transactions between a bank collective investment fund and persons who are parties in interest with respect to an employee benefit plan. Without the exemption, sections 406 and 407(a) of ERISA and section 4975(c)(1) of the Internal Revenue Code may prohibit transactions between the collective investment fund (CIF) and a party in interest to one or more of the employee benefit plans participating in the collective investment fund. Under PTE 91–38, a collective investment fund generally may engage in transactions with parties in interest to a plan that invests in the fund as long as the plan's total investment in the fund does not exceed a specified percentage of the total assets of the fund. The PTE also contains more limited or differently defined relief for funds holding more than the specified percentage, for multiemployer plans, and for transactions involving employer securities and employer real property. In order to ensure that the rights of participants and beneficiaries are protected, and that bank collective investment funds can demonstrate compliance with the terms of the exemption, the Department requires a bank to maintain records regarding the exempted transactions and make them available for inspection to specified interested persons (including the Department and the Internal Revenue Service) on request for a period of six years.

EBSA previously submitted the information collection provisions of PTE 91–38 to the Office of Management and Budget (OMB) for review in an ICR that was approved under the OMB Control No. 1210–0083. The current approval is scheduled to expire on August 31, 2009.

II. Desired Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submission of responses.

III. Current Action

This notice requests comments on a proposed extension of the ICR included in PTE 91–38. The Department is not proposing or implementing changes to the existing ICR at this time. The following summarizes the ICR and the current burden estimates:

Type of Review: Extension of a currently approved collection of information.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Prohibited Transaction Class Exemption 91–38; Exemption for Certain Transactions Involving Bank Collective Investment Funds.

OMB Number: 1210–0082.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Estimated Total Burden hours: 200.

Respondents: 1,200.

Frequency of Response: On occasion.

Responses: 1,200.

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

Dated: April 13, 2009.

Joseph S. Piacentini,

Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. E9–8907 Filed 4–17–09; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection; Comment Request Prohibited Transaction Class Exemption 90–1, Pooled Separate Accounts

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95). This program helps to ensure that the Department can properly assess the impact of its information collection requirements on respondents and minimize the reporting burden (time and financial resources) on the public and that the public can understand the Department's collection instruments and provide the requested data in the desired format. Currently, the Employee Benefits Security Administration (EBSA) is soliciting comments on a proposed extension of the information collection request (ICR) incorporated in Prohibited Transaction Class Exemption (PTE) 90–1, Pooled Separate Accounts. A copy of the ICR may be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section below on or before June 19, 2009.

ADDRESSES: Direct all written comments to G. Christopher Cosby, Office of Policy and Research, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–5718, Washington, DC 20210, (210) 693–8410, FAX (202) 219–4745 (the foregoing are not toll-free numbers). Comments may also be submitted electronically to the following Internet e-mail address: *ebsa.opr@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

PTE 90–1 provides an exemption from certain provisions of the Employee Retirement Income Security Act of 1974 (ERISA) relating to transactions involving insurance company pooled separate accounts in which employee benefit plans participate. Without the exemption, sections 406 and 407(a) of ERISA and section 4975(c)(1) of the Internal Revenue Code might prohibit a party in interest to a plan from furnishing goods or services to an insurance company pooled separate account in which the plan has an interest, or prohibit engaging in other transactions. Under the exemption, persons who are parties in interest to a plan that invests in a pooled separate account, such as a service provider, may engage in otherwise prohibited transactions with the separate account if the plan's participation in the separate account does not exceed specified limits and other conditions are met. These other conditions include a requirement that the party in interest not be the insurance company, or an affiliate thereof, that holds the plan assets in its pooled separate account or other separate account. The terms of the transaction to which the exemption is applied must be at least as favorable to the pooled separate account as those that would be obtained in a separate arms-length transaction with an unrelated party, and the insurance company must maintain records of any transaction to which the exemption applies for a period of six years. This ICR covers this recordkeeping requirement.

The Department previously submitted this information collection to the Office of Management and Budget (OMB) in an ICR that was approved under the OMB Control Number 1210–0083. The current approval is scheduled to expire on August 31, 2009.

II. Desired Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, by permitting electronic submission of responses.

III. Current Action

This notice requests comments on the proposed extension of the ICR included in PTE 90–1. The Department is not proposing or implementing changes to the existing ICR at this time. The following summarizes the ICR and the current burden estimates:

Type of Review: Extension of a currently approved collection of information.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: PTE 90–1—Pooled Separate Accounts.

OMB Number: 1210–0083.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 70.

Frequency of Response: On occasion.

Responses: 70.

Estimated Total Burden Hours: 120.

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

Dated: April 13, 2009.

Joseph S. Piacentini,

Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. E9–8905 Filed 4–17–09; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection; Comment Request; Prohibited Transaction Class Exemption 94–20, Foreign Exchange Transactions

AGENCY: Employee Benefit Security Administration.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95). This program helps to ensure that the Department can properly assess the impact of its information collection requirements on respondents and minimize the reporting burden (time and financial resources) on the public and that the public can understand the Department's collection instruments and provide the requested data in the desired format. Currently, the Employee Benefits Security Administration (EBSA) is soliciting comments on the proposed extension of the information collection provisions of Prohibited Transaction Class Exemption (PTE) 94–20, Foreign Exchange Transactions. A copy of the information collection request (ICR) may be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section below on or before June 19, 2009.

ADDRESSES: Direct all written comments to G. Christopher Cosby, Office of Policy and Research, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5718, Washington, DC 20210, (202) 693–8410, FAX (202) 219–4745 (the foregoing are not toll-free numbers). Comments may also be submitted electronically to the following Internet e-mail address: *ebsa.opr@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

PTE 94–20 permits the purchase and sale of foreign currencies between an employee benefit plan and a bank, broker-dealer, or an affiliate thereof, that is a trustee, custodian, fiduciary, or other party in interest with respect to the plan. The exemption is available provided that the transaction is directed (within the meaning of section IV(e) of the exemption) by a plan fiduciary that is independent of the bank, broker-dealer, or affiliate and all other conditions of the exemption are satisfied. Without this exemption, certain aspects of these transactions might be prohibited by section 406(a) of ERISA. To protect the interests of participants and beneficiaries of the employee benefit plan, the exemption requires that the party wishing to take advantage of the exemption (1) Develop written policies and procedures applicable to trading in foreign currencies on behalf of an employee benefit plan; (2) provide a written confirmation with respect to each transaction in foreign currency to the independent plan fiduciary, disclosing specified information; and (3) maintain records pertaining to the transaction for a period of six years. This ICR relates to the foregoing disclosure and recordkeeping requirements.

EBSA previously submitted the information collection provisions of PTE 94–20 to the Office of Management and Budget (OMB) for review in connection with promulgation of the prohibited transaction exemption. OMB approved the information collection request (ICR) under OMB Control No. 1210–0085. The ICR approval is currently scheduled to expire on August 31, 2009.

II. Desired Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting electronic submission of responses.

III. Current Action

This notice requests comments on the extension of the ICR included in PTE 94–20. The Department is not proposing or implementing changes to the existing ICR at this time. The following summarizes the ICR and the current burden estimates:

Type of Review: Extension of a currently approved collection of information.

Agency: Employee Benefits Security Administration, Department of Labor.

Titles: Foreign Exchange Transactions; PTCE 94–20.

OMB Number: 1210–0085.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 239.

Frequency of Response: On occasion.

Responses: 1,195.

Estimated Total Burden Hours: 200.

Comments submitted in response to this notice will be summarized and/or

included in the request for OMB approval of the ICR; they will also become a matter of public record.

Dated: April 14, 2009.

Joseph S. Piacentini,

Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. E9–8949 Filed 4–17–09; 8:45 am]

BILLING CODE 4510–20–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,691]

Group Dekko, Inc., Murray Plant, Murray, IA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 27, 2009, in response to a petition filed by a company official on behalf of the workers at Group Dekko, Inc., Murray Plant, Murray, Iowa.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 27th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–8912 Filed 4–17–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,970]

Boise Cascade, LLC, White City, OR; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 22, 2009 in response to a worker petition filed on behalf of workers at Boise Cascade, LLC, White City, Oregon.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 26th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–8913 Filed 4–17–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,297]

Hewlett Packard Caribe, BV, LLC, Aguadilla, Puerto Rico; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 19, 2009 in response to a petition filed by a Puerto Rico workforce office on behalf of workers of Hewlett Packard Caribe, BV, LLC, Aguadilla, Puerto Rico.

The petitioner requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 26th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–8924 Filed 4–17–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,281 et al.]

Notice of Termination of Investigation

TA–W–65,281
Acument Global Technologies—North America Business Unit Ring Screw LLC—Fenton Operations Fenton, Michigan

TA–W–65,281A
Acument Global Technologies—North America Business Unit Ring Screw LLC—Warren Operations Hupp Warren, Michigan

TA–W–65,281B
Acument Global Technologies—North America Business Unit Ring Screw LLC—Detroit Distribution Center Detroit, Michigan

TA–W–65,281C
Acument Global Technologies—North America Business Unit Ring Screw LLC—Holly Operations—North Holly Road Holly, Michigan

TA–W–65,281D
Acument Global Technologies—North America Business Unit Burkland Inc—Goodrich Operations Goodrich, Michigan

TA–W–65,281E
Acument Global Technologies—North America Business Unit Ring Screw LLC—Holly Operations—Gainey Drive Holly, Michigan

TA–W–65,281F
Acument Global Technologies—North America Business Unit Ring Screw LLC—Sterling Heights Operations Sterling Heights, Michigan

TA–W–65,281G
Acument Global Technologies Acument Global Technologies Inc Headquarters Troy, Michigan

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 18, 2009 in response to a worker petition filed by a company official on behalf of workers of Acument Global Technologies, North America Business Unit, Ring Screw, LLC, Fenton Operations, Fenton, Michigan (TA–W–65,281); Acument Global Technologies, North America Business Unit, Ring Screw LLC, Warren Operations Hupp, Warren, Michigan (TA–W–65,281A); Acument Global Technologies, North America Business Unit, Ring Screw LLC, Detroit Distribution Center, Detroit, Michigan (TA–W–65,281B); Acument Global Technologies, North America Business Unit, Ring Screw LLC, Holly Operations, North Holly Road, Holly, Michigan (TA–W–65,281C); Acument Global Technologies, North America Business Unit, Burkland, Inc., Goodrich Operations, Goodrich, Michigan (TA–W–65,281D); Acument Global Technologies, North America Business Unit, Ring Screw LLC, Holly Operations, Gainey Drive, Holly, Michigan (TA–W–65,281E); Acument Global Technologies, North America Business Unit, Ring Screw LLC, Sterling Heights Operations, Sterling Heights, Michigan (TA–W–65,281F); and Acument Global Technologies, Acument Global Technologies Inc. Headquarters, Troy, Michigan (TA–W–65,281G). Workers at the subject facilities are predominantly engaged in the manufacturing of fasteners for the automotive industry. Workers are also engaged in support activities, including producing washers and fastening tools for plants that produce fasteners and providing distribution and warehousing support for the production of fasteners.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 25th day of March 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–8923 Filed 4–17–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,275]

Alcatel-Lucent, Westford, MA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February, 17, 2009 in response to a worker petition filed on behalf of workers of Alcatel-Lucent, Westford, Massachusetts.

The petitioners requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 26th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–8921 Filed 4–17–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,223]

Allegheny Ludlum Corporation, Midland, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 11, 2009 in response to a petition filed by the United Steelworkers of America, Local 1212 on behalf of workers of Allegheny Ludlum Corporation, Midland, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Therefore, the investigation under this petition has been terminated.

Signed at Washington, DC, this 26th day of March 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–8919 Filed 4–17–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,211]

Cabot Supermetals, Gilbertsville, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 10, 2009, in response to a worker petition filed by the International Chemical Workers Union a Council of the United Food and Commercial Workers Union, Local 619C on behalf of workers at Cabot Supermetals, Gilbertsville, Pennsylvania.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 26th day of March 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–8918 Filed 4–17–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,189]

Fairfield Chair Company Plant 2 Lenoir, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 10, 2009 in response to a worker petition filed by workers of Fairfield Chair Company, Plant 2, Lenoir, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 27th day of March 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–8917 Filed 4–17–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,072]

Eaton Hydraulics, Greenwood, SC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 2, 2009, in response to a worker petition filed on behalf of workers at Eaton Hydraulics, Greenwood, South Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 26th day of March 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–8916 Filed 4–17–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,036]

Oviso Manufacturing, Concord, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 29, 2009, in response to a worker petition filed by a State Workforce Office on behalf of workers at Oviso Manufacturing, Concord, California.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 26th day of March 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–8915 Filed 4–17–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,034]

ArcelorMittal Lackawanna LLC, A Subsidiary of ArcelorMittal USA, Blasdell, NY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January

29, 2009 in response to a petition filed by a company official on behalf of workers of ArcelorMittal Lackawanna LLC, a subsidiary of ArcelorMittal USA, Blasdell, New York.

The petitioner has requested that the petition be withdrawn. Therefore, the investigation under this petition has been terminated.

Signed at Washington, DC, this 26th day of March 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–8914 Filed 4–17–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,503]

Gerber Technology, Richardson, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 6, 2009 in response to a petition filed by a company official on behalf of the workers of Gerber Technology, Richardson, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 26th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–8935 Filed 4–17–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TAA–65,253]

CB&I Inc., Warren, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 13, 2009, in response to a petition filed by the International Brotherhood of Boilermakers on behalf of workers of CB&I Inc., Warren, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 26th day of March 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–8920 Filed 4–17–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,462]

Sekisui Voltek, LLC, Coldwater, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 3, 2009 in response to a worker petition filed on behalf of the workers of Sekisui Voltek, LLC, Coldwater, Michigan.

The petitioners requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 27th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–8933 Filed 4–17–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,458]

Diversified Machine, Inc., Milwaukee, WI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 3, 2009 in response to a petition filed by a company official on behalf of workers at Diversified Machine, Inc., Milwaukee, Wisconsin.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 26th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–8932 Filed 4–17–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,617]

Ecoquest Holding Corporation, Greenville, TN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 17, 2009 in response to a worker petition filed by a company official on behalf of workers of Ecoquest Holding Corporation, Greenville, Tennessee.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 27th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–8941 Filed 4–17–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,584]

Tyco Electronics Corporation, Jonestown, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 13, 2009, in response to a worker petition filed on behalf of workers at Tyco Electronics Corporation, Jonestown, Pennsylvania.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 26th day of March 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–8939 Filed 4–17–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,552]

Datwyler Rubber and Plastic, Marion, SC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 11, 2009, in response to a worker petition filed on behalf of the workers of Datwyler Rubber and Plastic, Marion, South Carolina.

The petitioners requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 27th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–8936 Filed 4–17–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,497]

Masterbrand, Littlestown, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 5, 2009 in response to a worker petition filed on behalf of the workers of Masterbrand, Littlestown, Pennsylvania.

The petitioners requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 27th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–8934 Filed 4–17–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,645]

Ultimizers, Inc., Boring, OR; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 20, 2009 in response to a worker petition filed by a company official on behalf of workers of Ultimizers, Inc., Boring, Oregon.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 26th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–8942 Filed 4–17–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,591]

ABF Freight Systems Incorporated, Dayton, OH; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 13, 2009 in response to a petition filed on behalf of workers of ABF Freight Systems Incorporated, Dayton, Ohio.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 27th day of March 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–8940 Filed 4–17–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,578]

Lyon Workspace Products, Montgomery, IL; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 12, 2009 in response to a petition filed by the United Steel Workers, Local 1636, on behalf of the workers of Lyon Workspace Products, Montgomery, Illinois.

The petitioner requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 27th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–8938 Filed 4–17–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,566]

Chrysler, LLC, Chrysler Plymouth Road Office Complex, Detroit, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 11, 2009 in response to a petition filed by the United Auto Workers Union, Local 412 on behalf of the workers of Chrysler, LLC, Chrysler Plymouth Road Office Complex, Detroit, Michigan.

The petitioner requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 27th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–8937 Filed 4–17–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,432]

Gmark Industries, McAllen, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 27, 2009 in response to a petition filed by a company official on behalf of the workers of Gmark Industries, McAllen, Texas.

The petitioner requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 27th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–8931 Filed 4–17–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,370]

Ethan Allen Operations, Incorporated, Case Goods Division, Old Fort, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 25, 2009 in response to a petition filed by a company official on behalf of workers of Ethan Allen Operations, Old Fort, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 27th day of March 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–8930 Filed 4–17–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,369]

Ethan Allen Operations, Inc., Case Goods Division, Andover, ME; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 25, 2009 in response to a worker petition filed by a company official on behalf of workers of Ethan Allen Operations, Inc., Case Goods Division, Andover, Maine. Workers at the subject firm manufacture wood furniture.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 27th day of March 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–8929 Filed 4–17–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,364]

SUMCO Phoenix Corporation, Sumco Southwest Corporation, a Subsidiary of SUMCO Corporation, Phoenix, AZ; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 24, 2009, in response to a worker petition filed by a State Workforce Office on behalf of workers at SUMCO Phoenix Corporation, SUMCO Southwest Corporation, a subsidiary of SUMCO Corporation, Phoenix, Arizona.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 26th day of March 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–8928 Filed 4–17–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,332]

Freescale Semiconductor, Technical Support Engineering, Austin, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 23, 2009 in response to a worker petition filed on behalf of workers of Freescale Semiconductor, Technical Support Engineering, Austin, Texas.

The petitioners requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 26th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–8927 Filed 4–17–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,320]

Auto Truck Transport, Portland, OR; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 20, 2009 in response to a petition filed by the International Association of Machinists and Aerospace Workers, Local 24, on behalf of the workers of Auto Truck Transport, Portland, Oregon.

The petitioner requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 27th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–8926 Filed 4–17–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,301]

Richland Manufacturing, a Subsidiary of Eagle Wings Industries, Inc., Olney, IL; Notice of Termination of Investigation

In accordance with Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 19, 2009 in response to a petition filed by an Illinois State One-Stop Operator on behalf of workers of Richland Manufacturing, a subsidiary of Eagle Wings Industries, Inc., Olney, Illinois.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 26th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–8925 Filed 4–17–09; 8:45 am]

BILLING CODE 4510–FN–P

LEGAL SERVICES CORPORATION

Notice of Sunshine Act Meetings of the Board of Directors and the Board's Five Committees

TIMES AND DATES: The Legal Services Corporation Board of Directors and five

of the Board's Committees will meet on April 24–25, 2009 in the order set forth in the following schedule, with each meeting commencing promptly upon adjournment of the immediately preceding meeting.

PUBLIC OBSERVATION BY TELEPHONE: Members of the public who wish to listen to the open portions of the meetings live may do so by following the telephone call-in directions given below. You are asked to keep your telephone muted to eliminate background noises. Comments from the public may from time to time be solicited by the presiding Chairman.

Call-In Directions for Open Sessions

Friday, April 24, 2009 and Saturday, April 25, 2009

- Call toll-free number: 1–800–247–9979;
- When prompted, enter the following numeric pass code: 94430083;
- When connected to the call, please *''MUTE''* your telephone immediately.

Meeting Schedule

Friday, April 24, 2009	Time [1]
1. Provision for the Delivery of Legal Services Committee (''Provisions Committee'').	2 p.m.
2. Audit Committee.	
3. Finance Committee.	
Saturday, April 25, 2009	
4. Governance and Performance Review Committee.	9 a.m.
5. Operations & Regulations Committee.	
6. Board of Directors.	

[1] Please note that all times in this notice are *Mountain Daylight Time*.

LOCATION: Embassy Suites Hotel, 319 SW Pine Street, Portland, OR.

STATUS OF MEETINGS: Open, except as noted below.

- *April 25, 2009 Board of Directors Meeting*—Open, except that a portion of the meeting of the *Board of Directors* may be closed to the public pursuant to a vote of the *Board of Directors* to consider and perhaps act on reports on potential and pending litigation involving LSC. A *verbatim* written transcript of the session will be made. The transcript of any portions of the closed session falling within the relevant provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(10), and the corresponding provisions of the Legal Services Corporation's implementing regulation, 45 CFR 622.5(h), will not be available for public inspection. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

Matters To Be Considered

Friday, April 24, 2009

Provision for the Delivery of Legal Services Committee

Agenda

1. Approval of agenda.
2. Approval of the Committee's meeting minutes of January 30, 2009.
3. Staff Update on activities implementing the *LSC Private Attorney Involvement Action Plan—Help Close the Justice Gap: Unleash the Power of Pro Bono:*
   - PAI Honor Roll;
   - PAI Advisory Group;
   - Law School Activities.
4. Staff Update on Herbert S. Garten Pilot Loan Repayment Assistance Program.
5. Staff Update on Native American Delivery and Funding—Data Analysis Status Report.
6. Staff Update on Legal Services Programs and Deferred Law Firm Associates.
7. Presentation on ''Creative Approaches to Recruitment and Retention at Legal Aid Services of Oregon''.
   - Tom Matsuda, Executive Director.
8. Public comment.
9. Consider and act on other business.
10. Consider and act on adjournment of meeting.

Audit Committee

Agenda

1. Approval of agenda.
2. Approval of minutes of the Committee's January 31, 2009 meeting.
3. Follow-up to FY 2008 Annual Audit references:

—Security of deposits;
—Classification of consultants;

   - David Richardson, Treasurer/Comptroller;
   - Vic Fortuno, General Counsel.
4. Report on solicitation for Fiscal Year 2009 outside auditor:
   - Jeffrey Schanz, Inspector General.
5. Public comment.
6. Consider and act on other business.
7. Consider and act on adjournment of meeting.

Finance Committee

Agenda

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of January 31, 2009.
3. Report on Distribution of FY 2009 Basic Field grants:
   - Presentation by David Richardson, Treasurer/Comptroller.
4. Consider and act on the Consolidated Operating Budget for FY 2009 and recommend Resolution #2009–003 to the full Board:
   - Presentation by David Richardson, Treasurer/Comptroller;
   - Comments by Charles Jeffress, Chief Administrative Officer;
   - Comments by Jeffrey Schanz, Inspector General.
5. Presentation on LSC's Financial Reports for the first six months of FY 2009:
   - Presentation by David Richardson, Treasurer/Comptroller;
   - Comments by Charles Jeffress, Chief Administrative Officer.
6. Consider and act on revision to FY 2010 Budget Request:
   - Presentation by Jeffrey Schanz, Inspector General.
7. Report on FY 2010 appropriations process:
   - Presentation by John Constance, Director, Office of Government Relations and Public Affairs.
8. Public comment.
9. Consider and act on other business.
10. Consider and act on adjournment of meeting.

Saturday, April 25, 2009

Governance and Performance Review Committee

Agenda

1. Approval of agenda.
2. Approval of minutes of the Committee's January 31, 2009 meeting.
3. Staff report on transition manual and plan.
4. Consider and act on Inspector General's memo on Review of Compliance with Sunshine Act.
5. Briefing by the Inspector General on his progress with respect to matters set out in his work plan for Fiscal Year 2009.
6. Consider and act on the annual performance review of the Corporation's Inspector General.
7. Public comment.
8. Consider and act on other business.
9. Consider and act on motion to adjourn meeting.

Operations & Regulations Committee

Agenda

1. Approval of agenda.
2. Approval of the minutes of the Committee's January 30, 2009 meeting and January 31, 2009 meeting.
3. Staff report on follow-up from January 30, 2009 presentation by grantee board chairs on the role of grantee boards of directors in grantee governance and oversight.

4. Consider and act on rulemaking petition regarding financial eligibility requirements in disaster areas:
- Public comment;
- Staff report;
- OIG comment.

5. Consider and act on Inspector General's request to delete reference in the *LSC Employee Handbook* to management procedures for cooperation with the OIG:
- OIG report;
- Staff comment.

6. Staff report on OIG follow-up to Management referrals of program issues identified by GAO.
7. Staff report on LSC's FOIA Function.
8. Other public comment.
9. Consider and act on other business.
10. Consider and act on adjournment of meeting.

Board of Directors

Agenda

1. Approval of agenda.
2. Approval of minutes of the *Board's* Open Session of January 31, 2008.
3. *Chairman's* Report.
4. *Members'* Reports.
5. *President's* Report.
6. *Inspector General's* Report.
7. Consider and act on the report of the *Provision for the Delivery of Legal Services Committee.*
8. Consider and act on the report of the *Finance Committee.*
9. Consider and act on the report of the *Operations & Regulations Committee.*
10. Consider and act on the report of the *Audit Committee.*
11. Consider and act on the report of the *Governance & Performance Review Committee.*
12. Report on IOLTA:
- Jonathan Asher—Executive Director, Colorado Legal Services;
- Bev Groudine—Staff Counsel to the American Bar Association's Commission on IOLTA.

13. Public comment.
14. Consider and act on whether to authorize an executive session of the Board to address items listed below under Closed Session.

Closed Session

15. Consider and act on reports on potential and pending litigation involving LSC.
16. Consider and act on other business.
17. Consider and act on motion to adjourn meeting.

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Katherine Ward, at (202) 295–1500.

Dated: April 14, 2009.

Victor M. Fortuno,

Vice President & General Counsel.

[FR Doc. E9–9060 Filed 4–16–09; 11:15 am]

BILLING CODE 7050–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before May 20, 2009. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001

E-mail: request.schedule@nara.gov.

FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1539. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1228.24(b)(3).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Defense, National Geospatial-Intelligence Agency (N1–537–09–1, 2 items, 2 temporary items). Records relating to the designation of contracting officers and contracting officer's technical representatives.

2. Department of Homeland Security, National Protection and Programs Directorate (N1–563–08–31, 12 items, 9 temporary items). Incident reports not related to catastrophic events, working papers associated with the development of National Infrastructure Protection Plans and Sector-Specific Plans, special events and exercises files, technology transition agreements, and vulnerability assessment reports and project files. Proposed for permanent retention are pre-event incident reports, catastrophic event incident reports, National Infrastructure Protection Plans, and Sector-Specific Plans.

3. Department of Homeland Security, National Protection and Programs Directorate (N1–563–08–36, 7 items, 7 temporary items). Voluntary submissions of Critical Infrastructure Information received by the agency which meet the requirements for protection contained in Section 214 of the Homeland Security Protection Act of 2002. Also included is electronic workflow and processing information for all submissions, including those that do not meet protected critical infrastructure information requirements.

4. Department of Homeland Security, U.S. Citizenship and Immigration Services (N1–566–09–3, 1 item, 1 temporary item). Master files of an electronic information system that tracks the status and results of fingerprint checks of aliens that are submitted to the Federal Bureau of Investigation.

5. Department of the Interior, National Business Center (N1–48–08–4, 11 items, 11 temporary items). Electronic records relating to such payroll processes as benefits, debt management, accounting, and tax withholding.

6. Department of the Interior, National Business Center (N1–48–08–7, 1 item, 1 temporary item). Electronic records contained in the Wildland Fire Safety and Health Reporting System, which contains data relating to fire safety and health issues received from the Federal firefighting community.

7. Department of the Interior, National Business Center (N1–48–08–19, 1 item, 1 temporary item). Electronic records contained in the National Fire Plan Operations and Reporting System, an inter-agency system used to manage the National Fire Plan. These records are duplicative of records maintained by the Office of Wildland Fire Coordination.

8. Department of the Interior, National Business Center (N1–48–09–2, 1 item, 1 temporary item). Master files of an electronic information system used to track aviation training.

9. Department of the Interior, Bureau of Land Management (N1–49–09–1, 1 item, 1 temporary item). Construction drawings, assembly diagrams, operation manuals, and other records that relate to equipment development projects for fire engines and other equipment used in firefighting.

10. Department of the Interior, Bureau of Reclamation (N1–115–09–1, 1 item, 1 temporary item). Master files associated with an electronic information system used for programming and budgeting for agency projects and activities.

11. Department of the Interior, Bureau of Reclamation (N1–115–09–2, 1 item, 1 temporary item). Master files associated with an electronic information system used for managing time and attendance of agency employees.

12. Department of the Interior, Bureau of Reclamation (N1–115–09–3, 1 item, 1 temporary item). Master files associated with an electronic information system used for managing Government-owned or leased assets other than real property.

13. Department of the Interior, National Park Service (N1–79–08–8, 5 items, 3 temporary items). Records relating to information and public image management, including such matters as library management, publications, and systems development. High level policy records and publications that relate to the agency's mission are proposed for permanent retention.

14. Joint Staff, Office of the Chairman (N1–218–09–3, 1 item, 1 temporary item). Master files of an electronic information system that contains force structure data, including information concerning facilities, readiness, and weapons.

15. Department of Justice, Executive Office for Immigration Review (N1–60–09–6, 2 items, 1 temporary item). Case files relating to complaints against immigration judges. Proposed for permanent retention is an electronic information system that tracks complaints and the final actions taken.

16. Department of Justice, National Drug Intelligence Center (N1–523–09–1, 2 items, 2 temporary items). Records of the digital evidence laboratory, including case files and derivative evidence documenting the examination of seized media and data.

17. Department of the Navy, Naval Criminal Investigative Service (N1–NU–09–1, 1 item, 1 temporary item). Profiles consisting of criminal investigative data derived from the Department of the Navy Criminal Justice Information System. This system contains records relating to investigations of criminal matters and related judicial and administrative actions, which are covered by multiple items in previously approved schedules.

18. Department of the Navy, Naval Criminal Investigative Service (N1–NU–09–2, 5 items, 5 temporary items). Short term copies of records relating to criminal and law enforcement investigations, including such records as copies of polygraph records, copies of investigative records, copies of records filed by ship, installation, or subject, and copies of investigative reports. Longer term copies of these records are filed separately.

19. Department of Transportation, Federal Highway Administration (N1–406–08–7, 6 items, 3 temporary items). Web copies of records derived from the National Bridge Inventory System and data tables and graphs used for reporting to Congress. Proposed for permanent retention are master files of the National Bridge Inventory System, unit cost data relating to bridge construction, and reports on bridge construction.

20. Department of Transportation, Federal Highway Administration (N1–406–09–1, 4 items, 3 temporary items). Records of the Office of Federal Lands Highway, including such records as administrative files, files relating to specific programs and projects, and emergency relief program files. Subject files relating to the Office's policies and procedures are proposed for permanent retention.

21. Department of Transportation, Federal Highway Administration (N1–406–09–4, 23 items, 17 temporary

items). Records of the Office of Operations, including such records as administrative files, continuity of operations plans, legislative files, working papers, status and progress reports, training materials, and traffic control subject files. Proposed for permanent retention are such records as traffic control devices rulemaking files, rulemaking records relating to work zone safety, and size and weight reports and publications.

22. Barry M. Goldwater Scholarship and Excellence in Education Foundation, Agency-wide (N1–508–09–1, 1 item, 1 temporary item). Case files on students who are awarded scholarships, including such records as applications, nominations, and payment requests.

23. Environmental Protection Agency, Headquarters (N1–412–09–3, 1 item, 1 temporary item). Master files of an electronic information system that enables Federal and non-Federal regulatory agencies to order audit samples for compliance testing and report the results.

24. Environmental Protection Agency, Headquarters (N1–412–09–4, 2 items, 2 temporary items). Master files of an electronic information system that supports the registration of fuel and fuel additives and includes compliance data related to fuels and additives.

25. Environmental Protection Agency, Office of International Affairs (N1–412–07–66, 30 items, 17 temporary items). This schedule authorizes the agency to apply the existing disposition instruction to records regardless of recordkeeping medium. Records consisting primarily of administrative files or containing duplicative data from the State Department. The records cover such topics as the United Nations Environmental Program, special foreign currency, bilateral programs, reimbursable technical assistance, U.S. and Russia environmental agreement, laws of the sea and deep seabed mining, ocean dumping, oil pollution, Organization for Economic Cooperation and Development, World Health Organization, U.S. and Canadian relations, U.S. and Mexican relations, and international travel. Paper recordkeeping copies of these files were previously approved for disposal. Proposed for permanent retention are agreements, other formally issued documents, position papers, reports, pilot studies, and other significant documents relating to such matters as the U.S. and Russia environmental agreement, laws of the sea and deep seabed mining, oil pollution, NATO Committee on the Challenges of Modern Society, U.S. and Canadian relations, and the U.S. and Mexican relations, for which paper recordkeeping copies previously were approved as permanent.

26. Equal Employment Opportunity Commission, Agency-wide (N1–403–08–2, 9 items, 3 temporary items). Copies of correspondence received by the Chairman and forwarded to other offices for reply, chronological files, and routine appeals case files of the Office of Federal Operations. Proposed for permanent retention are such records as agendas, transcripts, and recordings of Commission meetings, Commission decision files, and significant appeals case files.

27. Federal Open Market Committee, Secretariat (N1–82–09–1, 8 items, 4 temporary items). Ad hoc trial-run records created when the Federal Open Market Committee experiments with economic projection processes. Included are individual submissions and related summaries and compilations. Records relating to projections that are adopted and used are proposed for permanent retention.

28. National Archives and Records Administration, Office of Records Services—Washington, D.C. (N1–64–09–1, 1 item, 1 temporary item). Records relating to agency activities to assist other Federal agencies and non-Federal governmental entities in protecting and preserving records in the event of emergencies and natural disasters.

29. National Archives and Records Administration, Office of the Archivist (N1–64–09–2, 1 item, 1 temporary item). Petitions sent to the Archivist of the United States requesting expedited release of certain Hillary Clinton White House documents. A sample of 36 petitions will be retained permanently in accordance with a previously approved schedule.

30. Pension Benefit Guaranty Corporation, Agency-wide (N1–465–09–1, 17 items, 15 temporary items). Records relating to such matters as budget and finance, communications, legal affairs, public and congressional relations, administrative issuances and policies, regulations, security, and personnel management. Proposed for permanent retention are historical administrative records, which include such files as significant legal opinions, regulations, and litigation cases, and historical policy records, which include such files as reports to the President and Congress, research files, directives and operating manuals, investment policy files, and organizational records.

Dated: April 10, 2009.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. E9–8987 Filed 4–17–09; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Construction of the LIGO Exploration Center at Hanford, Proposal Review Panel for Physics, #1208.

Date and Time: Thursday, April 30, 2009; 8:30 a.m.–5 p.m. Friday, May 1, 2009; 8 a.m.–11 a.m.

Place: LIGO site at Hanford, Washington.

Type of Meeting: Partially Closed.

Contact Person: Beverly Berger, Program Director, Division of Physics, National Science Foundation, (703) 292–7372.

Purpose of Meeting: To provide an evaluation concerning the proposal submitted to the National Science Foundation.

Agenda

Thursday, April 30, 2009

8:30 a.m.–9 a.m. Closed—Executive Session.

9 a.m.–2 p.m. Open—Overview by LIGO-Hanford staff, Overview and Discussions of the Proposed Building, Presentations from Outreach Partners.

2–5 p.m. Closed—Executive session, Discussions with LIGO staff.

Friday, May 1, 2009

8:30 a.m.–11:30 a.m. Closed—Executive Session, Session with LIGO-Hanford staff.

Reason for Closing: The proposal contains proprietary or confidential material, including technical information on personnel. These matters are exempt under 5 U.S.C. 552b(c)(2)(4) and (6) of the Government in the Sunshine Act.

Dated: April 14, 2009.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E9–8909 Filed 4–17–09; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Education and Human Resources; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Education and Human Resources (#1119).

Date/Time: May 6, 2009; 8:30 a.m. to 5 p.m.; May 7, 2009; 8:30 a.m. to 1:30 p.m.

Place: National Science Foundation Headquarters, Stafford Place I—Room 1235 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: James Colby, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 292–5331, *jcolby@nsf.gov*.

If you are attending the meeting and need access to the NSF, please contact the individual listed above so your name may be added to the building access list.

Purpose of Meeting: To provide advice with respect to the Foundation's science, technology, engineering, and mathematics (STEM) education and human resources programming.

Agenda:

May 6, 2009

I. Acting Assistant Director's Remarks
II. Discussion of EHR Investment Themes:
- Broadening Participation to Improve Workforce Development
- Promoting Learning Through Research and Evaluation
- Enriching the Education of STEM Teachers
- Advancing Career Development Opportunities

III. Visit From the Office of the NSF Director
IV. Review and Acceptance of Committee of Visitors Report
- Robert Noyce Teacher Scholarships Program

May 7, 2009

V. Discussion of Strategic Partnerships
VI. Subcommittee Meetings
VII. Future Issues for Consideration

Dated: April 15, 2009.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E9–8967 Filed 4–17–09; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0171]

Final Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Regulatory Guide 1.211 and Withdrawal of Regulatory Guide 1.131.

FOR FURTHER INFORMATION CONTACT: Mark Orr, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 251–7495 or e-mail to *Mark.Orr@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing a new regulatory guide and withdrawing an outdated regulatory guide in the agency's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Regulatory Guide 1.131, ''Qualification Tests of Electric Cables, Field Splices, and Connections for Light-Water-Cooled Nuclear Power Plants,'' was issued for comment in August 1977 and never finalized. Regulatory Guide 1.131 is being withdrawn because its guidance has been replaced by the guidance in Regulatory Guide 1.211.

Regulatory Guide 1.211, ''Qualification of Safety-Related Cables and Field Splices for Nuclear Power Plants,'' was issued with a temporary identification as Draft Regulatory Guide 1132. This guide describes a method that the staff of the NRC considers acceptable for use in complying with the Commission's regulations for the qualification of safety-related cables and field splices for nuclear power plants.

The regulations established by the NRC in Title 10, Part 50, ''Domestic Licensing of Production and Utilization Facilities,'' of the Code of Federal Regulations (10 CFR Part 50) require that structures, systems, and components that are important to safety in a nuclear power plant must be designed to accommodate the effects of environmental conditions (i.e., remain functional under postulated design-basis events (DBEs)). Toward that end, General Design Criterion (GDC) 1, ''Quality Standards and Records,'' GDC 2, ''Design Bases for Protection Against Natural Phenomena,'' GDC 4, ''Environmental and Dynamic Effects Design Bases,'' and GDC 23, ''Protection System Failure Modes,'' of Appendix A, ''General Design Criteria for Nuclear Power Plants,'' to 10 CFR Part 50 contain the general requirements. Augmenting those general requirements, the specific requirements pertaining to the qualification of certain electrical equipment important to safety appear in 10 CFR 50.49, ''Environmental Qualification of Electric Equipment Important to Safety for Nuclear Power Plants.'' In addition, Criterion III, ''Design Control,'' of Appendix B, ''Quality Assurance Criteria for Nuclear Power Plants,'' to 10 CFR Part 50 requires that, where a test program is used to verify the adequacy of a specific design feature, the test program must include suitable qualification testing of a prototype unit under the most severe DBE.

II. Further Information

In June 2007, DG–1132 was published with a public comment period of 60 days from the issuance of the guide. The public comment period closed on September 14, 2007. The staff's responses to the public comments are located in the NRC's Agencywide Documents Access and Management System (ADAMS), Accession Number ML081690227. Electronic copies of Regulatory Guide 1.211 are available through the NRC's public Web site under ''Regulatory Guides'' at *http://www.nrc.gov/reading-rm/doc-collections/.*

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4209, by fax at (301) 415–3548, and by e-mail to *pdr.resource@nrc.gov.*

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

Dated at Rockville, Maryland, this 13th day of April 2009.

For the Nuclear Regulatory Commission.

Andrea D. Valentin,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E9–9034 Filed 4–17–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219; NRC–2009–0167]

Exelon Generation Company, LLC; Oyster Creek Nuclear Generating Station; Notice of Issuance of Renewed Facility Operating License No. DPR–16 for an Additional 20-Year Period; Record of Decision

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Renewed

Facility Operating License No. DPR–16 to Exelon Generation Company, LLC (the licensee), the operator of the Oyster Creek Nuclear Generating Station (OCNGS). Renewed facility operating license No. DPR–16 authorizes operation of OCNGS by the licensee at reactor core power levels not in excess of 1930 megawatts thermal, in accordance with the provisions of the OCNGS renewed license and its technical specifications.

The notice also serves as the record of decision for the renewal of Facility Operating License No. DPR–16, consistent with Title 10 of the *Code of Federal Regulations* (10 CFR), Section 51.103 ''Record of Decision—General.'' As discussed in the final Supplemental Environmental Impact Statement (FSEIS) for OCNGS, dated January 2007, the Commission has considered a range of reasonable alternatives that included generation from oil, wind, solar, hydropower, geothermal, wood waste, municipal solid waste, other biomass-derived fuels, fuel cells, delayed retirement, conservation measures and, tidal and ocean energy. The factors considered in the record of decision can be found in the supplemental environmental impact statement for OCNGS.

OCNGS is a boiling water reactor located in Lacey Township, Ocean County, New Jersey, approximately two miles south of the community of Forked River. OCNGS was operated by AmerGen Energy Company, LLC, until January 9, 2009, when the license was transferred to Exelon Generation Company, LLC (74 FR 4777), in accordance with Section 184 of the Atomic Energy Act of 1954, as amended, and 10 CFR Section 50.80, ''Transfer of Licenses.'' The application for the renewed license complied with the standards and requirements of the Atomic Energy Act of 1954 (the Act), as amended, and the Commission's regulations. As required by the Act and the Commission's regulations in 10 CFR Chapter I, the Commission has made appropriate findings, which are set forth in the license. Prior public notice of the action involving the proposed issuance of the renewed license and of an opportunity for a hearing regarding the proposed issuance of the renewed license was published in the **Federal Register** on September 15, 2005 (70 FR 54585).

For further details with respect to this action, see: (1) Exelon Generation Company, LLC, formerly AmerGen Energy Company, LLC, license renewal application for OCNGS dated July 22, 2005, as supplemented by letters dated through January 14, 2008; (2) the Commission's Safety Evaluation Report (NUREG–1875, Volumes 1 and 2), published on March 30, 2007, supplemented on September 19, 2008; (3) the licensee's updated safety analysis report; and (4) the Commission's FSEIS (NUREG–1437, Supplement 28), published on January 31, 2007. These documents are available at the NRC's Public Document Room, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, and can be viewed from the NRC Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.*

Copies of renewed facility operating license No. DPR–16, may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Director, Division of License Renewal. Copies of the OCNGS Safety Evaluation Report (NUREG–1875), Supplement 1, and the FSEIS (NUREG–1437, Supplement 28) may be purchased from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161 (*http://www.ntis.gov*), 703–605–6000, or Attention: Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954 Pittsburgh, PA 15250–7954 (*http://www.gpoaccess.gov*), 202–512–1800.

All orders should clearly identify the NRC publication number and the requestor's Government Printing Office deposit account number or Visa or MasterCard number and expiration date.

Dated at Rockville, Maryland, this 8th day of April, 2009.

For the Nuclear Regulatory Commission.

Brian E. Holian,

Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E9–9030 Filed 4–17–09; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2009–27; Order No. 202]

Postal Product Price Changes

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document announces the Postal Service's filing of a notice of price changes for several competitive products and invites public comment. The price changes are for products identified in a Postal Service notice of errata to changes in rates of general applicability.

DATES: Postal Service responses are due April 20, 2009. Comments are due May 1, 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 February 10, 2009, the Postal Service filed a notice with the Commission concerning changes in rates of general applicability for competitive products.[1] The Commission issued its final decision on these matters approving the changes on March 12, 2009.[2] These price changes are scheduled to become effective May 11, 2009.

Postal Service filing. On April 9, 2009, the Postal Service filed a Notice of Errata to United States Postal Service Notice of Changes in Rates of General Applicability for Competitive Products Established in Governors' Decision No. 09–01 (Notice).[3] The Notice explains that the price charts in the Mail Classification Schedule language included as Attachment B to the Governors' Decision omitted charges for Pickup on Demand service for certain competitive products. The Postal Service states that the price change from $14.75 to $15.30 for Pickup on Demand for Express Mail, Priority Mail, and certain international competitive products was inadvertently omitted in the materials included in the Filing, although the same price change was made for certain market dominant services that offer Pickup on Demand service in Docket No. R2009–2.

The Postal Service notes that it has sent a notice of correction for publication in the **Federal Register**, and has advised the Governors of this matter

[1] *See* Docket No. CP2009–23, Notice of the United States Postal Service of Changes in Rates of General Applicability for Competitive Products Established in Governors' Decision No. 09–01, February 10, 2009 (Filing). The Filing is available on the Commission's Web site, *http://www.prc.gov,* under Daily Listings for February 10, 2009. Pursuant to 39 U.S.C. 3632(b)(2), the ''Governors shall cause each rate and class decision under this section and the record of the Governors' proceedings in connection with such decision to be published in the **Federal Register** at least 30 days before the effective date of any new rates or classes.'' Similarly, 39 CFR 3015.2(a) requires that ''[w]hen the Postal Service determines to change a rate or rates of general applicability, it shall file notice of the change with the Commission no later than the date of publication of the decision in the **Federal Register** concerning such change, but at least 30 days before the effective date of the change.''

[2] PRC Order No. 190, Review of Notice Concerning Changes in Rates of General Applicability for Competitive Products, March 12, 2009.

[3] The Notice is available on the Commission's Web site, *http://www.prc.gov,* under Daily Listings for April 9, 2009.

and provided them with information concerning the Pickup on Demand price change. For the affected domestic products, the Postal Service believes that customers should already be on notice of the price change because the new price already appeared in the price charts published with Domestic Mail Manual changes in the **Federal Register.** 74 FR 8009 (February 23, 2009).

Attached to the Notice is Mail Classification Schedule language setting forth the price changes to be incorporated into the draft Mail Classification Schedule.

Notice of filing. The establishment of rates of general applicability for competitive products and the associated mail classification changes effects a change in the Mail Classification Schedule. The Commission establishes Docket No. CP2009–27 to consider this issue. Interested persons may express views and offer comments on whether the planned changes are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642 and 39 CFR part 3015 and 39 CFR part 3020. Comments are due no later than May 1, 2009.

Pursuant to 39 U.S.C. 505, Kenneth E. Richardson is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in the above-captioned docket.

Supplemental information. Pursuant to 39 CFR 3015.6, the Commission requests the Postal Service to provide the following supplemental information by April 20, 2009: Due to the planned price increase of Pickup on Demand service, please provide:

a. The overall (average) price increase for Express Mail, Priority Mail, Outbound International Expedited Services, and Outbound Priority Mail International; and

b. The weights used to derive the Before Rates and After Rates indices relied upon to calculate the overall (average) percentage price increase for each product and service referenced above, similar to those filed in response to Docket No. CP2009–8, Chairman's Information Request No. 2, question 2. Please show all calculations.

It is Ordered:

1. The Commission establishes Docket No. CP2009–27 to provide interested persons an opportunity to express views and offer comments on whether the planned changes are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642 and 39 CFR part 3015 and 39 CFR part 3020.

2. Comments on the Notice are due no later than May 1, 2009.

3. The Commission appoints Kenneth E. Richardson as Public Representative to represent the interests of the general public in this proceeding.

4. Responses to the request for supplemental information discussed in the body of this order are due no later than April 20, 2009.

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

By the Commission.

Steven W. Williams,

Secretary.

[FR Doc. E9–8944 Filed 4–17–09; 8:45 am]

BILLING CODE P

Postal Service

Change in Rates of General Applicability for Competitive Products; Correction

AGENCY: Postal Service™.

ACTION: Notice; correction.

SUMMARY: The Postal Service published in the **Federal Register** of February 24, 2009 (74 FR 8434), in accordance with 39 U.S.C. 3632(b)(2), a Notice document providing the February 3, 2009 Decision of the Governors of the United States Postal Service on Changes in Rates and Classes of General Applicability for Certain Competitive Products (Governors Decision No. 09–01), and a record of the proceedings in connection with the Decision. The Decision did not include planned increases to pickup on demand fees for Express Mail®, Priority Mail®, GXG, Express Mail International (EMI), and Priority Mail International (PMI) services to conform to the change in the Pickup on Demand™ service fee for Parcel Post® Single-Piece, which was raised in Postal Regulatory Commission Docket No. R2009–2 from $14.75 to $15.30. This document accordingly sets forth a correction to the prior notice to give effect to the planned change in Pickup on Demand fees for competitive services, to include Express Mail, Priority Mail, GXG, EMI, and PMI services.

DATES: This correction is effective April 20, 2009 and is applicable on May 11, 2009.

FOR FURTHER INFORMATION CONTACT: Anthony Alverno, 202–268–2997.

SUPPLEMENTARY INFORMATION:

Background

On February 3, 2009, the Governors of the Postal Service established prices and classification changes for competitive products, pursuant to their authority under 39 U.S.C. 3632. On February 24, 2009, the Governors' Decision and the record of proceedings in connection with the Decision were published in the **Federal Register** as required by 39 U.S.C. 3632(b)(2). Following the adoption of the Governors' Decision, it was discovered that pickup on demand fees for Express Mail, Priority Mail, GXG, EMI, and PMI services set out in sections 2105.6, 2110.6, 2205.6, and 2215.7 of the Mail Classification Schedule were not identified as increasing from $14.75 to $15.30. This increase in the fee when combined with these services conforms to the increase in fees for Pickup on Demand service provided in connection with Parcel Post Single-Piece service. The fee for Pickup on Demand provided in connection with Parcel Post Single-Piece was changed in Postal Regulatory Commission (PRC) Docket No. R2009–2 at section 1405.6 of the Mail Classification Schedule and is to become effective on May 11, 2009. See United States Postal Service Notice of Price Adjustment, PRC Docket No. R2009–2 (filed February 10, 2009); PRC Order No. 191 (March 16, 2009).[1]

Postal Service management has advised the Governors of this matter and has provided them with information concerning the corrected fees. Concurrently with the submission of this notice to the **Federal Register**, the Postal Service will file with the PRC a corresponding notice of correction in PRC Docket No. CP2009–23.

Need for Correction

The rates for Pickup on Demand service in sections 2105.6, 2110.6, 2205.6, and 2215.7 of the Mail Classification Schedule, attached to Governors' Decision No. 09–01, did not incorporate the correct fees for pickup on demand services combined with Express Mail, Priority Mail, GXG, Express Mail International (EMI), and Priority Mail International (PMI) services.

Correction

Corrections to the Mail Classification Schedule, which is marked as Attachment B to Governors' Decision 09–01, published in the **Federal Register** of February 24, 2009, should read as follows:

Mail Classification Schedule

* * * * *

2001 COMPETITIVE PRODUCT DESCRIPTIONS

* * * * *

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[1] Notice of the change in the pickup on demand fee for domestic Express Mail and Priority Mail was published with other changes to the Domestic Mail Manual in the **Federal Register** on February 23, 2009 (74 FR 8009).

2100 DOMESTIC PRODUCTS

2105 Express Mail

* * * * *

2105.6 Prices

* * * * *

Pickup on Demand

Add $15.30 for each Pickup on Demand stop.

* * * * *

2110 Priority Mail

* * * * *

2110.6 Prices

Retail Pickup On Demand

Add $15.30 for each Pickup on Demand stop.

* * * * *

Commercial Base Priority Mail Zone/ Weight

* * * * *

Commercial Pickup on Demand

Add $15.30 for each Pickup on Demand stop.

* * * * *

Commercial Plus Priority Mail Zone/ Weight

* * * * *

Commercial Pickup on Demand

Add $15.30 for each Pickup on Demand stop.

2200 INTERNATIONAL PRODUCTS

2205 Outbound International Expedited Services

* * * * *

2205.6 Prices

* * * * *

Pickup on Demand

Add $15.30 for each Pickup on Demand stop.

* * * * *

2215 Outbound Priority Mail International

* * * * *

2215.7 Prices

Pickup on Demand

Add $15.30 for each Pickup on Demand stop.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. E9–9036 Filed 4–15–09; 4:15 pm]

BILLING CODE 7710–12–P

RAILROAD RETIREMENT BOARD

Notice of Public Meeting; Sunshine Act

Notice is hereby given that April 22, 2009, 10 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

(1) Executive Committee Reports.

(2) Personnel Changes in the Newark and New York City Offices (For Discussion Only).

(3) Briefing on the Long Island Implementation Plan Update.

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312–751–4920.

Dated: April 13, 2009.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. E9–8820 Filed 4–17–09; 8:45 am]

BILLING CODE 7905–01–M

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11709 and #11710]

Minnesota Disaster #MN–00020

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Minnesota (FEMA—1830—DR), dated 04/10/2009.

Incident: Severe Storms and Flooding.

Incident Period: 03/16/2009 and continuing.

Effective Date: 04/10/2009.

Physical Loan Application Deadline Date: 06/09/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 01/11/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 04/10/2009, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Clay, Norman, Traverse, and Wilkin.

Contiguous Counties (Economic Injury Loans Only):

Minnesota: Becker, Big Stone, Grant, Mahnomen, Otter Tail, Polk, Stevens.

North Dakota: Cass, Richland, Traill.

South Dakota: Roberts.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	4.375
Homeowners Without Credit Available Elsewhere	2.187
Businesses With Credit Available Elsewhere	6.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	4.500
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 117096 and for economic injury is 117100.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E9–9022 Filed 4–17–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11707 and #11708]

North Dakota Disaster #ND–00016

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of North Dakota (FEMA–1829–DR), dated 04/10/2009.

Incident: Severe Storms and Flooding.

Incident Period: 03/13/2009 and continuing.

Effective Date: 04/10/2009.

Physical Loan Application Deadline Date: 06/09/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 01/11/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 04/10/2009, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Adams, Barnes, Billings, Burleigh, Cass, Dickey, Emmons, Foster, Grand Forks, Griggs, Hettinger, Kidder, Lamoure, Logan, Mcintosh, Mercer, Morton, Nelson, Ransom, Richland, Sargent, Steele, Stutsman, Towner, Traill, Williams.

Contiguous Counties (Economic Injury Loans Only):

North Dakota: Benson, Bowman, Burke, Cavalier, Divide, Dunn, Eddy, Grant, Mckenzie, Mclean, Mountrai,l Oliver, Pierce, Ramsey, Rolette, Sheridan, Sioux, Slope, Stark, Walsh, Wells.

Minnesota: Clay, Marshall, Norman, Polk, Traverse, Wilkin.

Montana: Richland, Roosevelt, Sheridan.

South Dakota: Brown, Campbell, Corson, Harding, Marshall, Mcpherson, Perkins, Roberts.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	4.375
Homeowners Without Credit Available Elsewhere	2.187
Businesses With Credit Available Elsewhere	6.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	4.500
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 117076 and for economic injury is 117080.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E9–9025 Filed 4–17–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11686 and #11687]

Indiana Disaster Number IN–00029

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Indiana (FEMA–1828–DR), dated 03/05/2009.

Incident: Severe Winter Storm.

Incident Period: 01/26/2009 through 01/28/2009.

Effective Date: 04/06/2009.

Physical Loan Application Deadline Date: 05/04/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 12/05/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Indiana, dated 03/05/2009, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties:

Jennings, Lawrence, Ohio, Posey, Ripley, Scott.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E9–8518 Filed 4–17–09; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:
Rule 15c2–8, OMB Control No. 3235–0481, SEC File No. 270–421.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the existing collection of information provided for in the following rule: Rule 15c2–8 (17 CFR 240.15c2–8).

Rule 15c2–8 of the Securities Exchange Act of 1934 (''Exchange Act'') requires broker-dealers to deliver preliminary and/or final prospectuses to certain people under certain circumstances. In connection with securities offerings generally, including initial public offerings (IPOs), the rule requires broker-dealers to take reasonable steps to distribute copies of the preliminary or final prospectus to anyone who makes a written request, as well as any broker-dealer who is expected to solicit purchases of the security and who makes a request. In connection with IPOs, the rule requires a broker-dealer to send a copy of the preliminary prospectus to any person who is expected to receive a confirmation of sale (generally, this means any person who is expected actually to purchase the security in the offering) at least 48 hours prior to the sending of such confirmation. This requirement is sometimes referred to as the ''48 hour rule.''

Additionally, managing underwriters are required to take reasonable steps to ensure that all broker-dealers participating in the distribution of or trading in the security have sufficient copies of the preliminary or final prospectus, as requested by them, to enable such broker-dealer to satisfy their respective prospectus delivery obligations pursuant to Rule 15c2–8, as well as Section 5 of the Securities Act of 1933.

Rule 15c2–8 implicitly requires that broker-dealers collect information, as such collection facilitates compliance with the rule. There is no requirement to submit information collected to the Commission. In order to comply with

the rule, broker-dealers participating in a securities offering must keep accurate records of persons who have indicated interest in an IPO or requested a prospectus, so that they know to whom they must send a prospectus.

The Commission estimates that broker-dealers will spend a total of 78,800 hours complying with the collection of information required by the rule. The Commission estimates that the total number of responses required by the rule is 7764. The Commission estimates that the total annualized cost burden (copying and postage costs) is $157,600,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted within 30 days of this notice.

Dated: April 10, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–8876 Filed 4–17–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form 8–K, OMB Control No. 3235–0060, SEC File No. 270–50.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Form 8–K (17 CFR 249.308) is filed by issuers to satisfy their current reporting obligations pursuant to Section 13 and 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m and 78o(d)) in connection with the occurrence of significant corporate events. The purpose of Form 8–K is to provide investors with prompt disclosure of material information so that investors will be able to make investment and voting decisions better informed and receive information timely. Form 8–K takes approximately 5 hours per response and is filed by approximately 13,200 issuers approximately 8.21 annually for a total of 108,424 responses annually. We estimate 75% of the 5 hours per response (3.75 hours) is prepared by the issuer for a total annual reporting burden of 406,590 hours (3.75 hours per response × 108,424 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: April 10, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–8879 Filed 4–17–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28692; 812–13647]

Triangle Capital Corporation; Notice of Application

April 13, 2009.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 23(c)(3) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 23(c) of the Act.

SUMMARY OF THE APPLICATION: Triangle Capital Corporation (the ''Company'') requests an order to amend a prior order (the ''Prior Order'') that permits the Company to issue restricted shares of its common stock (''Restricted Stock'') under the terms of its employee and director compensation plan, the Amended and Restated 2007 Equity Incentive Plan (the ''Plan'').[1] Applicant seeks to amend the Prior Order in order to permit the Company, pursuant to the Plan, to engage in certain transactions that may constitute purchases by the Company of its own securities within the meaning of section 23(c) of the Act.

FILING DATES: The application was filed on March 27, 2009 and amended on April 10, 2009.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 4, 2009, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. The Company, c/o Garland S. Tucker III and Steven C. Lilly, Triangle Capital Corporation, 3700 Glenwood Avenue, Suite 530, Raleigh, NC 27612.

FOR FURTHER INFORMATION CONTACT: John Yoder, Senior Counsel, at (202) 551–6878, or Janet M. Grossnickle, Assistant Director, at (202) 551–6821, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549–1520 (tel. 202–551–5850).

[1] Triangle Capital Corporation, Investment Company Act Release Nos. 28165 (Feb. 20, 2008) (notice) and 28196 (Mar. 18, 2008) (order).

Applicant's Representations

1. The Company is an internally managed, non-diversified, closed-end investment company that has elected to be regulated as a business development company (''BDC'') under the Act. The Company is currently permitted to issue shares of Restricted Stock under the terms of its Plan in reliance on the Prior Order. Applicant seeks to amend the Prior Order in order to permit the Company, pursuant to the Plan, to: Withhold shares of the Company's common stock or purchase shares of the Company's common stock from employees or non-employee directors (''Participants'') to satisfy tax withholding obligations related to the vesting of Restricted Stock or the exercise of stock options that were or will be granted pursuant to the Plan. In addition, the Company seeks to amend the Prior Order to permit Participants to pay the exercise price of options that were or will be granted to them pursuant to the Plan with shares of the Company's common stock already held by them. The Company will continue to comply with all of the terms and conditions of the Prior Order.

2. The Plan authorizes the issuance to Participants of shares of Restricted Stock and options to purchase shares of the Company's common stock, subject to certain forfeiture restrictions. On the date Restricted Stock vests, shares of the Restricted Stock are released to the Participant and are available for sale or transfer and the value of the vesting shares is deemed to be compensation for an employee of the Company.[2] As discussed more fully in the application, certain exercises of options result in a Participant being deemed to have received compensation in the amount by which the fair market value of the shares of the Company's common stock, determined as of the date of exercise, exceeds the exercise price. Applicant states that any compensation income recognized by an employee generally is subject to federal withholding for income and employment tax purposes. Accordingly, arrangements must be made to satisfy the necessary withholding tax obligations.

3. The Company's stockholders approved the terms and provisions of the Plan on May 7, 2008. The Plan explicitly permits the Company to withhold shares of the Company's common stock or purchase shares of the Company's common stock from the Participants to satisfy tax withholding obligations related to the vesting of Restricted Stock or the exercise of options granted pursuant to the Plan. The Plan further provides that Participants may pay the exercise price of options to purchase shares of the Company's stock with shares of the Company's stock already held by such Participants.

Applicant's Legal Analysis

1. Section 23(c) of the Act generally prohibits a registered closed-end investment company from purchasing any securities of which it is the issuer except in the open market, pursuant to tender offers or under other circumstances as the Commission may permit to ensure that the purchase is made on a basis that does unfairly discriminate against any holders of the class or classes of securities to be purchased. The applicant states that the withholding or purchase of shares of Restricted Stock and common stock in payment of applicable withholding tax obligations or of common stock in payment for the exercise price of a stock option might be deemed to be purchases by the Company of its own securities within the meaning of section 23(c) and therefore prohibited by the Act.

2. Section 23(c)(3) provides that the Commission may issue an order that would permit a closed-end investment company to repurchase its shares in circumstances in which the repurchase is made in a manner or on a basis that does not unfairly discriminate against any holders of the class or classes of securities to be purchased. Applicant believes that the requested relief meets the standards of section 23(c)(3).

3. Applicant states that these purchases will be made on a basis which does not unfairly discriminate against the stockholders of the Company because all purchases of the Company's stock will be at the closing price of the common stock on the NASDAQ (or any other primary exchange on which the shares are traded) on the relevant date (i.e., the public market price on the date the Restricted Stock vests or the date of the exercise of any options). Applicant further states that no transactions will be conducted pursuant to the requested order on days where there are no reported market transactions involving the Company's shares. Applicant submits that because all transactions would take place at the public market price, the transactions would not be significantly different than could be achieved by any stockholder selling in a market transaction.

4. Applicant submits that the proposed purchases do not raise concerns about preferential treatment of the Company's insiders because the Plan is a bona fide compensation plan of the type that is common among corporations generally. Further, the vesting schedule is determined at the time of the initial grant of the Restricted Stock while the option exercise price is determined at the time of the initial grant of the options. Applicant represents that that all purchases will be made only as permitted by the Plan, which was approved by the Company's stockholders. Applicant argues that granting the requested relief would be consistent with precedent and the Commission's recognition of the important role that equity compensation can play in attracting and retaining qualified personnel with respect to certain types of investment companies, including BDCs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–8965 Filed 4–17–09; 8:45 am]

BILLING CODE 8010–01–P

[2] During the restriction period (*i.e.*, prior to the lapse of the forfeiture restrictions), the Restricted Stock may not be sold, transferred, hypothecated, margined, or otherwise encumbered by the Participant.

SECURITIES AND EXCHANGE COMMISSION

[Securities Act of 1933 Release No. 9025; Securities Exchange Act of 1934 Release No. 59759]

Order Approving Increase to Public Company Accounting Oversight Board Annual Accounting Support Fee for Calendar Year 2009

April 13, 2009.

The Sarbanes-Oxley Act of 2002 (the ''Act'') established the Public Company Accounting Oversight Board (''PCAOB'') to oversee the audits of public companies and related matters, to protect investors, and to further the public interest in the preparation of informative, accurate and independent audit reports. The PCAOB is to accomplish these goals through registration of public accounting firms and standard setting, inspection, and disciplinary programs. Section 109 of the Act provides that the PCAOB shall establish a reasonable annual accounting support fee, as may be necessary or appropriate to establish and maintain the PCAOB. Section 109(h) amends Section 13(b)(2) of the Securities Exchange Act of 1934 to require issuers to pay the allocable share of a reasonable annual accounting support fee or fees, determined in accordance with Section 109 of the Act. Under Section 109(f), the aggregate

annual accounting support fee shall not exceed the PCAOB's aggregate ''recoverable budget expenses,'' which may include operating, capital and accrued items. Section 109(b) of the Act directs the PCAOB to establish a budget for each fiscal year in accordance with the PCAOB's internal procedures, subject to approval by the Securities and Exchange Commission (the ''Commission'').

On July 18, 2006, the Commission amended its Rules of Practice related to its Informal and Other Procedures to add a rule to facilitate the Commission's review and approval of PCAOB budgets and accounting support fees.[1] This budget rule provides, among other things, a timetable for the preparation and submission of the PCAOB budget and for Commission actions related to each budget, a description of the information that should be included in each budget submission, limits on the PCAOB's ability to incur expenses and obligations except as provided in the approved budget, procedures relating to supplemental budget requests, requirements for the PCAOB to furnish on a quarterly basis certain budget-related information, a list of definitions that apply to the rule and to general discussions of PCAOB budget matters, and the ability of the Commission to waive compliance with any provisions of the rule.

On December 17, 2008, the Commission approved the PCAOB's 2009 budget of $157.6 million and 2009 annual accounting support fee of $151.8 million.[2] Due to the development of certain unforeseen contingencies, on March 16, 2009 the PCAOB requested Commission approval to increase its 2009 annual accounting support fee by $5.6 million, to $157.4 million. The primary reason for the requested increase relates to proposed legislation in Congress that would increase the PCAOB's responsibilities over auditors of broker-dealers.

Specifically, the PCAOB's request would create an additional reserve for contingencies in addition to the five month working capital reserve provided for in the Commission's budget rule.[3] Therefore, the requested amount of the increase to the annual accounting support fee would result in the PCAOB being noncompliant with certain provisions of the Commission's budget rule. The Commission's budget rule provides that the Commission, in its discretion, may waive compliance with any provision of the rule,[4] and the PCAOB has requested a waiver. In approving the PCAOB's request to increase its 2009 annual accounting support fee, the Commission is hereby waiving paragraph (d)(3) of the budget rule with respect to the PCAOB's 2009 budget and annual accounting support fee.

Pursuant to the budget rule, and as the PCAOB indicates in its request, the incremental monies collected by the PCAOB are to be held by the PCAOB until the Commission, through the approval of a supplemental budget, later approves disbursement of such monies. The procedures for submitting a supplemental budget request are provided in the budget rule. Prior to submission of any such supplemental budget request or to the implementation of any legislation that expands the PCAOB's authority over the auditors of broker-dealers, the PCAOB shall consult with the Commission on a timely basis about the PCAOB's plans for additional resources, program changes, or information technology developments and enhancements contemplated.

The Commission has determined that the PCAOB's increased annual accounting support fee is consistent with Section 109 of the Act. Accordingly,

It is ordered, pursuant to Section 109 of the Act, that the PCAOB's increase to its annual accounting support fee for calendar year 2009 is approved.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–8886 Filed 4–17–09; 8:45 am]

BILLING CODE 8010–01–P

[1] 17 CFR 202.11. See Release No. 33–8724 (July 18, 2006) [71 FR 41998 (July 24, 2006)].

[2] See Release No. 33–8989 (December 17, 2008) [73 FR 78861 (December 23, 2008)].

[3] See 17 CFR 202.11(d)(3), which provides that, ''In addition to amounts needed to fund disbursements during the budget year, a budget may reflect receipts in amounts needed to fund expend expected disbursements during a period not to exceed the first five months of the fiscal year immediately following the budget year (the working capital reserve), provided such amounts shall be disbursed only as specified in the following year's budget or in a supplemental budget approved by the Commission.''

[4] See 17 CFR 202.11(i).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59754; File No. SR–FINRA–2009–018]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Adopt IM–2830–1 (''Breakpoint'' Sales) in the Consolidated FINRA Rulebook

April 13, 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 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 NASD Interpretive Material 2830–1 (''IM–2830–1'') (''Breakpoint'' Sales) as a FINRA rule in the consolidated FINRA rulebook with minor changes. The proposed rule change would renumber NASD IM–2830–1 as FINRA Rule 2342 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.

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 NASD IM–2830–1 into the Consolidated FINRA Rulebook with minor changes discussed below. The proposed rule change would renumber NASD IM–2830–1 as FINRA Rule 2342. NASD IM–2830–1 prohibits sales of mutual fund shares in amounts below a ''breakpoint'' if such sales are made ''so as to share in the higher sales charges.'' In the context of mutual fund sales, a ''breakpoint'' is that point at which the sales charge is reduced for quantity purchases of fund shares.

The application of the standard in NASD IM–2830–1 depends on the facts and circumstances of particular transactions to determine whether a member executed a transaction for the purpose of earning a higher sales charge. In 1998, NASD IM–2830–1 was amended to address the use of modern portfolio investment strategies that utilize many different mutual funds with varying investment objectives.[4] The amendments specify more precisely those facts and circumstances that FINRA will consider when examining whether trades that miss breakpoints, but are made pursuant to bona fide asset allocation programs, may have violated NASD IM–2830–1. In making such determinations, the rule provides that FINRA will consider, among other things, whether a member has retained records that demonstrate that the trade was executed in accordance with a bona fide asset allocation program that the member offers to its customers which is designed to meet their diversification needs and investment goals; and under which the member discloses to its customers that they may not qualify for breakpoint reductions that are otherwise available.

Breakpoint issues have been of concern to the regulatory community. On December 23, 2002, FINRA issued *Special Notice to Members* 02–85, which reminded firms of their obligation to apply correctly breakpoint discounts to front-end sales load mutual fund transactions.[5] In 2003, the staffs of FINRA, the SEC, and the NYSE conducted examinations of broker-dealers to assess their ability to deliver breakpoint discounts and memorialized the findings of those examinations in a joint report.[6] Concurrently, FINRA staff and industry members formed a joint task force to consider issues regarding breakpoints. The joint task force issued a report in July 2003 containing recommendations for the industry to facilitate the accurate delivery of breakpoint discounts.[7]

FINRA proposes to adopt NASD IM–2830–1 as FINRA Rule 2342 as it believes this rule continues to be an important tool in regulating members' sales of mutual fund shares to ensure that they are not sold in dollar amounts just below breakpoints so as to share in higher sales charges. FINRA proposes to eliminate references to ''just and equitable principles of trade'' and make other minor changes to the text to reflect that it would be a stand-alone rule, rather than Interpretive Material, and to eliminate certain redundant text that is inconsistent with a rules-based format.

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,[8] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change would continue to provide FINRA with an important tool in regulating members' sales of mutual fund shares, consistent with the goals of protecting investors and the public interest.

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–2009–018 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–2009–018. This file number should be included on the subject line if e-mail is used. To help the

[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] *See* Securities Exchange Act Release No. 40659 (Nov. 10, 1998), 63 FR 64136 (Nov. 18, 1998) (Order Approving Proposed Rule Change Relating to Mutual Fund Breakpoint Sales).

[5] NASD *Special Notice to Members* 02–85, NASD Requires Immediate Member Firm Action Regarding Mutual Fund Purchases and Breakpoint Schedules (December 2002).

[6] *See* Joint SEC/NASD/NYSE Report of Examinations of Broker/Dealers Regarding Discounts on Front-End Sales Charges on Mutual Funds (March 2003), available at *http://www.finra.org/Industry/Issues/Breakpoints/P006438.*

[7] *See* Report of the Joint NASD/Industry Task Force on Breakpoints (July 2003), available at *http://www.finra.org/Industry/Issues/Breakpoints/P006422.*

[8] 15 U.S.C. 78*o*–3(b)(6).

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–2009–018 and should be submitted on or before May 11, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–8877 Filed 4–17–09; 8:45 am]

BILLING CODE 8010–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59755; File Nos. SR–NYSE–2009–18 and SR–NYSEAltr–2009–15]

Self-Regulatory Organizations; New York Stock Exchange LLC and NYSE Alternext US LLC (n/k/a NYSE Amex LLC); Order Granting Approval of Proposed Rule Changes Amending Rule 123C to Provide the Exchanges with the Ability to Temporarily Suspend Certain Requirements Relating to the Closing of Securities on the Exchange

April 13, 2009.

I. Introduction

On February 19, 2009, the New York Stock Exchange LLC (''NYSE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Rule 123C to provide the Exchange with the ability to temporarily suspend certain NYSE requirements relating to the closing of securities at the Exchange. On February 20, 2009, NYSE Alternext US LLC (n/k/a NYSE Amex LLC) (''NYSE Amex'' and, with NYSE, each an ''Exchange'' and collectively, the ''Exchanges'') filed with the Commission, pursuant to Section 19(b)(1) of the Act[3] and Rule 19b–4 thereunder,[4] a substantively identical proposed rule change to amend NYSE Amex Equities Rule 123C. The proposed rule changes were published for comment in the **Federal Register** on March 10, 2009.[5] The Commission received no comments regarding the proposals. This order approves the proposed rule changes, as amended.

II. Description of the Proposal

A. NYSE's October 2, 2008 Amendments to Rule 48

On October 2, 2008, NYSE filed for immediate effectiveness to amend NYSE Rule 48 to provide NYSE with the ability to suspend certain rules at the close when extremely high market volatility could negatively affect the ability to ensure a fair and orderly close.[6] NYSE amended Rule 48 on a temporary basis in order to respond swiftly to market conditions at that time. The Rule 48 amendments are scheduled to end on April 30, 2009.[7]

On December 1, 2008, NYSE Amex (then known as NYSE Alternext US LLC) relocated its equities trading to facilities located at NYSE's main trading floor at 11 Wall Street, New York, New York (the ''Equities Relocation''). NYSE Amex's equity trading systems and the facilities at 11 Wall Street are operated by NYSE on behalf of NYSE Amex. In connection with the Equities Relocation, NYSE Amex adopted NYSE Rules 1–1004, subject to such changes as necessary to apply the rules to NYSE Amex, to govern trading on the NYSE Alternext Trading System beginning on December 1, 2008.[8] In particular, among the rules adopted in substantively identical form were the rules at issue in this proposal—most notably, NYSE Rules 48, 52, and 123C.

The temporary provisions of Rule 48 provide that a qualified Exchange officer could declare an extreme market volatility condition before the scheduled close of trading in cases where the Exchange noted volatility during the day's trading session and evidence of significant order imbalances at the close.[9] A declaration of extreme market volatility at the close under Rule 48 permits each Exchange to temporarily suspend Rule 52 (Hours of Operation) to allow the DMM to solicit and enter into Exchange systems additional orders in order to offset any imbalance in a security at the close.[10] Rule 48 requires that any additional interest be represented manually on the Floor by an Exchange Floor broker.[11] A declaration of extreme market volatility at the close also permits each Exchange to temporarily suspend NYSE Rules 123C(1) and (2) (Market on the Close Policy and Expiration Policy) in order to allow cancellation or reduction of market-at-the-close (''MOC'') and limit-at-the-close (''LOC'') orders after 3:50 p.m. if such orders are the result of a legitimate error and would cause significant price dislocation at the close, among other requirements.[12] Each Exchange is required to make a reasonable effort to consult with Commission staff before declaring an extreme market volatility condition and granting a suspension of NYSE rules or procedures.[13]

The Exchanges now propose to adopt the amendments to Rule 48 on a permanent basis by deleting these provisions from Rule 48 and moving them to Rule 123C. As part of the amendments to Rule 123C, the Exchanges further propose modifying the terms of the temporary suspensions by permitting the Exchange to invoke such relief on a security-by-security basis without first declaring a Floor-wide extreme market volatility condition and codifying certain

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b–4.

[5] *See* Securities Exchange Act Release Nos. 59489 (March 3, 2009), 74 FR 10330 (SR–NYSE–2009–18) and 59488 (March 3, 2009), 74 FR 10334 (SR–NYSEAltr–2009–15) (each a ''Notice'' and collectively, the ''Notices'').

[6] *See* Securities Exchange Act Release No. 58743 (October 7, 2008), 73 FR 60742 (October 14, 2008) (SR–NYSE–2008–102) (referred to herein as ''NYSE's October 2, 2008 filing'').

[7] Rule 48.10. *See also* Securities Exchange Act Release Nos. 59168 (December 29, 2008), 74 FR 483 (January 6, 2009) (SR–NYSE–2008–139) and 59666 (March 31, 2009), 74 FR 15792 (April 7, 2009) (SR–NYSE–2009–35).

[8] *See* Securities Exchange Act Release Nos. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR–Amex–2008–63) and 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008) (SR–NYSEALTR–2008–10).

[9] Rule 48(c)(1)(A).

[10] Rule 48(b)(2)(A).

[11] Rule 48(b)(2)(A)(ii).

[12] Rule 48(b)(2)(B).

[13] Rule 48(c)(2).

practices for the entry of orders after 4 p.m.

B. Proposed Amendments to Rule 123C

1. Modification of the Requirements for Temporary Suspensions

As noted above, the amendments to Rule 48 were adopted by NYSE as an emergency measure to respond to the extreme market volatility that the markets experienced in September and October 2008. Under current Rule 48, each Exchange must first declare a Floor-wide extreme market volatility condition before it can consider, on a security-by-security basis, whether to temporarily suspend either Rule 52 or Rule 123C(1) or (2). The Exchanges stated in their respective Notices that they believe the requirement to declare a Floor-wide extreme market volatility condition before 4 p.m. could hamper their ability to invoke the temporary suspensions when they are needed most—for example, when during normal market conditions that would not otherwise warrant a Rule 48 condition at the close, Exchange systems receive in the seconds before the close a large market order in a security that by itself creates the type of extreme imbalance that would merit a temporary suspension of Rule 52. The Exchanges therefore believe that the ability to temporarily suspend rules at the close should be available on a security-by-security basis as part of Rule 123C, which governs the closing process at the Exchange.[14] The Exchanges therefore propose deleting the extreme market volatility at the close condition from Rule 48 and returning Rule 48 to a form substantively identical to the form of NYSE Rule 48 prior to NYSE's October 2, 2008 filing amending that rule.

2. Temporary Suspension of Rule 52

Proposed Rule 123C(8)(a)(1) would permanently establish the temporary provisions of Rule 48(b)(2)(A) that give each Exchange the ability to temporarily suspend Rule 52 for the sole purpose of allowing the entry of orders after 4 p.m. to offset an extreme order imbalance at the close. The Exchanges propose to adopt without change the language of Rule 48(b)(2)(A)(i) and (iii) (proposed as Rule 123C(8)(a)(1)(i) and (v)) concerning, respectively, the purpose of soliciting orders after 4 p.m. and the use of a ''designated Exchange database'' [15] on an ''as of'' basis following execution of an order.

The Exchanges propose to codify in Rule 123C(8)(a)(1)(ii) the requirement that when soliciting orders to offset an imbalance in a security that may exist after 4 p.m., such interest will be solicited from off-Floor participants directly and via their Floor broker representatives. Such solicitation requests shall be transmitted electronically both off-Floor and on-Floor and shall include, at a minimum, information about the security symbol, the imbalance amount and side, the last sale price, and an order acceptance cut-off time (which in no event may be later than 4:30 p.m.). The Exchanges also propose adding conditions on the type of order that may be entered in response to a solicitation request. As proposed in Rule 123C(8)(a)(1)(iii), any offsetting interest received in response to a solicitation request must be a limit order priced no worse than the last sale and must be irrevocable.

The Exchanges propose to maintain in Rule 123C(8)(a)(1)(iii) that any offsetting interest must be represented by a Floor broker. As noted in the NYSE's October 2, 2008 filing to amend Rule 48, Exchange systems do not have the capability to receive electronic interest after 4:00 p.m. The Exchanges stated in their respective Notices that the time and cost necessary to reconfigure Exchange systems to electronically accept orders after 4 p.m. for this limited purpose would far outweigh any benefit that may accrue from such technology changes. In any event, the Exchanges believe that more information is necessary before they undertake to implement any such technology change. The Exchanges therefore propose that six months after the approval of this proposed rule change, the Exchanges will provide the Commission with information regarding how many times a Rule 52 temporary suspension under proposed Rule 123C(8)(a)(1) has been invoked. At that time, the Exchanges and the Commission can make a more informed decision of whether the benefit in accepting orders electronically after 4 p.m. outweighs the costs associated with making such changes. To provide both the Exchange and the Commission with time to evaluate the proposed rule, the Exchange proposes that Rule 123C(8)(a)(1) be approved on a Pilot basis, to end six months after the date of this order.

The Exchanges also propose to add to the rule certain parameters regarding the timing of the closing of a security when such offsetting interest is solicited. As proposed in Rule 123C(8)(a)(1)(iv), in such circumstances, the DMM should close the security the earlier of the order acceptance cut-off time or the time that the imbalance is paired off at or reasonably contiguous to the last sale price.[16] This provision is intended to require the DMM to arrange for a fair and orderly close that is as close to 4 p.m. as possible, notwithstanding the fact that the Exchange seeks additional offsetting interest after 4 p.m. Finally, the Exchanges propose that any offsetting interest entered after 4 p.m., but before the DMM closes the security, would trade on parity.[17]

3. Temporary Suspensions Under Rule 123C(1) and (2)

The Exchanges propose to adopt permanently the provisions of Rule 48(b)(2)(B) as proposed Rule 123C(8)(a)(2), without any change. Therefore, each Exchange would continue to have the ability to temporarily suspend, on a security-by-security basis, the Rule 123C(1) and (2) requirements that MOC and LOC orders cannot be cancelled or reduced after 3:50 p.m. for MOC and LOC orders that are the result of a legitimate error and would cause significant price dislocation at the close.

4. Parameters for Obtaining Temporary Rule Suspensions

The Exchanges propose codifying the practices concerning how a temporary suspension under proposed Rule 123C(8)(a) would be invoked and who should be involved. As proposed in Rule 123C(8)(b), only the DMM assigned to a particular security may request a temporary suspension under proposed section 8(a) of the Rule. The Exchanges argued in their respective Notices that because the DMM is responsible for facilitating the close of trading in its registered securities, the DMM is in the unique position to know whether he or she would need additional interest to ensure a fair or orderly close.

To ensure that such temporary suspensions are not invoked indiscriminately, the Exchanges propose that any such determination, as well as any entry or cancellation of orders or closing of a security under proposed Rule 123C(8)(a), must be approved by

[14] *See* proposed Rule 123C(8)(c).

[15] In the Notices, the Exchanges refer to FESC as the relevant ''designated Exchange database.''

[16] A ''reasonably contiguous to the last sale price'' means a price point that is within cents of the last sale price, and would be a price point that during a regular closing auction would not be considered a dislocating closing price as compared to the last sale price. *See* Rule 123C(8)(a)(1)(iv).

[17] The Exchange notes that all MOC and marketable LOC orders entered before 4 p.m. that otherwise would have participated in the close will continue to participate in the close. Because the MOC/LOC imbalance dictates the closing price (see Rule 123C(3)), any additional interest solicited after 4 p.m. under proposed Rule 123C(8)(a)(1) is simply to ensure that the existing imbalance of MOC and marketable LOC orders can be filled at a price that does not cause a significant price dislocation from the last sale price.

either an Executive Floor Governor or a qualified NYSE Euronext employee, as defined in Rule 46(b)(v). The Exchange also proposes requiring that any temporary suspensions under proposed Rule 123C(8)(a) should be under the supervision of a qualified Exchange Officer, as defined in Rule 48(d). To assist the DMM and Exchange officials, proposed Rule 123C(8)(b) identifies a number of factors that may be considered when making such a determination. Such factors include, but are not limited to, when the order(s) that impacted the imbalance were entered into Exchange systems or orally represented to the DMM; the impact of such order(s) on the closing price of the security; the volatility of the security during the trading session; and the ability of the DMM to commit capital to dampen the price dislocation.

C. Proposed Amendment to Rule 48(c)(2)

In addition to the above-described amendments, the Exchanges also propose to amend Rule 48(c)(2), which concerns the method by which each Exchange notifies Commission staff when it declares a Rule 48 extreme market volatility condition.

The current rule provides that the qualified Exchange officer will make a reasonable effort to consult with Commission staff before declaring an extreme market volatility condition and granting a suspension of the Exchange's rules or procedures. In the event that the qualified Exchange officer cannot reach the Commission staff, the qualified Exchange officer will, as promptly as practicable in the circumstances, inform the Commission staff of such declaration.

Given the limited relief that can be granted during a Rule 48 condition—certain Floor Official approvals are suspended and mandatory indications can be suspended—the Exchanges argued in their respective Notices that the requirement to consult with Commission staff before declaring an extreme market volatility condition imposes an undue burden on regulatory resources. Accordingly, the Exchanges propose to amend Rule 48(c)(2) to delete the requirement that the qualified Exchange officer undertake reasonable efforts to consult with Commission staff before declaring an extreme market volatility condition. As required by the rule, each Exchange will continue to inform the Commission staff, as promptly as practicable under the circumstances, when it has declared a Rule 48 extreme market volatility condition.

III. Commission's Findings and Order Granting Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[18] In particular, the Commission finds that the proposed rule changes are consistent with Section 6(b)(5) of the Act [19] in that they 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 Exchanges propose to eliminate the requirement that an Exchange first declare a Floor-wide extreme market volatility condition before it can consider, on a security-by-security basis, whether to temporarily suspend either Rule 52 or Rule 123C(1) or (2). The Commission notes that an extreme order imbalance at the close may be the result of Floor-wide volatility, but may also be a result of isolated volatility in a particular security, or of a single large order received close to the scheduled close. Therefore, the Commission agrees that the requirement that a Floor-wide extreme market volatility condition precede the invocation of temporary suspensions pursuant to Rule 128(c)(8) could hamper the Exchanges' ability to use Rule 128(c)(8) to help ensure a fair and orderly close in a specific security.

The Exchanges propose to make permanent and move to Rule 123C(8)(a)(1) the temporary provisions permitting the Exchanges to suspend Rule 52, regarding hours of operation, to permit DMMs to solicit and enter orders into Exchange systems after the scheduled close in order to offset an extreme order imbalance. As described above, because Exchange systems are not configured to accept orders electronically after 4 p.m., any offsetting interest submitted by Exchange members in response to a solicitation for offsetting interest are required by Rule 123C(8)(a)(iii) to be represented by a Floor broker.

The Exchanges have argued in their respective Notices that requiring Floor brokers to represent offsetting interest does not unfairly discriminate against any market participants. The Exchanges state that the requirement to use a Floor broker, who would be acting only as an agent, does not deny anyone access to trading at the Exchange. And while the Commission notes that submitting order through a Floor broker might be more costly for some members than directly entering the offsetting interest orders electronically, the Exchanges assert that the Exchange customers that would typically respond to a solicitation request are sophisticated market participants who likely already have, or could easily arrange for, a relationship with a Floor broker to represent orders on their behalf, and that furthermore such customers have the wherewithal to enter into arrangements with Floor brokers that are financially competitive with entering orders directly into Exchange systems, *e.g.,* via reduced commissions or pass through of Floor broker rebates.

The Exchanges also state that, though it would be possible to reconfigure Exchange systems to accept orders electronically after 4 p.m., to do so would be costly, and that the benefit to such a reconfiguration would be limited, since the temporary suspension of Rule 52 to attract offsetting interest is intended to be used for extreme, and likely rare, circumstances where there exists such a large imbalance at the close that the DMM could not close the security without significant price dislocation.[20] While the elimination of the Floor-wide declaration of an extreme market volatility condition as a prerequisite for suspending Rule 52 may increase the likelihood of Rule 52 suspensions on the Exchange, the Commission notes that other elements of Rule 128(c)(8), such as Executive Floor Governor oversight, are designed to restrict suspension of Rule 52 to situations where it is necessary to maintain a fair and orderly market.

The Commission notes that the Exchanges have proposed to implement Rule 128(c)(a)(1) for a six-month pilot period, and have agreed to provide to the Commission information regarding how many times a Rule 52 temporary suspension under proposed Rule 123C(8)(a)(1) has been invoked during such period. Such information should assist the Commission in making a determination as to whether the requirement that only Floor brokers may represent offsetting interest is

[18] In approving these proposed rule changes, the Commission notes that it has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78f(b)(5).

[20] For example, NYSE reports that, in the period from October 2, 2008, when the Exchange adopted the amendments to Rule 48, to February 19, 2009, when NYSE filed their proposed rule change, NYSE invoked Rule 48 (*i.e.,* declared a floor-wide extreme market condition) at the close eight times. However, because the DMM does not know what the actual imbalance will be until 4 p.m., during that time NYSE solicited offsetting interest for only one security on one such trading day.

appropriate. Thus, the Commission approves Rule 123C(8)(a)(1) on a Pilot basis, to end six months after the date of this order.

The Commission finds the proposal to permanently establish the provisions allowing for temporary suspension of Rule 123C's restriction on canceling or reducing market-at-the-close and limit-at-the-close orders to be consistent with the Act. The Exchanges' ability to suspend these restrictions is narrowly drawn—it would only affect MOC or LOC orders that are both clearly erroneous and would cause a significant dislocation in the closing price—in order to ensure its use will be consistent with the removal of impediments to, and perfection of the mechanism of, free and open markets on the Exchanges. Similarly, the requirement for overview by an Executive Floor Governor or qualified NYSE Euronext employee should help to ensure that only in extreme situations involving significant price dislocation at the close are the provisions of Rule 128(C)(8) employed.

Finally, given that the Exchanges anticipate their uses of Rule 123C(8) to suspend Exchange rules will be infrequent and, moreover, given the quick decisions required in many cases where an extreme market condition is declared, the Commission accepts the Exchanges' assertion that requiring the Exchange to notify Commission staff in advance may be unduly burdensome. Accordingly, the Commission finds the proposed amendment to Rule 48(c)(2), requiring each Exchange to notify Commission staff of the declaration of an extreme market condition as soon as practicable after the fact, to be consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule changes, as amended (SR–NYSE–2009–18 and SR–NYSEAltr–2009–15) be, and they hereby are, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–8878 Filed 4–17–09; 8:45 am]

BILLING CODE 8010–01–P

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59747; File No. SR–NYSEArca–2009–20]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Listing and Trading of the Safety First Trust Certificates Linked to the S&P 500® Index

April 10, 2009.

On March 6, 2009, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange''), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities''), filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade the Safety First Trust Series 2009–1, Principal-Protected Trust Certificates Linked to the S&P 500® Index (''Certificates'').[3] The proposed rule change was published in the **Federal Register** on March 19, 2009.[4] The Commission received no comments on the proposal. This order approves the proposed rule change on an accelerated basis.

I. Description of the Proposal

NYSE Arca proposes to list and trade the Certificates under NYSE Arca Equities Rule 5.2(j)(7), which governs the listing of Trust Certificates.[5] The Certificates are preferred securities of Safety First Trust Series 2009–1 (''Trust'') and will mature on a specified date in 2014 (''Maturity Date''). Investors will receive at maturity for each certificate held intact an amount in cash equal to $10 plus a ''Supplemental Distribution Amount,'' which may be positive or zero. The Supplemental Distribution Amount will be based on the percentage change of the value of the S&P 500 Index (''Index'') during the term of the Certificates. The Supplemental Distribution Amount for each Certificate will equal the product of (a) $10, (b) the percentage change in the value of the Index, and (c) the Participation Rate, which is 90%–100%,[6] provided that the Supplemental Distribution Amount will not be less than zero.[7] A holder of the Certificates has an interest in two separate securities of Citigroup Funding Inc., the issuer of the Certificates: (1) Equity index participation securities; and (2) equity index warrants.

Additional information about the Trust and the Certificates, including without limitation, the Maturity Date, valuation and pricing dates, equity index participation securities, equity index warrants, and risks can be found in the Notice and the Registration Statement.

II. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act[8] and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[10] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission finds that the proposal to list and trade the Certificates on the Exchange is consistent with

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Registration Statement, Safety First Trust Series 2009–1, dated October 31, 2008 (Nos. 333–154914, 154914–08, and 154914–11); Registration Statement for Safety First Trust Series 2009–1, dated February 18, 2009 (Nos. 333–157386 and 333–157386–01) (collectively, ''Registration Statement'').

[4] *See* Securities Exchange Act Release No. 59562 (March 12, 2009), 74 FR 11794 (''Notice'').

[5] Trust Certificates pay an amount at maturity based upon the performance of an underlying index or indexes of equity securities (''Equity Index Reference Asset''); instruments that are direct obligations of the issuing company, either exercisable throughout their life (*i.e.,* American style) or exercisable only on their expiration date (*i.e.,* European style), entitling the holder to a cash settlement in U.S. dollars to the extent that the foreign or domestic index has declined below (for a put warrant) or increased above (for a call warrant) the pre-stated cash settlement value of the index (''Index Warrants''); or a combination of two or more Equity Index Reference Assets or Index Warrants. *See* NYSE Arca Equities Rules 5.2(j)(7)(i)–(iii).

[6] The Participation Rate will be determined at the time of issuance of the Certificates.

[7] The Trust payments will not be guaranteed pursuant to a financial guaranty insurance policy. *See* Commentary .10 to NYSE Arca Equities Rule 5.2(j)(7).

[8] 15 U.S.C. 78f.

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

Section 11A(a)(1)(C)(iii) of the Act,[11] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. The Exchange will disseminate quotation and last-sale data information via the Consolidated Tape. The value of the Index is calculated on at least a 15-second basis and is widely disseminated by major market data vendors and financial publications.

The Commission further believes that the proposal to list and trade the Certificates is reasonably designed to promote fair disclosure of information that may be necessary to price the Certificates. If the value of the Index is not being disseminated as required, the Exchange may halt trading during the day on which the interruption first occurs. If such interruption persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. The Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in Trust Certificates.[12] Standard & Poor's (''S&P''),[13] which publishes the Index, is not a registered broker-dealer, and Citigroup Funding, Inc. is not affiliated with S&P. With respect to any index upon which the value of an issue of Trust Certificates is based and that is maintained by a broker-dealer, the Exchange would require that such broker-dealer erect a ''firewall'' around personnel responsible for the maintenance of such index or who have access to information concerning adjustments to the index, and the index would be required to be calculated by a third party who is not a broker-dealer. In addition, the Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees.

The Certificates will be subject to the requirements of NYSE Arca Equities Rule 5.2(j)(7), including the continued listing criteria. Additionally, NYSE Arca states that: (1) At least one million publicly held trading units will be issued prior to listing and trading on the Exchange, with at least 400 public beneficial holders; (2) the issuer, Citigroup Funding, Inc., has total assets of at least $100 million and a net worth of at least $10 million; and (3) the issuer will be required to have either (a) a minimum tangible net worth of $250,000,000, or (b) a minimum tangible net worth of $150,000,000 and the original issue price of the Certificates, combined with all of the issuer's other Trust Certificates listed on a national securities exchange or otherwise publicly traded in the United States, must not be greater than 25% of the issuer's tangible net worth at the time of issuance.[14]

Further, the Exchange has represented that the Certificates are equity securities subject to the Exchange's rules governing the trading of equity securities, including the Exchange's equity margin rules. In support of this proposal, the Exchange has made the following representations:

(1) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Certificates in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members of the ISG.

(2) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Certificates. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and exchanges of Trust Certificates; (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading an issue of Trust Certificates; (c) trading hours; and (d) trading information. In addition, the Information Bulletin will reference that an issue of Trust Certificates is subject to various fees and expenses described in the applicable prospectus.

This approval order is based on the Exchange's representations.

III. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[15] for approving the proposal prior to the thirtieth day after the date of publication of the Notice in the **Federal Register**. The Commission notes that it has previously approved for listing and trading on the Exchange other issues of Trust Certificates issued by Citigroup Funding, Inc. based on the Index that have similar characteristics and payout provisions to the Certificates.[16] In addition, no comments were received on the proposed rule change during the 21-day comment period, and the Commission believes that the Exchange's proposal to list and trade the Certificates under NYSE Arca Equities Rule 5.2(j)(7) does not present any novel or significant regulatory issues. The Commission believes that accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for Trust Certificates.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–NYSEArca–2009–20) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–8961 Filed 4–17–09; 8:45 am]

BILLING CODE 8010–01–P

[11] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[12] Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in Trust Certificates inadvisable. These may include: (1) The extent to which trading is not occurring in the underlying securities; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

[13] S&P is a division of The McGraw-Hill Companies, Inc.

[14] The Commission notes that the foregoing criteria relating to the issuance and the issuer are substantially similar to the requirements applicable to Index-Linked Securities. *See* NYSE Arca Equities Rule 5.2(j)(6)(A).

[15] 15 U.S.C. 78s(b)(2).

[16] *See* Securities Exchange Act Release No. 59051 (December 4, 2008), 73 FR 75155 (December 10, 2008) (SR–NYSEArca–2008–123) (order approving NYSE Arca Equities Rule 5.2(j)(7) and listing on the Exchange of 14 issues thereunder).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59763; File No. SR–OCC–2009–06]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Accommodate the Clearance and Settlement of Metals Futures and Options on Metals Futures Traded on NYSE Liffe

April 14, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 25, 2009, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared

[1] 15 U.S.C. 78s(b)(1).

primarily by OCC. OCC filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act [2] and Rule 19b–4(f)(4) [3] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the rule change is to accommodate the clearance and settlement of: (i) 100 oz. gold futures, 5,000 oz. silver futures, ''mini'' gold futures, and ''mini'' silver futures (collectively, ''Metals Futures'') and (ii) options on 100 oz. gold futures and on 5,000 oz. silver futures (collectively, ''Options on Metals Futures'') traded on NYSE Liffe.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Metals Futures

The primary purpose of this proposed rule change is to revise OCC's By-Laws and Rules (collectively, the ''Rules'') to accommodate the clearance and settlement of Metals Futures and Options on Metals Futures traded by NYSE Liffe.[5] Delivery of the metals underlying the Metals Futures will be made through the facilities of NYSE Liffe by delivery of ''vault receipts'' (or, in the case of the ''mini'' futures contracts, through delivery of electronic ''warehouse depository receipts'') representing the underlying metals. Delivery is required upon maturity of any Metals Future that has not been closed out in an exchange transaction prior to the close of trading on the last trading day for the contract. In addition, delivery may be made, at the election of the seller of a Metals Future, on any business day during the delivery month. Delivery will be initiated by the submission to NYSE Liffe by the clearing member with a short position in the Metals Future of a notice of an Intent to Deliver. Obligations to take delivery of the underlying metal which is the subject of an Intent to Deliver will be assigned by NYSE Liffe to clearing members with long positions in the same Metals Future, and NYSE Liffe will notify OCC of the delivery and payment obligations of clearing members resulting from Intents to Deliver. Delivery of the vault receipts will be made through NYSE Liffe's facilities on the second day after submission of the Intent to Deliver or on maturity date, as applicable. Payment will be made through OCC's systems on this same date. Although delivery of the vault receipts is not made through OCC's systems, the Clearance and Settlement Services Agreement between OCC and NYSE Liffe (''Clearing Agreement'') provides that NYSE Liffe is deemed to represent to OCC in connection with its notification to OCC of an Intent to Deliver that it holds vault receipts sufficient to satisfy the delivery obligation of the clearing member submitting the Intent to Deliver. This provision is intended to ensure that delivery has been made by the delivering clearing member before OCC credits the purchase price to this clearing member. In addition, OCC will have a lien on the vault receipts from the time the Intent to Deliver has been submitted until physical delivery against payment has been made. OCC will collect initial margin and pay and collect variation margin for Metals Futures as in the case of any other futures contract.

The last trading day for Metals Futures is the third to last business day of the maturity month. The trading day for Metals Futures is 22 hours long and spans two calendar days. As a result, a clearing member may sell a Metals Future to offset a long position before an assignment is made or after an assignment has been made but before the clearing member learns of it. In this situation, the sale will be deemed to have created a new short position rather than closing out the long position. However, clearing members in this situation will be able to ''retender'' the underlying metals in satisfaction of their delivery obligations with respect to the short position.

OCC proposes to expand Chapter 13 of the Rules to accommodate: (i) The settlement of Metals Futures by physical delivery; (ii) the granting of requests for offsets between full-sized and mini-sized Metals Futures in the same contract month and year; (iii) the retendering of a delivery in the event a clearing member is assigned an Intent to Deliver with respect to a long position that the clearing member has closed out; and (iv) the procedures to be followed in the event a clearing member fails to make physical delivery or payment at delivery settlement. Rule 1308 provides that, in the event of such a failure, OCC will make payment to the non-defaulting clearing member in an amount equal to the damages, as determined by OCC, incurred by the non-defaulting clearing member from such failure. The amount of the damages is charged by OCC to the defaulting clearing member.

2. Options on Metals Futures

Options on Metals Futures are American style. The last trading day for Options on Metals Futures is normally the fifth business day prior to the first calendar day of the delivery month for the underlying future. Submission of exercise notices at expiration and at other than expiration will be governed by existing OCC Rules, as supplemented by proposed Rule 1305. At expiration, OCC will apply exercise-by-exception (''Ex-by-Ex'') processing procedures to expiring Options on Metals Futures. Under Ex-by-Ex processing procedures, a clearing member is deemed to have submitted exercise notices for options that are in the money by a specified amount (i.e., exercise threshold amount) unless the clearing member instructs OCC otherwise. The exercise threshold amount for Options on Metal Futures will be set at $.001. Article XII, Section 9 of the By-Laws would be amended to provide that the expiration time for futures and commodity options traded on NYSE Liffe will be 7 p.m. Central Time, which is different from the expiration time for other such options. OCC is also proposing to amend Rule 801 to permit clearing members to submit exercise notices for Options on Metals Futures on the business day prior to expiration. In light of the 22-hour trading day for the Metals Contracts, filing, revoking, or modifying exercise notices, or submitting contrary exercise instructions in connection with Ex-by-Ex processing for Options on Metal Futures and certain other classes of contracts identified by OCC after applicable deadlines will be prohibited.

NYSE Liffe will require that Metals Contracts be held separately from

[2] 15 U.S.C. 78s(b)(3)(A)(iii).

[3] 17 CFR 240.19b–4(f)(4).

[4] The Commission has modified the text of the summaries prepared by OCC.

[5] The proposed amendments are also designed to accommodate cash-settled futures that NYSE Liffe intends to introduce shortly after the transition of clearing services to OCC.

contracts traded on other exchanges, which OCC understands is intended to prevent the offset for margin purposes of Metals Contracts against contracts traded on other exchanges. OCC is proposing to add an interpretation and policy to its Rules stating that futures markets may impose such a requirement and explaining how clearing members may satisfy this requirement. OCC will provide notice to clearing members that NYSE Liffe has such a requirement. Additional changes are proposed to introduce the terminology necessary to support clearance and settlement of Metals Contracts, allow for the use of cash settlement in the event of a shortage of an underlying interest, and require that clearing members holding positions in Metals Contracts be members of the relevant exchange. The latter point is necessary because delivery is affected through the facilities of the exchange.

OCC assumed the clearing function for Metals Contracts traded on NYSE Liffe from CME Clearing during the last weekend of March 2009. In connection therewith, OCC and NYSE Liffe entered into the Clearing Agreement, which is generally similar to corresponding agreements between OCC and other futures exchanges but contains specific provisions concerning the delivery settlement since vault or warehouse depository receipts, as applicable, will be delivered through the facilities of NYSE Liffe. It further contains additional commercial terms relative to the treatment of trade data. OCC has prepared an information memorandum specifying the obligations of clearing members in connection with such transitions. The memorandum will be distributed to all clearing members and will be considered an OCC rule.

The proposed rule change is consistent with Section 17A of the Act,[6] as amended, because it is designed to permit OCC to perform clearing services for products that are subject to the jurisdiction of the Commodity Futures Trading Commission without adversely affecting OCC's obligations with respect to the prompt and accurate clearance and settlement of securities transactions or the protection of securities investors and the public interest. The proposed rule change applies substantially the same rules and procedures to transactions in Metals Futures and Metals Options as OCC applies to transactions in security futures and securities options.

[6] 15 U.S.C. 78q–1.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. OCC will notify the Commission of any written comments received by OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(4)[8] thereunder because the proposed rule change effects a change in an existing service of a registered clearing agency that: (i) Does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty 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–OCC–2009–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Elizabeth M. Murphy, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2009–06. 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 filings also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.optionsclearing.com/publications/rules/proposed_changes/sr_occ_09_06.pdf.* 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–OCC–2009–06 and should be submitted on or before May 11, 2009.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–8963 Filed 4–17–09; 8:45 am]

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[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(4).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59764; File No. SR–OCC–2009–07]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Revise Fee Schedule

April 14, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act''),[1] notice is hereby given that on April 9, 2009, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to revise OCC's fee schedule for OneChicago, LLC (''ONE'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under OCC's Standard Fee Schedule, clearing members pay OCC's standard clearing fees and are eligible to receive rebates of excess clearing fees when and as determined by OCC's Board of Directors. When negotiating its clearing agreement with OCC, ONE negotiated the right to pay clearing fees based on an Alternate Fee Schedule that was ineligible for rebates in order to avoid the uncertainty of a rebate that might be less than expected.[3]

In 2005, OCC began to charge ONE clearing fees for trades where both sides are cleared by OCC clearing members based on OCC's rebate-eligible Standard Fee Schedule.[4] Since 2005, OCC adopted further discounts to its Standard Fee Schedule such that the fees charged to ONE under the Alternate Fee Schedule for trades where one side is cleared by CME are now substantially higher than OCC's discounted fees in effect for other trades.[5]

In response to a request by ONE, OCC has agreed to reduce OCC's fees for trades on ONE where one side is cleared by CME. Accordingly, effective April 1, 2009, OCC will charge ONE clearing fees for trades where one side is cleared through CME based on the Standard Fee Schedule as in effect from time to time.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(D) of the Act[6] and the rules and regulations thereunder applicable to OCC because it provides for the equitable allocation of reasonable dues, fees, and other charges among OCC's participants by providing the benefit of OCC's discounted, rebate-eligible clearing fee schedule to more trades effected on a market for which OCC provides clearance and settlement services.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will have any impact on or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. OCC will notify the Commission of any written comments received by OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and Rule 19b–4(f)(2)[8] thereunder because the proposed rule change establishes or changes a due, fee, or other charge applicable only to a participant. At any time within sixty 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–OCC–2009–07 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–OCC–2009–07. 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 Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of OCC and on

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] Under the Alternate Fee Schedule, different fees were charged to ONE when Chicago Mercantile Exchange (''CME''), as an associated clearinghouse (''ACH''), was on one or both sides of the trades.

[4] There were no changes made, however, to the fees charged where CME, as an ACH, was on one or both sides of a trade. In such cases, the Alternate Fee Schedule remained in effect.

[5] OCC's current discounted fee schedule is as follows:

3¢ per contract for trades of 1 to 500 contracts,

2.4¢ per contract for trades of 501 to 1,000 contracts,

$18.00 per trade (capped) for trades of 1,001 to 2,000 contracts, and

$18.00 per trade (capped) for trades larger than 2,001 contracts.

Under the Alternate Fee Schedule, fees for trades where one side of the trade is cleared by CME are as follows:

5¢ per contract for trades of 1 to 500 contracts,

4.25¢ per contract for trades of 501 to 1,000 contracts,

3.5¢ per contract for trades of 1,001 to 2,000 contracts,

$61.00 per trade for trades larger than 2,000 contracts.

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

OCC's Web site at *http://www.optionsclearing.com/publications/rules/proposed_changes/sr_occ_09_07.pdf.* 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–OCC–2009–07 and should be submitted on or before May 11, 2009.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–8964 Filed 4–17–09; 8:45 am]

BILLING CODE 8010–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59756; File No. SR–ISE–2009–08]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Granting Approval of Proposed Rule Change Relating to Changes to the Third Amended and Restated Limited Liability Company Operating Agreement of Direct Edge Holdings LLC

April 13, 2009.

I. Introduction

On February 27, 2009, the International Securities Exchange, LLC (the ''Exchange'' or ''ISE''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] this proposed rule change. On March 3, 2009, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on March 10, 2009.[3] The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description

Maple Merger Sub, LLC (''Merger Sub''), a wholly-owned subsidiary of Direct Edge Holdings, LLC (''Direct Edge''), currently owns and operates a marketplace for the trading of U.S. cash equity securities by Equity Electronic Access Members of ISE under the rules of ISE, as a facility, as that term is defined in Section 3(a)(2) of the Act, of ISE (the ''Equity Facility'').[4] As a facility of ISE, the Equity Facility is subject to regulation by ISE and oversight by the Commission. In addition, because Direct Edge is the sole owner of the entity that operates the Equity Facility, ISE must review any amendments to Direct Edge's governing documents, including the Third Amended and Restated Limited Liability Company Operating Agreement of Direct Edge Holdings LLC (''Third Amended and Restated DE Operating Agreement''), to determine whether it must be filed with, or filed with and approved by, the Commission before it may become effective under Section 19 of the Act.[5] Accordingly, ISE reviewed the proposed changes to the Third Amended and Restated DE Operating Agreement and determined that such changes were required to be filed with and approved by the Commission, consistent with the requirements in Section 15.2 of the Third Amended and Restated DE Operating Agreement.

ISE, on behalf of Direct Edge, proposes to amend and restate the Third Amended and Restated DE Operating Agreement to decrease from 7.5% to 5% the percentage ownership interest in Direct Edge that the ISE Stock Exchange Consortium Members [6] must retain in order to retain the right to designate a Manager to the Direct Edge Holdings Board of Managers. ISE also proposes that if any ISE Stock Exchange Consortium Member elects to sell its ownership interest in Direct Edge, it must first offer to sell such interest to the non-selling ISE Stock Exchange Consortium Members to allow such non-selling ISE Stock Exchange Consortium Members to collectively maintain their current percentage ownership interest. In addition, ISE proposes to make other non-substantive clean-up changes necessary to reflect that the Third Amended and Restated DE Operating Agreement, as amended, will become the Fourth Amended and Restated Limited Liability Company Operating Agreement of Direct Edge Holdings, LLC.

III. Commission's Findings and Order Granting Approval of the Proposed Rule Change

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.[7] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,[8] which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and the rules and regulation thereunder, and Section 6(b)(5) of the Act [9] in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest. The Commission believes that the proposed changes to the Third Amended and Restated DE Operating Agreement should not adversely affect the ability of ISE and the Commission to fulfill their respective regulatory obligations under the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change, as amended (SR–ISE–2009–08) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–8962 Filed 4–17–09; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59492 (March 3, 2009), 74 FR 10322 (''Notice'').

[4] *See* Exchange Act Release No. 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (SR–ISE–2008–85) (order approving a proposed rule change, as modified by Amendment No. 1, relating to the purchase by ISE Holdings of an ownership interest in Direct Edge).

[5] *See* Third Amended and Restated DE Operating Agreement, Section 15.2.

[6] Currently, the ISE Stock Exchange Consortium Members are DB US Financial Markets Holding Corporation, LabMorgan Corporation, Merrill Lynch L.P. Holdings, Inc., Nomura Securities International, Inc., and Sun Partners LLC. *See* Notice, supra note 3. The ISE Stock Exchange Consortium Members formerly were minority unitholders of the ISE Stock Exchange, LLC. *See id.* Currently, the ISE Stock Exchange Consortium Members have a collective ownership interest of 8.76% in Direct Edge.

[7] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(1).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59737; File No. SR–NYSEArca–2009–27)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. Amending Rule 6.62 To Offer WAIT Modifier, PNP Plus Orders and Allow the Use of Attributable Orders

April 9, 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 April 6, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''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 the Exchange. 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 Rule 6.62 to (i) offer the ''WAIT'' order modifier for use with orders entered into the NYSE Arca System; (ii) allow the use of attributable orders; and (iii) offer PNP Plus orders. The WAIT modifier is designed to enhance compliance with the order exposure requirement of NYSE Arca Rule 6.47A. Attributable orders allow users to voluntarily display their firm IDs on the orders. PNP Plus orders allow Users greater control over the circumstances of order execution. The text of the proposed rule change is attached as Exhibit 5 to the 19b–4 form. 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

WAIT Orders

On January 5, 2009, the Securities and Exchange Commission approved NYSE Arca's proposal to reduce the order exposure requirement of Rule 6.47A from three seconds to one second.[3] Rule 6.47A prohibits Users from executing as principal orders they represent as agent unless (i) agency orders are first exposed on the Exchange for at least one (1) second or (ii) the User has been bidding or offering on the Exchange for at least one (1) second prior to receiving an agency order that is executable against such bid or offer. This Rule ensures that a User does not gain at the expense of customers by depriving them of the opportunity to interact with orders in the NYSE Arca System.

Users that enter agency orders into the NYSE Arca System have noted the proposal by the NASDAQ Options Market (''NOM'') for a WAIT order modifier,[4] and have asked the Exchange to develop an automated mechanism that permits them to enter orders into the NYSE Arca System as soon as the orders are received but that also prevents them from interacting with their own agency orders in violation of the order exposure requirement. NYSE Arca believes this is an efficient use of resources because it will allow NYSE Arca to program its System once rather than have multiple Users re-program their systems.

In order to accomplish that request, NYSE Arca has developed the ''WAIT'' modifier which can be appended to an order prior to entry into the NYSE Arca System. The WAIT modifier will instruct the System to wait precisely one second from the time of order entry before processing the order in accordance with the other instructions attached to that order. Upon expiration of the one-second WAIT period, the System will time stamp, route, display, or execute the order in accordance with the entering party's other order entry instructions. Thus, the WAIT modifier does not affect the existing display, routing, or execution priorities of the NYSE Arca System or any other obligations of Users as set forth in the NYSE Arca rules.

Orders designated with the WAIT modifier are independent of all other orders, including an agency order that is being exposed pursuant to Rule 6.47A. WAIT orders are not associated or in any way linked to another order entered into the System, as is the case with certain facilitation orders at other options exchanges. The System will process the WAIT order even if a customer order entered into the System simultaneously with the WAIT order has been executed or cancelled during the WAIT second, unless the WAIT order itself is modified or cancelled pursuant to System rules. As a result, there is no guarantee that an order designated as WAIT will execute against another specific order. Use of the WAIT modifier is completely voluntary.

Attributable Orders

The Exchange proposes to modify Rule 6.62 (Certain Types of Orders Defined) to allow for the submission of attributable orders. These orders allow users to voluntarily display their firm IDs on the orders.[5] The NASDAQ Options Market, LLC (''NOM'') currently allows its participants to submit attributable orders (*See* NOM Chapter VI, Section (1)(d)(1)).[6] As proposed, the Exchange may limit the processes for which attributable orders will be available. This proposal is responsive to requests by Exchange Users who believe that enhanced executions may be obtained if firm ID is allowed on orders (on a voluntary basis).

PNP Plus

As part of its continuing efforts to enhance participation on the Exchange, and provide additional tools to control the circumstances in which orders are executed, NYSE Arca proposes to adopt an order type known as ''PNP Plus''. PNP Plus Orders are currently offered on the NYSE Arca Equities market.[7]

A PNP Order is an order entered into the NYSE Arca System for execution on the Exchange, but not for routing to away markets. Because of the condition to not route PNP orders, they are cancelled if they would otherwise lock or cross the NBBO.

Customers have requested that the exchange develop a PNP Order type that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 34–59194 Order Granting Accelerated Approval of SR–NYSEArca–2008–135.

[4] *See* SR–NASDAQ–2009–017.

[5] A Firm ID is a 5 character identification code (letters and/or numbers). Each OTP Holder is assigned its own unique Firm ID.

[6] The Chicago Board Options Exchange (''CBOE'') also allows attributable orders. *See* Exchange Act Release No. 34–58394, Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Adopting A New Order Type, File No. SR–CBOE–2008–85.

[7] *See* NYSE Arca Equities Rule 7.31(w)(1).

would, if marketable against the NBBO but not executable on the Exchange, be represented in the Exchange's disseminated market by re-pricing the order. Specifically, if posting a PNP Plus order or a portion there of would otherwise result in locking or crossing the NBBO, the PNP order would automatically be re-priced to be one MPV greater than the NBBO bid (for sell orders) or one MPV less than the NBBO offer (for buy orders), thus avoiding locking or crossing the NBBO. The re-priced bid or offer is included in the Exchange's disseminated quote.

If the NBBO changes, and the order is marketable against the new NBBO, but still not executable on the Exchange, the PNP Plus order would again be re-priced to be one MPV away from the NBBO. When re-priced, the PNP Plus order is re-ranked at the new price. The order would continue to be re-priced and re-ranked with each change in the NBBO, until such time that the NBBO moves such that the original price of the PNP Plus Order would no longer lock or cross the NBBO. The PNP Plus Order would then automatically be re-priced back to its original limit price and re-ranked in the Consolidated Book. The PNP Plus Order will not be re-priced if the order becomes locked or crossed by another market.

The Exchange believes that the implementation of the aforementioned rule change modifying NYSE Arca order entry options will enhance compliance with NYSE Arca rules, preserve order execution opportunities on the NYSE Arca market, provide greater control over the circumstances of executions, and provide an opportunity for enhanced executions.

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, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest, by providing investors with additional order types that allow greater flexibility in maintaining compliance with the rules, or providing an opportunity for enhanced executions, or managing the circumstances in which their orders are executed.

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 [8] and Rule 19b–4(f)(6) thereunder.[9] 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 [10] and Rule 19b–4(f)(6)(iii) thereunder.[11]

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2009–27 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–NYSEArca2009–27. 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 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–NYSEArca–2009–27 and should be submitted on or before May 11, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–8960 Filed 4–17–09; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 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 this requirement.

[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 6587]

Notice of Information Collection Under Emergency Review: DS–7655, Iraqi Citizens and Nationals Employed by Federal Contractors, Grantees, and Cooperative Agreement Partners, OMB Control Number 1405–xxxx

AGENCY: Department of State.

ACTION: Notice of request for emergency OMB approval.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Iraqi Citizens and Nationals Employed by Federal Contractors, Grantees, and Cooperative Agreement Partners.
- *OMB Control Number:* OMB Control Number: None.
- *Type of Request:* Emergency Review.
- *Originating Office:* A/LM.
- *Form Number:* DS–7655.
- *Respondents:* Federal contractors, grantees, and cooperative agreement partners of the Department of State.
- *Estimated Number of Respondents:* 50.
- *Estimated Number of Responses:* 200.
- *Average Hours per Response:* .5.
- *Total Estimated Burden:* 100 hours.
- *Frequency:* On occasion.
- *Obligation to respond:* Mandatory.

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by May 15, 2009. If granted, the emergency approval is only valid for 180 days. Comments should be directed to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), Washington, DC 20503. Fax number 202–395–6974.

During the first 60 days of the emergency approval period, a regular review of this information collection is also being undertaken. The agency requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Comments will be accepted until 60 days from the date that this notice is published in the **Federal Register**. You may submit comments by any of the following methods:

- *E-mail: lowerrs@state.gov.*
- *Mail (paper, disk, or CD–ROM submissions):* Rob Lower, Department of State, A/LM Room 525, P.O. Box 9115 Rosslyn Station, Arlington, VA 22219.
- *Fax:* 703–875–4731.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Rob Lower, Department of State, A/LM Room 525, P.O. Box 9115 Rosslyn Station, Arlington, VA 22219, who may be reached at 703–875–5822 or at *lowerrs@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of Proposed Collection

The Refugee Crisis in Iraq Act of 2007 was included in the National Defense Authorization Act of 2008 which became Public Law 110–181 on 28 January 2008. Section 1248(c) of this Act requires the Secretary of State to request from each Department of State prime contractor, grantee, or cooperative agreement partner that has performed work in Iraq since March 20, 2003, under a contract, grant, or cooperative agreement with the Department that is valued in excess of $25,000, information that can be used to verify the employment of Iraqi citizens and nationals by such contractor, grantee or cooperative agreement partner. To the extent possible, biographical information, to include employee name, date(s) of employment, biometric, and other data must be collected and used to verify employment for the processing and adjudication of refugee, asylum, special immigrant visa, and other immigration claims and applications.

Methodology

The Department of State will collect the information via electronic submission.

Additional Information

This information collection will be used to fulfill the requirements under Section 1248(c) of the National Defense Authorization Act of 2008 (Pub. L. 110–181).

Dated: April 13, 2009.

William H. Moser,

Deputy Assistant Secretary, Office of Logistics Management, Bureau of Administration, Department of State.

[FR Doc. E9–9023 Filed 4–17–09; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice 6586]

Waiver of Restriction on Assistance to Central Government of Egypt

Pursuant to section 7088(c)(2) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2009 (Division H, Pub. L. 111–8) (''the Act''), and Department of State Delegation of Authority Number 245–1, I hereby determine that is important to the national interest of the United States to waive the requirements of section 7088(c)(1) of the Act with respect to the Government of Egypt, and I hereby waive such restriction.

This determination shall be reported to the Congress, and published in the **Federal Register.**

Dated: April 2, 2009.

James B. Steinberg,

Deputy Secretary of State, Department of State.

[FR Doc. E9–9039 Filed 4–17–09; 8:45 am]

BILLING CODE 4710–31–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–364 (Sub-No. 16X)]

Mid-Michigan Railroad, Inc.—Abandonment Exemption—in Muskegon County, MI

Mid-Michigan Railroad, Inc. (MMRR), has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 3.35-mile line of railroad between milepost 191.40 and milepost 194.75, at the end of the

line, in Muskegon County, MI.[1] The line traverses United States Postal Service Zip Codes 49441, 49442, and 49444.

MMRR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 20, 2009, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 30, 2009. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 11, 2009, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to MMRR's representative: Louis E. Gitomer, Law Offices of Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

MMRR has filed a combined environmental report and historic report which addresses the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by April 24, 2009. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), MMRR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by MMRR's filing of a notice of consummation by April 20, 2010, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: April 10, 2009.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–8718 Filed 4–17–09; 8:45 am]

BILLING CODE 4915–01–P

[1] The Board previously exempted the abandonment of the 3.35-mile line in *Mid-Michigan Railroad, Inc.—Abandonment Exemption—in Muskegon County, MI*, STB Docket No. AB–364 (Sub-No. 13X) (STB served Dec. 10, 2007). However, the authority to abandon the line expired because MMRR did not file its notice of consummation by the December 10, 2008 deadline. In a decision served on February 25, 2009, MMRR was advised that, should it wish to abandon the line, it must seek appropriate Board authority with a new filing.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,500. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on January 16, 2009 (74 FR 3134). The agency received no comments. This is a request for an extension of an existing collection.

DATES: Comments must be submitted on or before May 20, 2009.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Rosalind Proctor, NHTSA, 1200 New Jersey Avenue, SE., Room W43–302, NVS–131, Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–0846.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 49 CFR 575—Consumer Information Regulations (sections 103 and 105).

OMB Control Number: 2127–0049.

Form Number: None.

Affected Public: Vehicle manufacturers.

Requested Expiration Date of Approval: Three years from approval date.

Abstract: NHTSA must ensure that motor vehicle manufacturers comply with 49 CFR Part 575, Consumer Information Regulation part 575.103 Truck-camper loading and Part 575.105 Utility Vehicles. Part 575.103, requires that manufacturers of light trucks that are capable of accommodating slide-in campers provide information on the cargo weight rating and the longitudinal limits within which the center of gravity for the cargo weight rating should be

located. Part 575.105, requires that manufacturers of utility vehicles affix a sticker in a prominent location alerting drivers that the particular handling and maneuvering characteristics of utility vehicles require special driving practices when these vehicles are operated.

Estimated Annual Burden: 300 hours.

Number of Respondents: 15.

Based on prior years' manufacturer submissions, the agency estimates that 15 responses will be submitted annually. Currently 12 light truck manufacturers comply with 49 CFR part 575. These manufacturers file one response annually and submit an additional response when they introduce a new model. Changes are rarely filed with the agency, but we estimate that three manufacturers will alter their information because of model changes. The light truck manufacturers gather only pre-existing data for the purposes of this regulation. Based on previous years' manufacturer information, the agency estimates that light truck manufacturers use a total of 20 hours. Specifically, manufacturers use 9 hours to gather and arrange the data in its proper format, 4 hours to distribute the information to its dealerships and attach labels to light trucks that are capable of accommodating slide-in campers, and 7 hours to print the labels and utility vehicle information in the owner's manual or a separate document included with the owner's manual. The estimated annual burden hour is 300 hours. This number reflects the total responses (15) times the total hours (20). Prior years' manufacturer information indicates that it takes an average of $35.00 per hour for professional and clerical staff to gather data, distribute and print material. Therefore, the agency estimates that the cost associated with the burden hours is $10,500 ($35.00 per hour x 300 burden hours).

Estimated Annual Cost: $2,262,631.

The annual cost is based on light truck production. In model year 2008, light truck manufacturers produced about 6,464,659 units. By assuming that all light truck manufacturers (both large and small volume manufacturers) incur the same cost, the total annual cost to comply with statutory requirements, § 575.103 and § 575.105 is $2,262,631 (or $0.35 each unit).

Comments Are Invited On:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility.
- Whether the Department's estimate for the burden of the proposed information collection is accurate.
- Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued on: April 14, 2009.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E9–8950 Filed 4–17–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current inibrination collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 3, 2008, vol. 73, no. 233, page 73688. The data from this report is used to target those leading outsource maintenance providers that may have a higher risk level which in turn would merit an increase of FAA surveillance.

DATES: Please submit comments by May 20, 2009.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Air Carriers Listing of Leading Outsource Maintenance Providers.

Type of Request: Extension without change of a currently approved collection.

OMB Control Number: 2120–0708.

Form(s): There are no FAA forms associated with this collection.

Affected Public: An estimated 121 Respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden per Response: Approximately 4 hours per response.

Estimated Annual Burden Hours: An estimated 484 hours annually.

Abstract: The data from this report is used to target those leading outsource maintenance providers that may have a higher risk level which in turn would merit an increase of FAA surveillance.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility the accuracy of the Department's estimates of the burden of the proposed information collection ways to enhance the quality, utility, and clarity of the information to be collected and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on April 14, 2009.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E9–9044 Filed 4–17–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Government/Industry Air Traffic Management Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Charter Renewal.

SUMMARY: The FAA is issuing this notice to advise the public of the renewal of the RTCA Charter (FAA Order 1110.77S) for two years, effective April 2, 2011. The administrator is the sponsor of the committee. The objective of the advisory committee is to seek solutions to problems involving applied technology (for example, electronics, computers, and telecommunications) to aeronautical operations that impact the future air traffic management system. The solutions are often about

recommended minimum operational performance standards and technical guidance documents that are acceptable to Government, industry, and users. Standards ensure equivalent performance of the same generic equipment built by different manufacturers. Government regulatory and procurement practices reference or use RTCA standards (with or without change). The Secretary of Transportation has determined that that information and use of committee are necessary in the public interest in connection with the performance of duties imposed on the FAA by law.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org* or the FAA Office of Systems Engineering & Safety, AJP–1, 800 Independence Avenue, SW., Washington, DC: telephone (202) 385–7100; fax (202) 385–7105.

SUPPLEMENTARY INFORMATION: Steering Committee and Special Committee meetings are open to the public and announced in the **Federal Register**, except as authorized by section 10(d) of the Federal Advisory Committee Act.

Issued in Washington, DC, on April 13, 2009.

Francisco Estrada C.,

RTCA Advisory Committee.

BILLING CODE 4910–13–P

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
National Policy

ORDER 1110.77S

04/02/09

SUBJ: RTCA, Inc. (Utilized as an Advisory Committee)

1. Purpose of This Order. This order renews and forms the charter for using RTCA, Inc. (formerly Radio Technical Commission for Aeronautics) and some of its components as an advisory committee. The Federal Aviation Administration (FAA) and other Federal Government members of RTCA, Inc. would use parts of RTCA (for example, the Program Management Committee (PMC), Air Traffic Management (ATM) Advisory Committee and Special Committees) as an advisory committee. The advisory committee functions under Section 3 (2) (C) of the Federal Advisory Committee Act, as amended, 5 U.S.C., App.

2. Audience. This order applies to all members of the RTCA Inc. Advisory Committee and director level organizations at the Washington, DC headquarters and the William J. Hughes Technical Center in Atlantic City, NJ.

3. Where Can I Find This Order? You can find this order on the Directives Management System website: https://employees.faa.gov/tools_resources/orders_notices/.

4. Cancellation. This current order replaces Order 1110.77R, RTCA, Inc. (Utilized as an Advisory Committee) dated March 16, 2007.

5. Background.

a. The RTCA was organized in June 1935 on the initiative of the Department of Commerce and by agreement of interested government and non-government organizations and membership groups. The original objective was to ensure efficient coordination of research efforts in the technical development of aeronautical radio aids.

b. From 1935 until 1991, RTCA continued to function in the form of an unincorporated association of government agencies and industry organizations active in aeronautics. The Radio Technical Commission for Aeronautics was incorporated on November 14, 1991, and its name was changed to RTCA, Inc. The objectives of the organization and use of the Program Management Committee, Air Traffic Management Advisory Committee, and Special Committees as Federal advisory committees remain unchanged. The current membership comprises over 400 domestic and international government agencies, aviation industry associations, companies, and academic institutions. Through this membership, RTCA develops consensus-based recommendations on contemporary operational, technology, policy, procedural, and equipage issues, principally related to implementation of Communication, Navigation, Surveillance and Air Traffic Management operational capabilities.

c. The RTCA is incorporated under the New York Not-For-Profit Corporation Law and is authorized to do business in the District of Columbia. Its status as a tax-exempt organization is recognized by the Internal Revenue Service and the Government of the District of Columbia.

6. Scope. This order describes the extent and manner of use of RTCA, Inc. as an advisory committee under the sponsorship of FAA. It does not describe the details of FAA's relationship to RTCA, Inc. in other respects.

7. Consent and Compliance. The RTCA has consented to its "utilization" as an advisory committee as described in this order and, for activities covered by the Act, has pledged compliance with all requirements as prescribed in Order 1110.30C, Committee Management.

8. Objectives and Scope. The objective of the advisory committee is to seek resolutions to issues and challenges involving air transportation concepts, requirements, operational capabilities, and the associated use of technology and related considerations to aeronautical operations that impact the future air traffic management system.

a. To achieve this, specific objectives include the following:

(1) Coalesce aviation system user and provider requirements in a manner that helps government and industry meet their common objectives and responsibilities.

(2) Analyze and recommend solutions to the challenges that the aviation community faces as it continues to increase safety, security, system capacity, and efficiency.

(3) Develop consensus on relevant solutions to meet user and provider requirements, including development of minimum operational performance standards for electronic systems and equipment that support aviation.

(4) Aid in developing the appropriate material on which to base U.S. positions for International Civil Aviation Organization, International Telecommunication Union, and other international organizations, when requested.

b. The RTCA provides the following two categories of recommendations:

(1) Broad-gauged policy and investment priority recommendations used by the FAA when considering for policy and program decisions.

(2) Performance standards, reports, and guidance documents used by the FAA in regulatory decisions and rulemaking. Government regulatory and procurement practices reference or use RTCA standards (with or without change). The RTCA recommendations are used in the private sector as the basis for development, investment, and other business decisions.

c. The advisory committee will not aid in the coordination or review of safety and certification issues, which are inherently governmental. This does not preclude the procedures and standards work above or efforts to streamline government and industry processes.

9. **Organization.** The RTCA, Inc. comprises a general membership, a chair, vice chair, Board of Directors, Policy Board, Program Management Committee, a president, vice president, and a small staff.

a. The membership comprises over 400 domestic and international government agencies, aviation industry associations, companies, and academic institutions. Currently, there are eight government agencies: the FAA, the Departments of the Army, the Navy, and the Air Force; the Volpe National Transportation Systems Center of the Department of Transportation; the National Aeronautics and Space Administration; the National Geospatial Intelligence Agency; and the Federal Bureau of Investigation. Private sector members include: Air Line Pilots Association, Air Transport Association of America, Aircraft Owners and Pilots Association, Airports Council International-North America, General Aviation Manufacturers Association, National Business Aviation Association, National Air Traffic Controllers Association, Regional Airline Association, aircraft and avionics manufacturers, component suppliers, integrators, and service providers. International associates include: various Civil Aviation Authorities, European Organization for the Safety of Air Navigation, European Organization for Civil Aviation Equipment, Airbus France, NAV Canada, Airservices Australia, France Development Conseil Belgium, Society of Japanese Aerospace Companies, and Swedish Defense Material Administration, among others. Academic associate members include: Applied Research Lab Penn State University, Embry-Riddle Aeronautical University, George Mason University, Imperial College London, Stanford University, The Johns Hopkins University, and University of Alaska Anchorage, among others.

b. The Policy Board establishes RTCA policies and programs and establishes task forces and steering committees, as required. The Program Management Committee, using Special Committees, manages most of the Federal advisory committee-related business of RTCA, Inc. The Program Management Committee establishes Special Committees in response to an identified need by government and industry. Sub-elements of Special Committees (that is working groups) report to the specific committee of which they are a part. The Program Management Committee approves the terms of reference for the special committee; approves the chairs; approves recommendations; reviews reports; and approves, modifies, sends back for additional work, or disapproves these reports. Program Management Committee meetings are open to the public and announced in the Federal Register.

c. Special Committees are a principal means for RTCA to carry out its mission. Membership on Special Committees is open to the public. Special Committees' duration depends on the assigned tasks. Special Committee meetings are open to the public. Notices, including details of the meeting agenda, appear in the Federal Register.

10. Administration.

a. The FAA Air Traffic Organization Chief Operating Officer and the Associate Administrator for Aviation Safety, serve as FAA "ex *officio*," nonvoting members of the RTCA Policy Board. Air Traffic Organization Chief Operating Officer Representatives serve as the Designated Federal Officer (DFO) for general RTCA advisory committee business; other Federal employees serve in this role for the various Special Committee tasks.

b. FAA will keep participation in all levels of RTCA committees to a minimum, serving in an "*ex officio*" capacity as nonvoting members. The DFO for the various committees will determine appropriate FAA participation to ensure further understanding of the subject matter. The FAA officials will not serve as chair or vice chair of any committee. Exceptions to this for Special Committees will require approval of the FAA members of the Program Management Committee.

c. Representatives of non-government RTCA member organizations serve on the committees without government compensation. Members serve in a representative capacity. The employing organization bears all costs related to its participation on such RTCA committees. Appointed members of the RTCA Policy Board, Board of Directors, Program Management Committee, Air Traffic Management Steering Group and Air Traffic Management Advisory Committee, and chairpersons of Special Committees serve as Representative Members, representing a particular interest of his or her employment, education, experience, or affiliation with a specific aviation-related organization (reference DOT/FAA Order 1110.30C, Committee Management, para. 37.a.).

(1) To identify clearly and provide proper disclosure of their specific affiliation or professional interest, appointed members will complete an Advisory Committee Candidate Biographical Information Request, Form DOT F 1120.1 (as described in the DOT/FAA Order 1110.30C, para. 38.a.). A summary of the candidate's professional background and affiliations will also appear on the RTCA web page for each committee. Members must complete a new form DOT F 1120.1, when a change in affiliation occurs.

(2) The RTCA President, FAA Air Traffic Organization Chief Operating Officer, and the Associate Administrator for Aviation Safety will review Air Traffic Management Advisory Committee and Program Management Committee membership yearly to ensure balanced representation for the points of view represented and the roles performed by the committees; that is, that it equitably represents, to the extent feasible, the aviation community.

d. The Program Management Committee will meet approximately quarterly, as required, to carry out its responsibilities. The Air Traffic Management Advisory Committee meets approximately three times a year. Special Committees will meet as required by their workload. The Program Management Committee, Air Traffic Management Advisory Committee, and Special Committee meetings shall comply with all applicable provisions of the Act, including:

(1) The Designated Federal Officer or alternate must be present at a Program Management Committee, Air Traffic Management Advisory Committee, or Special Committee meeting. The FAA sponsor will appoint a full-time government employee as the DFO or alternate.

(2) The DFO or alternate may adjourn any advisory committee meeting, in coordination with the chairperson, when it is in the public's interest.

(3) Program Management Committee, Air Traffic Management Advisory Committee, and Special Committee meetings shall be open to the public and a notice shall appear in the Federal Register at least 15 calendar days before each meeting, except in emergencies. The notice should include the name of the advisory committee, the time, place, purpose of the meeting (including a summary of the agenda), and information stating the meeting will be open to the public. The FAA may use other forms of notice, such as press releases. All RTCA advisory committees will follow the regular advisory committee process in making recommendations to the FAA and will not make recommendations directly to FAA program offices.

(4) The RTCA will publish minutes of each PMC, ATM Advisory Committee, and Special Committee meeting. The official minutes shall include the time and place of the meeting; a list of all attendees, including members, staff, and public observers; a summary of matters discussed and conclusions reached; a reference to reports issued or approved by the committee; and a description of public participation, including verbal or written statements. The committee chairperson shall certify the accuracy of the minutes. Meeting summaries are available to the public and posted on the RTCA website at www.rtca.org. Although the Air Traffic Management Steering Group is not required to hold public meetings, summaries will appear on the RTCA internet. All working groups report to the specific committee they represent.

e. Yearly, RTCA shall provide information to FAA on its committees, including, but notlimited to the number of meetings of each committee; the total number of meetings; meeting attendance (including a breakdown of meeting days) for FAA, other government and non-government participants; the name and organizational affiliation of each RTCA committee member; the report titles and dates; and the dates of all meetings.

f. This order complies with the requirements in section 9 (c) of the Act for charters for the Program Management Committee and Special Committees or other advisory committee task forces.

(1) Appendix 1 provides a list of the current Special Committees. Assignment to an existing Special Committee of a new problem within its topical responsibility does not require a new charter action. These committees shall comply with all requirements and implementing regulations covered in Section 10 of the Act.

11. Public Participation. Each advisory committee meeting shall be open to the public and anyone interested can attend and appear before the committee subject to reasonable limits of space and time. Meetings may be closed to the public only as authorized by section 10(d) of the Act and applicable regulations. Anyone interested may file written statements with the committee.

12. Availability of Records. Subject to the conditions of the Freedom of Information Act, 5 U.S.C. 552 (b), records, reports, transcripts, minutes or meeting summaries, and other documents are available for public inspection or purchase at RTCA, Inc., 1828 L Street, NW, Suite 805, Washington, DC 20036. As of 2000, all new and a limited number of previously published RTCA, Inc. documents are available at www.rtca.org. Copies of FAA documents are available to the public according to the fee schedule published in part 7 of Title 49, Code of Federal Regulations. Records of the proceedings will be kept, as required by applicable laws and regulations. All records of the committee, formally and informally established committees, or other subgroups of the committee, shall be handled in accordance with General Records Schedule 26, Item 2 or other approved agency records disposition schedule. These records shall be available for public inspection and copying, subject to the Freedom of Information Act, 5 U.S.C. 552.

13. Public Interest. The FAA has determined that continued use of RTCA, Inc. and its components as an advisory committee is in the public interest for responsibilities imposed on FAA by law.

14. Estimated Cost. The estimated average annual cost of FAA participation in the RTCA, Inc. advisory committee process is $400,000 (including proportional share of salaries of DOT employees). The FAA estimates that sponsorship of RTCA, Inc. requires about 0.12 employee years for administrative support.

15. Effective Date and Duration. Renewal of the charter of RTCA, Inc. and its components, listed in Appendix 1, is effective **April 2, 2009,** which is the filing date of the charter. Using RTCA, Inc. as an advisory committee will continue until **April 2, 2011**, unless sooner terminated or renewed by proper authority. The FAA may terminate the charter incorporated in this order if RTCA disbands; if the use of RTCA, Inc. components by FAA ceases; if RTCA, Inc. operations as covered by the Act do not comply with the Act or implementing regulations, and RTCA, Inc. cannot, or will not, achieve compliance; if RTCA, Inc. refuses membership to a qualified applicant; or if FAA determines that, as to important aspects of its operations, RTCA's role as an advisory committee cannot be upheld. FAA will give as much advance notice as possible of such action to RTCA, Inc. and all participants. Such action by FAA would not prevent another Government agency from chartering RTCA, Inc. under the Federal Advisory Committee Act.

16. Distribution. This order is to be distributed to the director level in Washington Headquarters and the Technical Center.

Lynne A. Osmus

Lynne A. Osmus
Acting Administrator

Appendix 1. RTCA, Inc. Special Committee

Paragraph 10f contains information on the Special Committees. The following is a list of RTCA, Inc. Special Committees as of November 1, 2008. The most current list of RTCA, Inc. Special Committees is found at www.rtca.org.

SC-135	Environmental Testing
SC-147	Traffic Alert & Collision Avoidance System (TCAS)
SC-159	Global Positioning System (GPS)
SC-186	Automatic Dependent Surveillance-Broadcast (ADS-B)
SC-202	Portable Electronic Devices (PEDs)
SC-203	Unmanned Aircraft Systems
SC-205	Software Considerations
SC-206	Aeronautical Information Services (AIS) Data Link
SC-211	Nickel-Cadmium, Lead Acid and Rechargeable Lithium Batteries
SC-213	Enhanced Flight Vision Systems/Synthetic Vision Systems (EFVS/SVS)
SC-214	Standards for Air Traffic Data Communication Services
SC-215	IRIDIUM AMS(R)S for NGSS
SC-216	Aeronautical Systems Security
SC-217	Airport Mapping Databases
SC-218	Future ADS-B/TCAS Relationships
SC-219	Attitude and Heading Reference Systems (AHRS)
SC-220	Automatic Flight Guidance and Control Systems
SC-221	Aircraft Secondary Barriers
SC-222	INMARSAT AMS(R)S for NGSS

[FR Doc. E9–8994 Filed 4–17–09; 8:45 am]
BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Kings County, NY

AGENCY: Federal Highway Administration (FHWA), USDOT.

ACTION: Notice of Intent (NOI).

SUMMARY: The FHWA is issuing this notice to advise the public and other agencies that a tiered environmental impact statement (EIS) will be prepared for a proposed project involving approximately 1.5 miles of the Brooklyn-Queens Expressway (BQE), Interstate 278 (I–278) in Kings County, New York (Project Identification Number X730.56). This segment of the BQE extends from Atlantic Avenue to Sands Street and encompasses 21 structures, including a unique 0.4-mile triple cantilever structure. The objective of the tiered EIS is to evaluate alternatives and make corridor level decisions regarding the rehabilitation or reconstruction of the existing facility and to identify a general alignment and corridor for proposed improvements. The tiered approach will allow for a broad range of solutions and the appropriate consideration of area wide environmental and land use impacts, including the maintenance and protection of traffic during construction.

FOR FURTHER INFORMATION CONTACT: Jeffrey W. Kolb, P.E., Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, Suite 719, Clinton Avenue and North Pearl Street, Albany, New York 12207, Telephone: (518) 431–4127; or Fred Libove, P.E., Project Development Supervisor, New York State Department of Transportation, Region 11, Hunters Point Plaza, 47–40 21st Street, Long Island City, New York 11101, Telephone: (718) 482–4565.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New York State Department of Transportation (NYSDOT), will prepare a tiered EIS that will study and document proposed improvements to a 1.5-mile segment of the BQE (I–278) between Atlantic Avenue and Sands Street in Kings County, New York (the Project). The Project would be the first major rehabilitation or reconstruction of this segment of the BQE/I–278 since its opening in 1954. Based on the results of on-site inspections of 14 of the 21 structures as documented in a June 2002 Seismic Evaluation Report (SER) prepared for the NYSDOT, and the results of recent inspections of the remaining seven structures, the current overall condition of this segment of the BQE is safe for use by the public. However, the SER and subsequent inspections of the structures, indicate that corrective action will be required within the next 10 to 15 years to maintain this segment of the BQE in a state of good repair.

Need for the Project: The segment of the BQE/I–278 under consideration carries a daily volume of approximately 140,000 vehicles and is a critical transportation link in the New York City metropolitan area that serves the needs of the Boroughs of Brooklyn, Manhattan, Queens, the Bronx and Staten Island, as well as areas outside New York City.

The most important bridge along this segment of the BQE is the unique triple cantilevered structure. This multi-level structure carries six lanes of the BQE. The eastbound and westbound roadways, with three lanes each, are carried at separate levels. The eastbound lanes are located above the westbound lanes. Furman Street, an important local connector, runs parallel to the highway at grade below the westbound lanes of the BQE. A third cantilever above the eastbound lanes of the highway supports the Brooklyn Heights Promenade, a key community resource that provides spectacular views of the East River, Lower Manhattan and the Statue of Liberty. The remaining bridges within this segment of the BQE are comprised of multi-girder steel and concrete-encased steel structures. Indirect and circuitous connections between the Brooklyn and Manhattan Bridges and the BQE add to the complexity of this segment of the highway.

The segment of highway within the project limits is characterized by narrow lanes (10.5 feet), lack of shoulders, and short merge/weave distances near on-ramps and off-ramps that do not meet current highway design standards. These deficiencies, combined with vertical clearance constraints, and the approximately 140,000 vehicles using this segment of the highway each day, result in the highway operating at or above capacity during most of the day. Severe congestion throughout much of the midday and the diversion of the highway traffic, particularly truck traffic because of the vertical clearances, onto local streets are also operational deficiencies.

Based on the results of the SER and periodically scheduled inspections of the facility by NYSDOT and the New York City Department of Transportation (NYCDOT), which owns the facility within the project limits, the NYSDOT and FHWA convened an Accelerated Construction Technology Transfer (ACTT) workshop in March 2006 attended by a broad range of public agency staff and private consultants to consider potentially viable options for rehabilitating or replacing the structures, and on ways to alleviate the severe congestion experienced by motorists along this segment of the BQE/I–278. Issues considered in identifying and evaluating possible alternatives during the ACTT workshop included constructability, environmental impacts, geometric design considerations, public involvement/concerns, structural considerations, traffic, safety, use of intelligent transportation systems (ITS), and work zone concerns. Although the ACTT workshop reached no final recommendation on which alternative should be pursued to address the structural deterioration or operational issues affecting this segment of the BQE/I–278, the results of the ACTT workshop confirmed the need for a more comprehensive examination of alternative rehabilitation or reconstruction options. The results of the SER and ACTT workshop will be considered in the environmental review process initiated with this NOI.

Environmental Review Process: The EIS will be developed in accordance with the National Environmental Policy Act of 1969 (NEPA), the environmental review provisions of Section 6002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), and the New York State Environmental Quality Review Act (SEQRA). The FHWA and the NYSDOT will use a tiered process, as provided for in 40 CFR 1508.28, in the completion of the environmental review of the Project. ''Tiering'' is a staged environmental review process applied to environmental reviews for complex projects.

The initial phase (''Tier 1 EIS'') of this process will address broad corridor-level issues and proposals. Subsequent phases or tiers will analyze, at a greater level of detail, narrower site-specific proposals based on the decisions made in Tier 1.

Tier 1: Although open to refinement based on public and agency review and comment, the Tier 1 assessment will result in a NEPA document with the appropriate level of detail for corridor-level decisions and will address broad overall issues of concern, including but not limited to:

—Confirm the purpose and need for the proposed action.
—Determine the logical termini for the proposed action.
—Define the study area appropriate to assess reasonable alternatives.
—Identify a comprehensive set of goals and objectives for the corridor in conjunction with Stakeholders and Steering Committee members. These goals and objectives will be crafted to allow comprehensive evaluation of all aspects of the project to include alignment, mode, limits, etc.
—Identify the range of reasonable alternatives to be considered, including consideration of travel demand management, transportation systems management, and transit options consistent with the current and planned use of the corridor and the transit needs and existing services within and adjacent to the study area.
—Develop criteria and screen alternatives to eliminate those that do not meet the purpose and need of the proposed action.
—Identify the general alignment of the reasonable alternatives.
—Identify right-of-way requirements for the reasonable alternatives.
—Characterize the overall land use and environmental consequences of the reasonable alternatives.
—Establish, as necessary, the timing and sequencing of independent actions to maintain a state of good repair.
—Establish the environmental review process to be followed in completing subsequent tier evaluations of the proposed Project.

Tier 2: The second tier assessment will result in more detailed assessments of a range of build alternatives within the general corridor and alignment identified in the Tier 1 EIS. These evaluations will be based on a higher level of engineering detail and environmental analysis than in the Tier 1 evaluation. It is anticipated that the subsequent evaluation(s) will:

—Incorporate by reference the data and evaluations included in the Tier 1 EIS.
—Concentrate on the issues specific to the selected alternative identified in the Tier 1 EIS.
—Provide a more detailed evaluation of transit accommodations if carried forward from Tier 1.
—Screen the identified alternatives to determine the alternative that best meets the purpose and need for the proposed action.
—Identify the environmental consequences at a higher level of detail than in the Tier 1 assessment and identify measures necessary to mitigate environmental impacts based on a higher level of engineering detail than in the Tier 1 EIS.
—Establish, as necessary, the timing and sequencing of independent actions to maintain a state of good repair.

Notice of Initiation of the Environmental Process and Request to Public Agencies to Become Participating Agencies in the Environmental Review Process: In accordance with Section 6002 of SAFETEA–LU, letters will be sent to all Federal, State and local agencies, and to private organizations and citizens who have previously identified and/or expressed interest in the project, notifying them of the initiation of the environmental process and requesting that they be included as participating agencies or parties in the environmental review process. Once the Draft EIS is certified as complete, it will be made available for further public and agency review and comment.

Scoping Process: To assure that the full range of issues related to the proposed action is addressed and all significant issues identified, FHWA and NYSDOT will undertake an extensive public ''scoping process'' that will allow the public and affected agencies to provide comment on the scope of the environmental review process. To facilitate public comment, a Draft EIS Scoping Document will be prepared for public review and comment. Included in the Draft Scoping Document will be draft descriptions of:

—Purpose and Need for the Project.
—Alternatives for Study.
—Public Involvement Process.
—Environmental Impact Assessment Methodologies and Study Areas.

A separate notification will be published regarding the availability of the Draft Scoping Document for public review. Additional opportunities for comment will also be provided through a series of public participation activities. These include:

—Public scoping meetings on the EIS will be held at a venue within the project study area, during which the public will be provided with a description of information included in the Draft Scoping Document and opportunity to comment on the scope of the DEIS. NYSDOT personnel will be available at the scoping meetings to answer questions concerning the Project and proposed scope of the DEIS.
—Direct discussions with agencies and organizations with jurisdiction or interest in the project corridor and project area.
—Briefings to elected officials.
—A project Web site that will allow the public to provide comment over the Internet.

Comments received from any of these activities and sources will be considered in the development of the environmental document.

Public Hearing: A public hearing will be held after publication of the Tier 1 DEIS to obtain comments on that document. Public notice will be given prior to the hearing regarding its time and location and process for submitting comment.

Project Funding: The proposed project will be funded in part through Federal programs which assist State transportation agencies in the planning and development of an integrated, interconnected transportation system important to interstate commerce and travel by constructing and rehabilitating the National Highway System, including the Interstate System.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The regulations implementing Executive Order 12372, regarding intergovernmental consultation on Federal programs and activities apply to this program).

Issued on: April 14, 2009.

Jeffrey W. Kolb,

Division Administrator, Federal Highway Administration, New York Division, Albany, New York.

[FR Doc. E9–8978 Filed 4–17–09; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Research and Innovative Technology Administration

[Docket No. RITA 2009–0001]

Establishing Strategic Direction for the Intelligent Transportation Systems Program

AGENCY: Research and Innovative Technology Administration (RITA), DOT.

ACTION: Request for public comments.

SUMMARY: The U.S. Department of Transportation's (DOT) Intelligent Transportation Systems Joint Program Office (ITS JPO) is requesting public comments on the proposed direction, goals, and objectives for the multi-modal ITS Program over the next five years. Comments will be used to shape a multi-year, strategic, research agenda that will result in an ITS Program Strategic Plan in October 2009. Respondents to this RFI are invited to comment on any of the items; in particular, respondents are encouraged

to address the specific questions that are featured at the end of this RFI. This RFI was prepared with the intention of insuring that all stakeholders and parties interested in ITS have the opportunity to provide input and comment on the next five-year, strategic direction for ITS research, technology transfer, and evaluation.

DATES: Comments must be submitted by May 20, 2009. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments identified by DOT Docket Number RITA 2009–0001 by any of the following methods:

○ *Federal eRulemaking Portal:* Go to http://*www.regulations.gov.* Follow the online instructions for submitting comments.

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

○ *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE. between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

○ *Fax:* 202–493–2251

Instructions: Identify docket number, RITA 2009–0001, at the beginning of your comments, and send two copies. To receive confirmation that DOT received your comments, include a self-addressed stamped postcard. Internet users may access all comments received by DOT at *http://www.regulations.gov.* All comments are posted electronically without charge or edits, including any personal information provided. Please do not send items directly to DOT staff. Items that are sent directly to DOT staff and that appear to be docket items will be submitted to the above Web site on behalf of the submitter.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketInfo.dot.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Suzanne M. Sloan, RVT–91, Research and Innovative Technology Administration, Volpe National Transportation Systems Center, 55 Broadway, Cambridge, MA, 02142, Phone Number: (617) 494–3282, Fax Number: (617) 494–3260, or E-mail: *Suzanne.Sloan@dot.gov*. For legal questions, please contact Mr. Robert Monniere, Attorney Advisor, RITA Office of the Chief Counsel, (202) 366–5498, or via e-mail at *Robert.Monniere@dot.gov.* Office hours for the RITA are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Federal eRulemaking portal at: *http://www.regulations.gov.* Electronic submission and retrieval help and guidelines are available under the help section of the Web site. The Federal eRulemaking portal is available 24 hours each day, 365 days each year. Please follow the instructions. An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register's home page at *http://www.archives.gov* or the Government Printing Office's Web page at *http://www.gpoaccess.gov/nara.*

Background

The U.S. Department of Transportation's (the US DOT) Intelligent Transportation Systems (ITS) Joint Program Office (JPO), part of the Research and Innovative Technology Administration (RITA), is issuing this Request for Information (RFI) to elicit comments from the public and the transportation community on future activities of the ITS Program. Respondents to this RFI are invited to comment on any of the items; in particular, respondents are encouraged to address the specific questions. This RFI was prepared with the intention of insuring that all stakeholders and parties interested in ITS have the opportunity to provide input and comment on the next five-year, strategic direction for ITS research, technology transfer, and evaluation. This input, in combination with research results of current initiatives (documented in the report, *ITS Research Results: ITS Program Plan 2008* available at the following URL: *http://www.itsdocs.fhwa.dot.gov/JPODOCS//REPTS_TE/14429.htm*), will form the basis for the next ITS Program Strategic Plan and will provide input to the next transportation legislation.

The previous ITS Program strategic direction was established in 2004 when the US DOT realigned ITS research into a set of major initiatives with a clearly recognized federal role to conduct high-risk/high-payoff, multi-modal, technology research. This strategy and subsequent program was documented in the *2006 Five-Year ITS Program Plan* (found at *http://www.itsdocs.fhwa.dot.gov//JPODOCS/REPTS_TE//14289.htm*), which has guided the ITS Program since 2004. Much of this research is reaching completion (documented in the *2008 Program Plan* mentioned above); some of the research results have been particularly fruitful in establishing the viability of new, transformational opportunities in surface transportation safety and mobility (as well as other areas), and will continue to be pursued as part of the forthcoming research agenda.

In moving to establish the next strategic direction, the ITS JPO will guide development of the Strategic Plan in cooperation with the US DOT's ITS Management Council and ITS Strategic Planning Group (SPG). Both groups are comprised of representatives of the surface transportation modes within the US DOT that are responsible for furthering the application of advanced technologies to the transportation system across the Nation.

Through this RFI and other outreach events, the ITS JPO will engage the public and key stakeholders in the process of:

(a) Confirming the next set of goal areas for the Program;

(b) Confirming the objectives within each goal area;

(c) Identifying existing or new transportation research and development activities that are being performed by others and determine if there are joint funding opportunities that will allow the US DOT to make better use of its resources;

(d) Identifying a research agenda that stimulates the private sector market and that fosters collaboration among public, private, and academic partners; and,

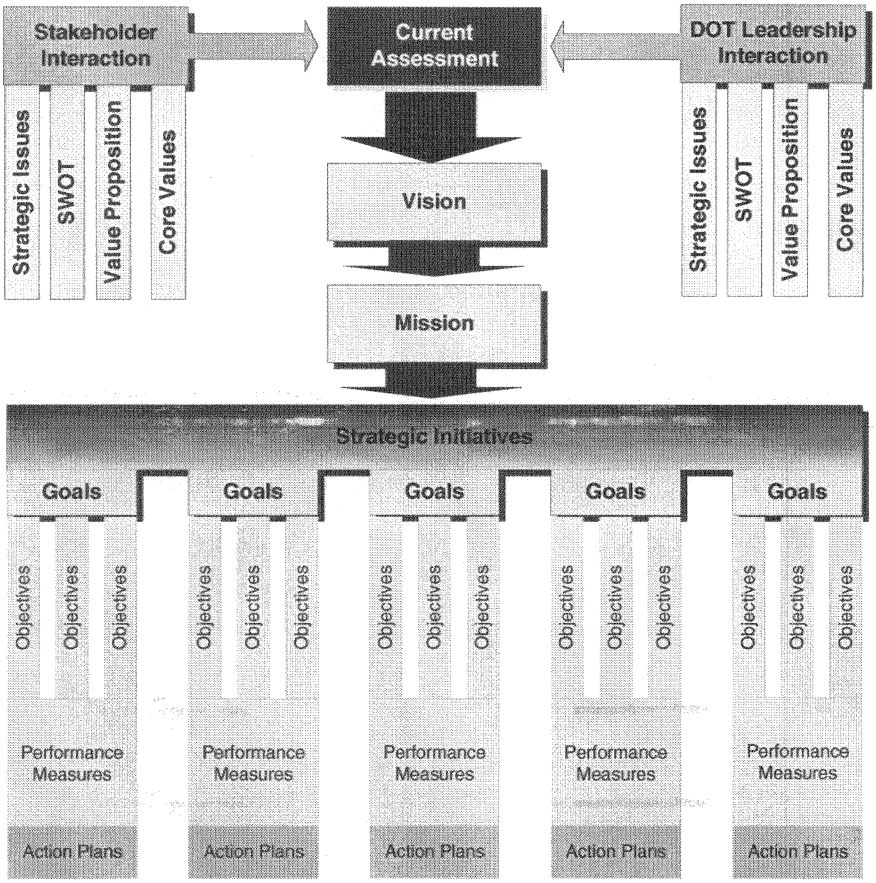
(e) Identifying, for consideration, new technologies, trends, and research opportunities that are not described in this RFI.

Note: This is not a solicitation for proposals. This is specifically a request for information that will assist the ITS JPO, ITS SPG, and ITS Management Council in establishing the most feasible and robust research, technology transfer, evaluation agenda for the Nation in the next five years.

Development of the Goals and Objectives for the ITS Program

The process in use by the ITS Program to develop the goals, objectives, and the specific research programs is one that incorporates a set of traditional strategic

planning activities. The flow of these activities is provided in flow chart format in the PDF version of this RFI as well as described in text format below.



The flow of activities begins with input provided by stakeholders and DOT leadership. The input is analyzed to gain an understanding of the strategic issues and needs; their associated strengths, weaknesses, opportunities, and threats (risks); their value proposition; and their alignment with the core values and principles of the ITS Program. This analysis leads to an assessment of the advanced technology needs of the Nation, which then translates into a vision and mission for the ITS Program. From the mission and vision flows the development of a set of conceptual strategic initiatives, which are substantiated through setting strategic goals and objectives; identifying performance measures for success; and ultimately developing a more concrete research program with action plans.

The intent of this RFI is to engage stakeholders in this process. The starting point for this process is the recognition of the critical role of advanced technologies in achieving the US DOT goals in the areas of Safety, Mobility, and Environmental Stewardship. To these goals, the ITS Program adds a fourth goal area—Policy—with the acknowledgement that successful ITS deployment is founded on strategic and effective policies.

In addition to these goal areas, the following two points form a critical, foundational basis for continuing the ITS Program with a new five-year strategy:

(1) To identify areas of greatest opportunity, the ITS Program has formed an initial assessment of the state of technology and transportation through a set of listening sessions conducted over the past year at public meetings and forums. Through these sessions and subsequent discussions, observations, and analysis, a theme for the next generation of the ITS Program has emerged—CONNECTIVITY. This theme recognizes that current and future wireless technology, and the connectivity that it enables, has the potential to *transform the transportation industry with new capabilities and services.*

(2) RESEARCH is needed to achieve the full potential of a connected transportation environment. It is the intent of the ITS Program to focus on a few, high-value research initiatives that support achieving transformational benefits in safety, mobility and system performance, and environmental stewardship through establishing connectivity among vehicles, devices introduced to the vehicle, and the infrastructure. Research will be conducted and policy set in a manner that most effectively serves the public good while leveraging market forces.

The ITS Program seeks input in order to identify the highest value areas of federal research that have the greatest potential to capitalize on the transformational power of connectivity and that have the greatest potential to deployment. The following text proposes a set of focused, strategic initiatives with associated outcomes, goals, and objectives. As funding is never adequate to meet all needs, the goals and objectives that follow intentionally focus attention in a few, high-value, critical areas.

Safety Strategic Initiative (one goal)

Outcome Sought—Significant reduction in crashes, injuries, fatalities, and associated economic costs.

Goal: Transformative safety through vehicle and infrastructure connectivity:

• Objective—Enable active safety applications (*i.e.,* applications designed to assist vehicle operators in avoiding imminent crashes, and which require low latency communications).

• Objective—Improve safety by providing in-vehicle crash avoidance warnings, which do not require low latency communications.

• Objective—Perform the necessary research and testing to enable potential safety regulations.

• Objective—Provide a foundation for technologies to enable partial or full vehicle control.

• Objective—Enable vehicle-based applications such that they achieve program objectives without negatively impacting driver focus.

• Objective—Harmonize standards and architecture internationally around the vehicle platform.

Mobility Strategic Initiative (three goals)

Outcome Sought—Significant improvements in mobility that result in more sustainable and livable communities.

Goal (1): Capture complete, real-time information on all roads and all modes to support transformational system performance:

• Objective—Capture real-time mobility data from vehicles.

• Objective—Capture real-time system cost information across modes (parking, transit, pricing, tolling, etc.).

• Objective—Integrate real-time mobility data from all sources for use in transportation management and performance improvement.

Goal (2): Achieve transformational transportation management and system performance through applications of vehicle and infrastructure connectivity:

• Objective—Create applications and strategies for the use of real-time mobility and cost data from all sources for use by transportation managers.

• Objective—Create applications and strategies for the use of real-time mobility and cost data to ensure safe and secure freight movement.

• Objective—Create information from real-time mobility and cost data from all sources for use in traveler information.

Goal (3): Realize ''next generation'' electronic payment systems that support transformational system performance:

• Objective—Create interoperability of electronic payment systems across modes (parking, transit, pricing, tolls, etc.).

• Objective—Enable technology solutions in support of national policy for transportation financing.

Environment Strategic Initiative (one goal)

Outcome Sought—Reduced transportation impact on the environment and improved livability.

Goal: Enable environmental management through vehicle and infrastructure connectivity:

• Objective—Capture real-time environmental data from vehicles.

• Objective—Integrate real-time environmental data from all sources for use in transportation management and performance improvement.

• Objective—Create applications that use real-time data on environmental impact for use by transportation managers.

• Objective—Create information from real-time data on environmental impact for use in traveler information.

Policy Foundation for Deployment Strategic Initiative (One Goal)

Outcome Sought—New institutional policy and potential regulatory requirements and a foundation for effective deployment of technologies.

Goal (1): Establish an institutional foundation for deployment of safety, mobility, and environmental applications based on vehicle and infrastructure connectivity:

• Objective—Identify and research solutions to address institutional foundations, governance, privacy issues, potential regulations, and policies, both nationally and internationally, to implement transportation technologies.

• Objective—Address social equity in all goal areas to ensure that all users benefit from transportation solutions.

Within each goal area, the intent is to develop a *few, focused, high value, bold* programs which:

• Further US DOT goals, ITS Program mission, vision, strategic initiatives, and goals areas.

• Have the potential for a significant impact at a national scale.

• Generally address research or deployment issues that transcend a single mode or a single strategic initiative.

• Address a clear research question that would not otherwise be filled due to the fact that:

  • It is too big or too risky for any one entity alone, and

  • The market has too many players and no clear ownership.

• Are expected to offer a positive, measurable return on investment.

• Offer a justifiable or clear Federal role.

• Appear to be implementable, technically feasible, and have a clear champion, with supportive partners.

• Have the potential to be a catalyst for the development of a sustainable marketplace through technology transfer.

With consensus on these goals, the ITS JPO will establish teams to develop a set of proposed multi-modal research programs. Preliminary research programs will address:

• A clear business case, including alignment with ITS goals;

• A clear description of the value to the Nation;

• A plan for technology transfer;

• A plan for outreach;

• A plan for evaluation;

• A plan to research and address critical policy and institutional issues; and

• A plan to address standards and architecture needs.

Timeline

A set of multi-modal teams within US DOT will be convened at the beginning of May 2009 to develop the program proposals described above. All RFI input will be delivered to these teams. The ITS JPO expects to hold a workshop at the June 2009 ITS America Annual Meeting to solicit further input on the strategic plan and preliminary research programs. The ITS JPO use the input from this RFI to advise the DOT leadership on the ITS Program strategic research agenda. In addition to shaping this agenda, it is desired that the RFI input provide the ITS JPO with insight on:

• Next generation technologies for research and development.

• New opportunities for technology transfer.

• Identification of key metrics for program evaluation.

• Development of the next transportation legislation.

RFI Objective and Response Requirements

Respondents are asked to comment on all elements of this RFI and, specifically, to address the questions below.

(1) RFI respondents are asked to comment on the proposed content of this RFI:

a. Do the goal areas and objectives establish the foundation for an appropriate and feasible multi-year strategic research agenda for the ITS Program to pursue over the next five years?

b. What strategic issues, goal, and/or objectives do you view as vital for establishing a research agenda that provides meaningful and transformational changes for the Nation?

c. Are there research or technology development opportunities within these

goal areas that are not described within this RFI? If yes, please describe them, the value of the research, and the reason for federal government involvement as opposed to private sector or academia.

d. In your opinion, if the objectives of the goal areas are met, will technology transfer within these goal areas create dynamic and sustainable markets? If yes, please identify the opportunities and risks.

e. Are there opportunities to partner that are currently not being pursued by the ITS Program? If yes, please describe the opportunity and how risk/reward would be shared. What barriers must be overcome in order for the research program to be deployed in the future?

f. Given limitations on funding, which research goals and objectives are the most important to pursue? Please explain your basis.

g. What are any remaining concerns?

(2) Additional Information:

Respondents are also encouraged to provide any additional information that describe alternative concepts, technologies, or research areas that would benefit the establishment of the next multi-year strategic agenda for the ITS Program. In particular, the ITS JPO is interested in descriptions of future technologies and systems that will build from and continue to provide transformational change to the transportation system, but that in current form, are still highly exploratory in nature.

Please note that this is NOT a solicitation for proposals, quotes, or bids. Unsolicited proposals will not be addressed by DOT staff who review the submissions to this RFI. Those parties who are interested in such matters are encouraged to consult ''A Guide to Federal Highway Administration Policies and Procedures for Submitting Unsolicited Proposals'', available at the following URL: *http://www.fhwa.dot.gov/AAA/gtup.htm.* Also, please do not include any proprietary information in your response.

Please also note that the docket is open to the public to view the responses and any personally identifiable information will be noted. We are happy to accept responses with names associated with them, as well as those submitted anonymously.

Finally, the ITS JPO acknowledges the short duration for providing responses to this RFI and requests responses within 30 days of the issuing of this RFI.

Issued in Washington, DC on April 10, 2009.

Shelley J. Row,

Program Director, ITS Joint Program Office, Research and Innovative Technology Administration, U.S. Department of Transportation.

[FR Doc. E9–8985 Filed 4–17–09; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Correction; Announcement of Withdrawal

AGENCY: Federal Aviation Administration.

ACTION: Correction; Announcement of Withdrawal.

SUMMARY: The Federal Aviation Administration (FAA) published an announcement in the **Federal Register** on October 24, 2008, requesting review of a proposed amendment to the Noise Compatibility Program (NCP) submitted for Gulfport Biloxi International Airport, Gulfport MS. The proposed amendment to the Noise Compatibility Program was to be approved or disapproved on or before April 16, 2009. Public comments were to be submitted by December 16, 2008 to the address below. No amendment to NCP was received therefore, neither FAA review or public comment will be required. This Notice was published in error and is being withdrawn.

FOR FURTHER INFORMATION CONTACT: Kevin Morgan, Federal Aviation Administration, Jackson Airports District Office, 100 West Cross Street, Jackson, Mississippi 39208, 601 664–9891.

Issued in Jackson, Mississippi on April 13, 2009.

Rans Black,

Manager, Jackson Airports District Office.

[FR Doc. E9–8867 Filed 4–17–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2009–0067]

Notice of Receipt of Petition for Decision That Nonconforming 2008 Harley Davidson FX, FL, XL and VR Series Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2008 Harley Davidson FX, FL, XL and VR Series Motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2008 Harley Davidson FX, FL, XL and VR Series Motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS) are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is May 20, 2009.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register**

published on April 11, 2000 (65 FR 19477–78).

How to Read Comments submitted to the Docket: You may read the comments received by Docket Management at the address and times given above. You may also view the documents from the Internet at *http://www.regulations.gov*.

Follow the online instructions for accessing the dockets. The docket ID number and title of this notice are shown at the heading of this document notice. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

Wallace Environmental Testing Laboratories, Inc. (WETL) of Houston, TX (Registered Importer 90–005) has petitioned NHTSA to decide whether non-U.S. certified 2008 Harley Davidson FX, FL, XL and VR series motorcycles are eligible for importation into the United States. The vehicles that WETL believes are substantially similar are 2008 Harley Davidson FX, FL, XL and VR series motorcycles that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it carefully compared non-U.S. certified 2008 Harley Davidson FX, FL, XL and VR series motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

WETL submitted information with its petition intended to demonstrate that non-U.S. certified 2008 Harley Davidson FX, FL, XL and VR series motorcycles, as originally manufactured, conform to many FMVSS in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2008 Harley Davidson FX, FL, XL and VR series motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses,* 111 *Rearview Mirrors,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* and 122 *Motorcycle Brake Systems.*

The petitioner further contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated below:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* Installation of the following U.S.-certified components on vehicles not already so equipped: (a) Headlamp; (b) front and rear side-mounted reflex reflectors; (c) rear-mounted reflex reflector; (d) rear turn signal lamps; (e) stoplamp; (f) taillamp; and (g) license plate lamp.

Standard No. 120 *Tire Selection and Rims for Vehicles Other Than Passenger Cars:* Installation of a tire information placard.

Standard No. 123 *Motorcycle Controls and Displays:* Installation of a U.S.-model speedometer/odometer unit to meet the requirements of this standard.

Standard No. 205 *Glazing Materials:* Inspection of all vehicles, and removal of noncompliant glazing or replacement of the glazing with U.S.-certified components on vehicles that are not already so equipped.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above addresses both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 14, 2009.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. E9–8953 Filed 4–17–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Motor Theft Prevention Standard; Porsche

AGENCY: National Highway Traffic Safety Administration, Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the petition of Porsche Cars North America, Inc. (Porsche) for an exemption in accordance with § 543.9(c)(2) of 49 CFR Part 543, *Exemption from the Theft Prevention Standard*, for the Porsche Panamera vehicle line beginning with model year (MY) 2010. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard.

DATES: The exemption granted by this notice is effective beginning with model year (MY) 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Mazyck, Office of International Policy, Fuel Economy and Consumer Standards, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590. Ms. Mazyck's phone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: In a petition dated February 17, 2009, Porsche requested an exemption from the parts-marking requirements of the theft prevention standard (49 CFR Part 541) for the Porsche Panamera vehicle line beginning with MY 2010. The petition requested an exemption from parts-marking pursuant to 49 CFR 543, *Exemption from Vehicle Theft Prevention Standard*, based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Under § 543.5(a), a manufacturer may petition NHTSA to grant an exemption

for one vehicle line per model year. In its petition, Porsche provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for its new Porsche Panamera vehicle line. Porsche stated that all Porsche Panamera vehicles will be equipped with a passive antitheft device as standard equipment beginning with MY 2010. Key components of the antitheft device will include a microprocessor-based immobilizer system, electronic ignition switch, transponder key, remote control unit, alarm/central locking control unit, optional keyless entry system and electronic parking brake. The device will also be equipped with an audible and visible alarm. Additionally, Porsche stated that the central locking system works in conjunction with the audible and visible alarm. Locking the doors with the ignition key, the remote control or a door switch (with the keyless entry option) will activate the audible and visible alarm. An ultrasonic sensor in the alarm system will monitor the doors, rear luggage compartment, front deck lid, fuel filler door, and interior movement. The horn will sound and the lights will flash if there is any detection of unauthorized use. Porsche's submission is considered a complete petition as required by 49 CFR 543.7 in that it meets the general requirements contained in 543.5 and the specific content requirements of 543.6.

Porsche stated that its immobilizer prevents the engine management system and steering system from functioning when the system is engaged. The immobilizer is automatically activated when the key is removed from the ignition switch assembly, or the optional special keyless entry keycard exits the vehicle with the driver. The immobilizer then returns to its normal ''off'' state, where engine starting, operation, and steering are not allowed. Starting the engine and operation of the vehicle will be allowed only when the correct code is sent to the control unit by using the correct key in the ignition switch, or by having the correct keyless entry keycard within the occupant compartment of the car. The ignition key contains a radio signal transponder, which signals the control unit to allow steering and the engine to be started. With the keyless entry system, operation of the vehicle is allowed when the ignition key is substituted with the special keycard that contains a radio signal transmitter similar to the transponder in the standard ignition key.

The central locking system works in conjunction with the audible and visible alarm. Locking the doors with the ignition key, the remote control or a door switch (with the keyless entry option) will activate the audible and visible alarm.

Porsche will also equip the Panamera vehicle line with an electronically activated parking brake which it states is integrated into the vehicle's antitheft device. If the control unit does not receive the correct code from the ignition key or keycard, the parking brake will remain activated and the vehicle cannot be towed away.

Since the Porsche Panamera is a new vehicle line, there is currently no available theft rate data published by the agency for the vehicle line. However, Porsche provided data on the effectiveness of other similar antitheft devices installed on its 911 and Boxster vehicle lines in support of its belief that its device will be at least as effective as those comparable devices previously granted exemptions by the agency. Porsche's data showed that the theft rate for the two vehicle lines remained consistently low over a 3-year period. The average theft rate using three MY's data for the Porsche 911 and Boxster are 0.8261 and 0.8784 respectively. Based on the experience of these vehicle lines, Porsche has concluded that the antitheft device proposed for its Porsche Panamera vehicle line is no less effective than those devices in the lines for which NHTSA has already granted full exemption from the parts-marking requirements. The agency agrees that the device is substantially similar to devices in these and other vehicle lines for which the agency has already granted exemptions.

In addressing the specific content requirements of 543.6, Porsche provided information on the reliability and durability of its proposed device. To ensure reliability and durability of the device, Porsche conducted tests based on its own specified standards. Porsche provided a detailed list of the tests conducted (*i.e.,* extreme temperature tests, voltage spike tests, reverse polarity tests, electromagnetic interference tests, vibration tests and endurance tests) and believes that the device is reliable and durable since the device complied with its specific requirements for each test. Additionally, Porsche stated that the antitheft device also features a built-in self-diagnostic that constantly checks for system failures. If a failure is detected, an alarm indicator signals the driver.

Porsche further states that disablement of the immobilizer is virtually impossible. Disconnecting power to the antitheft device does not affect the operation of the device. Once the antitheft device is activated, the device stays activated until the correct key or optional keycard is used to instruct the engine management system through code to begin functioning again. Porsche also stated that the immobilizer cannot be disabled by manipulation of the door locks or central-locking system because the locks/locking system are incapable of sending the code needed to disable the device.

In further support of the reliability of its antitheft device, Porsche informed the agency that it has developed a new ''off-board'' antitheft strategy to reduce the marketability of stolen electronic components. Specifically, Porsche stated that during the production of its vehicle, the initialization and registration of various antitheft electronic components are recorded in a central database. If the components have to be repaired or replaced, authorized access to the database must be obtained to receive authorization for the components. If authorized access to the central database is unavailable or the database indicates that the components are not authorized, further operation and use of the vehicle will be restricted or impossible to obtain.

Based on the evidence submitted by Porsche, the agency believes that the antitheft device for the Panamera vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR 541).

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7(b), the agency grants a petition for exemption from the parts-marking requirements of Part 541, either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of Part 541. The agency finds that Porsche has provided adequate reasons for its belief that the antitheft device for the Porsche Panamera vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541). This conclusion is based on the information Porsche provided about its device.

The agency concludes that the device will provide the five types of performance listed in § 543.6(a)(3): Promoting activation; attracting attention to the efforts of unauthorized persons to enter or operate a vehicle by means other than a key; preventing defeat or circumvention of the device by unauthorized persons; preventing

operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

For the foregoing reasons, the agency hereby grants in full Porsche's petition for exemption for the Porsche Panamera vehicle line from the parts-marking requirements of 49 CFR Part 541. The agency notes that 49 CFR Part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR Part 543.7(f) contains publication requirements incident to the disposition of all Part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts marking requirements of the Theft Prevention Standard.

If Porsche decides not to use the exemption for this line, it should formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR Parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Porsche wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, Part 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that Part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on April 14, 2009.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E9–8951 Filed 4–17–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Disability Compensation; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Disability Compensation will meet on May 7–8, 2009, in the Carlton Room, at the St. Regis Washington, DC, 923 16th and K Streets, NW., from 8:30 a.m. to 5 p.m. each day. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the maintenance and periodic readjustment of the VA Schedule for Rating Disabilities. The Committee is to assemble and review relevant information relating to the nature and character of disabilities arising from service in the Armed Forces, provide an ongoing assessment of the effectiveness of the rating schedule and give advice on the most appropriate means of responding to the needs of veterans relating to disability compensation.

On May 7, the Committee will receive briefings about studies on compensation for Veterans with service-connected disabilities and other Veteran benefits programs. On the afternoon of May 7 and the morning of May 8, the Committee will break into subcommittees to prepare recommendations. In the afternoon of May 8, time will be allocated for receiving public comments. Public comments will be limited to three minutes each. Individuals wishing to make oral statements before the Committee will be accommodated on a first-come, first-served basis. Individuals who speak are invited to submit 1–2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record.

The public may submit written statements for the Committee's review to Ms. Ersie Farber, Designated Federal Officer, Department of Veterans Affairs, Veterans Benefits Administration (211A), 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public wishing to attend the meeting or seeking additional information should contact Ms. Farber at (202) 461–9728 or *Ersie.farber@va.gov*.

Dated: April 10, 2009.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. E9–8869 Filed 4–17–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Gulf War Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Gulf War Veterans will meet on May 6–7, 2009, at the Residence Inn by Marriott, 1199 Vermont Avenue, NW., Washington, DC, from 8:30 a.m. to 5 p.m. each day. The meeting is open to the public.

The purpose of the Committee is to provide advice and recommendations to the Secretary of Veterans Affairs on issues that are unique to Veterans who served in the Southwest Asia theater of operations during the 1990–1991 period of the Gulf War.

On May 6, the Committee will hear from a panel of outreach professionals from various VA staff offices. The Committee will also receive briefings from the Executive Director of the Iraq and Afghanistan Veterans of America and other subject matter experts on Gulf War Illness research.

On May 7, the Committee will receive a briefing from the National Director of the Post Deployment Integrated Care Initiative Model about VA's strategic plan to implement the Model. In the afternoon of May 6 and 7, the Committee will discuss recommendations for its final report.

Public comments will be received on May 6, from 3:15 p.m. until 3:45 p.m. Individuals wishing to speak must register not later than May 4, 2009, by contacting Ms. Lelia Jackson at (202) 461–5758 and by submitting 1–2 page summaries of their comments for inclusion in the official record. A sign-in sheet will be available each day. Members of the public may also submit written statements for the Committee's review to the Advisory Committee on Gulf War Veterans, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

Interested parties may also listen in by teleconferencing into the meeting. The toll-free teleconference line will be open daily from 8:30 a.m. until 5 p.m. (Eastern Standard Time). To register for the teleconference, contact Ms. Lelia Jackson at (202) 461–5758 or via e-mail at *lelia.jackson@va.gov.*

Any member of the public seeking additional information should contact Laura O'Shea, Designated Federal Officer, at (202) 461–5765.

Dated: April 10, 2009.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. E9–8972 Filed 4–17–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board; Notice of Meetings

The Department of Veterans Affairs gives notice under the Public Law 92–463 (Federal Advisory Committee Act) that the subcommittees of the Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board will meet from 8 a.m. to 5 p.m. on the dates indicated below:

Subcommittee for	Date(s)	Location
Neurobiology-E	May 12, 2009	VA Central Office.*
Cellular & Molecular Medicine	May 13, 2009	VA Central Office.*
Nephrology	May 14, 2009	Crowne Plaza DC/Silver Spring.
Surgery	May 18, 2009	St. Gregory Luxury Hotel & Suites.
Endocrinology-A	May 22, 2009	St. Gregory Luxury Hotel & Suites.
Immunology	May 22, 2009	Embassy Suites Chevy Chase.
Mental Hlth & Behav Sci-B	May 28, 2009	The Westin Washington DC.
Hematology	May 29, 2009	The Westin Washington DC.
Clinical Research Program	June 1, 2009	VA Central Office.*
Epidemiology	June 3, 2009	VA Central Office.*
Infectious Diseases-B	June 4, 2009	Crowne Plaza DC/Silver Spring.
Neurobiology-A	June 5, 2009	VA Central Office.*
Respiration	June 5, 2009	The Westin Washington DC.
Cardiovascular Studies	June 8, 2009	The Westin Washington DC.
Endocrinology-B	June 9, 2009	Palomar Hotel.
Oncology	June 11–12, 2009	The Ritz-Carlton, Washington, DC.
Gastroenterology	June 11, 2009	The Westin Washington DC.
Mental Hlth & Behav Sci-A	June 15, 2009	The Ritz-Carlton, Washington, DC.
Neurobiology-C	June 18–19, 2009	Hilton Garden Inn.
Infectious Diseases-A	June 18, 2009	Palomar Hotel.
Neurobiology-D	June 19, 2009	The Westin Washington DC.

The addresses of the hotels and VA Central Office are:

Crowne Plaza DC/Silver Spring, 8777 Georgia Avenue, Silver Spring, MD.
Embassy Suites Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC.
Hilton Garden Inn, 815 14th Street, NW., Washington, DC.
Palomar Hotel, 2121 P Street, NW., Washington, DC.
The Ritz-Carlton Washington DC, 1150 22nd Street, NW., Washington, DC.
St. Gregory Hotel, 2033 M Street, NW., Washington, DC.
VA Central Office, 1722 Eye Street, NW., Washington, DC.
The Westin Washington DC City Center Hotel, 1400 M Street, NW., Washington, DC.

*Teleconference.

The purpose of the Merit Review Board is to provide advice on the scientific quality, budget, safety and mission relevance of investigator-initiated research proposals submitted for VA merit review consideration. Proposals submitted for review by the Board involve a wide range of medical specialties within the general areas of biomedical, behavioral and clinical science research.

The subcommittee meetings will be open to the public for approximately one hour at the start of each meeting to discuss the general status of the program. The remaining portion of each subcommittee meeting will be closed to the public for the review, discussion, and evaluation of initial and renewal research proposals.

The closed portion of each meeting involves discussion, examination, reference to staff and consultant critiques of research proposals. During this portion of each meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which could significantly frustrate implementation of proposed agency action regarding such research proposals.

As provided by subsection 10(d) of Public Law 92–463, as amended, closing portions of these subcommittee meetings is in accordance with 5 U.S.C., 552b(c)(6) and (9)(B). Those who plan to attend or would like to obtain a copy of minutes of the subcommittee meetings and rosters of the members of the subcommittees should contact LeRoy G. Frey, PhD, Chief, Program Review (121F), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 at (202) 461–1664.

Dated: April 10, 2009.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. E9–8973 Filed 4–17–09; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Monday,
April 20, 2009

Part II

Securities and Exchange Commission

17 CFR Part 242
Amendments to Regulation SHO; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 242

[Release No. 34–59748; File No. S7–08–09]

RIN 3235–AK35

Amendments to Regulation SHO

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is proposing amendments to Regulation SHO under the Securities Exchange Act of 1934 (''Exchange Act''). We are proposing two approaches to restrictions on short selling—one is a price test that would apply on a market wide and permanent basis (''short sale price test'' or ''short sale price test restriction'') and one that would apply only to a particular security during severe market declines in that security (''circuit breaker''). With respect to the first approach, we propose two alternative short sale price tests: One based on the national best bid and the second based on the last sale price. With respect to the second approach, we propose two basic alternatives: One alternative is a circuit breaker rule that would temporarily prohibit short selling in a particular security when there is a severe decline in the price of that security (a ''halt''), which could operate in place of, or in addition to, a short sale price test rule; and the second alternative is a circuit breaker rule that would trigger a short sale price test rule; we propose that such a short sale price test either be based on the national best bid for any security for which there has been a severe price decline or be based on the last sale price for any security for which there has been a severe price decline.

Due to the extreme market conditions that we are currently facing and the resulting deterioration in investor confidence, we believe it is appropriate at this time to re-evaluate and seek comment on some form of short sale price test restriction, either in the form of a short sale price test such as the proposed modified uptick rule or proposed uptick rule, or a circuit breaker rule.

For each of the proposed short sale price test restrictions and proposed circuit breaker rules, we are also proposing to amend Regulation SHO to require that a broker-dealer mark certain sell orders ''short exempt.'' If the Commission adopts a short sale price test proposal or a circuit breaker proposal, and adopts a ''short exempt'' marking requirement, we are proposing that the implementation period for these amendments would be three months from the effective date of the amendments.

DATES: Comments should be received on or before June 19, 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/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–08–09 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–08–09. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/final.shtml*). 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 am 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: James Brigagliano, Deputy Director; Jo Anne Swindler, Acting Associate Director; Josephine Tao, Assistant Director; Victoria Crane, Branch Chief; Joan Collopy, Special Counsel; Christina Adams, Special Counsel; or Matthew Sparkes, Staff Attorney, Division of Trading and Markets, at (202) 551–5720, at the Commission, 100 F Street, NE., Washington, DC 20549–6628.

SUPPLEMENTARY INFORMATION: The Commission is requesting public comment on proposed amendments to Rules 200(g) and 201 of Regulation SHO, 17 CFR 242.200(g) and 17 CFR 242.201, under the Exchange Act. The Commission is soliciting comments on all aspects of the proposed amendments.

I. Executive Summary

In July 2007, the Commission eliminated all short sale price test restrictions. At that time, short sale price test restrictions included Rule 10a–1 under the Exchange Act, also known as the ''uptick rule'' or ''tick test'' (''former Rule 10a–1''), that applied to exchange-listed securities, and the National Association of Securities Dealers, Inc.'s (''NASD'') [1] bid test, that applied to certain Nasdaq securities. The Commission's removal of short sale price test restrictions followed a careful, deliberative rulemaking process, carried out in multiple stages from 1999 through 2006, and was open to the public at every stage.[2]

Prior to taking that action, the Commission took a number of steps, including seeking extensive public comment and staff study to consider removing short sale price test restrictions. For example, beginning in 1999, the Commission published a concept release in which it sought comment regarding short sale price test regulation, including on whether to eliminate such regulation.[3] In 2004, the Commission initiated a year-long pilot to study the removal of short sale price tests for approximately one-third of the largest stocks.[4] Short sale data was made publicly available during this pilot to allow the public and Commission staff to study the effects of eliminating short sale price test restrictions. The findings of third party researchers were presented and discussed in a public Roundtable in September 2006.[5] In addition, the results of the Commission staff study of the pilot data were made publicly available in draft form in September 2006 and in final form in February 2007.[6]

[1] NASD is now known as the Financial Industry Regulatory Authority, Inc. (''FINRA'').

[2] In 1999, the Commission published a concept release in which it sought comment regarding short sale price test regulation, including on whether to eliminate such regulation. *See* Securities Exchange Act Release No. 42037 (Oct. 20, 1999), 64 FR 57996 (Oct. 28, 1999).

[3] *See* Securities Exchange Act Release No. 42037 (Oct. 20, 1999), 64 FR 57996 (Oct. 28, 1999).

[4] *See* Securities Exchange Act Release No. 50104 (July 28, 2004), 69 FR 48032 (Aug. 6, 2004) (''Pilot Release'').

[5] *See http://www.sec.gov/about/economic/shopilottrans091506.pdf.*

[6] *See http://www.sec.gov/about/economic/shopilot091506/draft_reg_sho_pilot_report.pdf* and *http://www.sec.gov/news/studies/2007/regshopilot020607.pdf. See also* discussion of findings of staff study, *supra* notes 25 to 41 and accompanying text.

As discussed in detail below,[7] concurrent with the development of the subprime mortgage crisis and credit crisis in 2007, market volatility, including steep price declines, particularly in the stocks of certain financial services issuers, has increased markedly in the U.S. and in every major stock market around the world (including markets that continued to operate under short sale price test restrictions). As market conditions have continued to worsen, investor confidence has eroded, and the Commission has received requests from many commenters to consider imposing restrictions with respect to short selling, in part in the belief that such action would help restore investor confidence.

Due to the extreme market conditions that we are currently facing and the resulting deterioration in investor confidence, we believe it is appropriate at this time to re-examine and seek comment on whether to restore restrictions with respect to short selling. Thus, we are proposing two approaches to restrictions on short selling. One approach would apply a price test on a market wide and permanent basis. With respect to this approach, we propose two alternative price tests. The first alternative price test, in many ways similar to NASD's former bid test, would be based on the national best bid (the ''proposed modified uptick rule''). The second alternative price test, similar to former Rule 10a–1, would be based on the last sale price (the ''proposed uptick rule'').[8]

The other approach would apply only to a particular security during a severe market decline in that security (collectively, the ''proposed circuit breaker rules''). With respect to this second approach, we are proposing two basic alternatives. First, we propose a circuit breaker rule that, when triggered by a severe price decline in a particular security, would temporarily prohibit any person from selling short that security, subject to certain exceptions (''proposed circuit breaker halt rule''). The proposed circuit breaker halt rule could operate in place of, or in addition to, a short sale price test restriction. Second, we propose a circuit breaker rule that, when triggered by a severe price decline in a particular security, would trigger a temporary short sale price test for that security. In connection with this approach, we are proposing two price tests. One is the modified uptick rule—that is, we propose a circuit breaker rule that would, when triggered by a severe decline in a particular security, temporarily impose the proposed modified uptick rule for that security (''proposed circuit breaker modified uptick rule''). The other is the uptick rule—that is, we propose a circuit breaker rule that would, when triggered by a severe market decline in a particular security, temporarily impose the proposed uptick rule for that security (''proposed circuit breaker uptick rule''). A circuit breaker that triggers a short sale price test rule such as the proposed modified uptick rule or the proposed uptick rule would operate in place of a short sale price test rule (collectively, the ''circuit breaker price test rules'').

As discussed in detail below, we preliminarily believe that of the short sale price test proposals, a price test based on the national best bid would have advantages over a test based on the last sale price in today's markets. Among other reasons, we believe that bids generally are a more accurate reflection of current prices for a security than last sale prices due to delays that can occur in the reporting of last sale price information and the manner in which last sale price information is published to the markets. For example, sale transactions may be reported manually up to 90 seconds after they occur. Even sale transactions that are reported automatically can be reported out-of-sequence if trades are occurring in multiple trading venues. This may make the proposed uptick rule more difficult to implement. In addition, last sale price information is published to the markets in reporting sequence rather than in transaction sequence. Thus, we preliminarily believe that if we were to adopt a short sale price test restriction, whether as a full-time rule or as part of a circuit breaker rule, that it would be more appropriate for such short sale price test restrictions to be based on the national best bid rather than on the last sale price.

A short sale price test similar to former Rule 10a–1 that is based on the last sale price, a short sale price test based on a national best bid, and a circuit breaker rule resulting in a short sale halt, should generally be familiar to investors and market participants. Former Rule 10a–1 was in place for almost 70 years. NASD adopted its bid test in 1994 and that rule was in place for over a decade. Various circuit breaker rules have been in place throughout the markets for many years.[9] A circuit breaker rule resulting in a short sale price test for particular stocks that have suffered a severe price decline would be an amalgamation of these familiar rules.

To offer straight-forward alternatives, this release proposes a modified uptick rule based on the national best bid that would apply to trading centers[10] and applies a policies and procedures approach that would require that trading centers have policies and procedures reasonably designed to prevent the execution or display of short sales at impermissible prices. As an alternative short sale price test, this release proposes an uptick rule based on the last sale price that, similar to former Rule 10a–1, applies a straight prohibition approach that would prohibit any person from effecting short sales at impermissible prices. However, either alternative could ultimately be implemented through a policies and procedures approach or through a prohibition approach or some combination thereof.[11]

We are also proposing circuit breaker rules.[12] As noted above, these are the proposed circuit breaker halt rule, the proposed circuit breaker modified uptick rule, and the proposed circuit breaker uptick rule. In addition, we are proposing that a broker-dealer be required to mark a sell order ''short exempt'' if the seller is relying on an exemption under the proposed short sale price test rules or proposed circuit breaker rules.

II. Background on Short Sale Restrictions

Short selling involves a sale of a security that the seller does not own or a sale that is consummated by the delivery of a security borrowed by, or for the account of, the seller.[13] In order

[7] *See infra* Section II(C).

[8] In 2003, the Commission proposed a short sale price test based on the national best bid (''uniform bid test''). *See* Securities Exchange Act Release No. 48709 (Oct. 28, 2003), 68 FR 62972 (Nov. 6, 2003) (''2003 Regulation SHO Proposing Release''). The Commission determined not to proceed with the uniform bid test, but instead established a pilot program pursuant to which it could evaluate the overall effectiveness of short sale price test restrictions on short sales. *See* Securities Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008, 48009 (Aug. 6, 2004) (''2004 Regulation SHO Adopting Release''). *See also infra* Section II(B) (discussing the pilot program).

[9] *See, e.g., infra* note 239 and accompanying text.

[10] A ''trading center'' means a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent. *See infra* note 111 and supporting text.

[11] For instance, the approaches could be combined so that persons are prohibited from selling short on a downbid and trading centers are also required to have reasonable policies and procedures to prevent the execution or display of a short sale on a downbid.

[12] *See* Section III.C below discussing the proposed circuit breaker rules.

[13] *See* 17 CFR 242.200(a).

to deliver the security to the purchaser, the short seller will borrow the security, typically from a broker-dealer or an institutional investor. Typically, the short seller later closes out the position by purchasing equivalent securities on the open market and returning the security to the lender. In general, short selling is used to profit from an expected downward price movement, to provide liquidity in response to unanticipated demand, or to hedge the risk of an economic long position in the same security or in a related security.[14]

A. Short Selling and Its Market Impact

The Commission has long held the view that short selling provides the market with important benefits, including market liquidity and pricing efficiency.[15] Market liquidity is often provided through short selling by market professionals, such as market makers (including specialists) and block positioners, who offset temporary imbalances in the buying and selling interest for securities. Short sales effected in the market add to the selling interest of stock available to purchasers and reduce the risk that the price paid by investors is artificially high because of a temporary imbalance between buying and selling interest. Short sellers covering their sales also may add to the buying interest of stock available to sellers.[16]

Short selling also can contribute to the pricing efficiency of the equities markets.[17] When a short seller speculates or hedges against a downward movement in a security, his transaction is a mirror image of the person who purchases the security in anticipation that the security's price will rise or to hedge against such an increase. Both the purchaser and the short seller hope to profit, or hedge against loss, by buying the security at one price and selling at a higher price. The strategies primarily differ in the sequence of transactions. Market participants who believe a stock is overvalued may engage in short sales in an attempt to profit from a perceived divergence of prices from true economic values. Such short sellers add to stock pricing efficiency because their transactions inform the market of their evaluation of future stock price performance. This evaluation is reflected in the resulting market price of the security.[18]

We recognize that, to the extent that the proposed short sale price test restrictions would result in increased costs to short selling in equity securities, it may lessen some of the benefits of legitimate short selling. Such a reduction may lead to a decrease in market efficiency and price discovery, less protection against upward stock price manipulations, a less efficient allocation of capital, an increase in trading costs, and a decrease in liquidity. Thus, we believe there may be potential costs associated with the proposed short sale price tests in terms of potential impact of such price tests on quote depths, spread widths, and market liquidity. We also believe costs may be incurred in terms of execution and pricing inefficiencies. For example, requiring all short sale orders to be executed or displayed above the best bid, or last sale price, in a declining market may slow the speed of executions and impose additional costs on market participants, including buyers. Also, by not allowing short sellers to sell at the bid, or last sale price, the proposed short sale price tests may impede trading and distort market pricing.

Although short selling serves useful market purposes, it also may be used to illegally manipulate stock prices.[19] One example is the ''bear raid'' where an equity security is sold short in an effort to drive down the price of the security by creating an imbalance of sell-side interest.[20] This unrestricted short selling could exacerbate a declining market in a security by increasing pressure from the sell-side, eliminating bids, and causing a further reduction in the price of a security by creating an appearance that the security price is falling for fundamental reasons, when the decline, or the speed of the decline, is being driven by other factors.[21]

B. History of Short Sale Price Test Restrictions in the U.S.

Section 10(a) of the Exchange Act[22] gives the Commission plenary authority to regulate short sales of securities registered on a national securities exchange, as necessary or appropriate in the public interest or for the protection of investors.[23] After conducting an inquiry into the effects of concentrated short selling during the market break of 1937,[24] the Commission adopted former Rule 10a–1 (also known as the ''tick test'' or ''uptick rule'') in 1938 to restrict short selling in a declining market.[25]

The core provisions of former Rule 10a–1 remained virtually unchanged for almost 70 years. Over the years, however, in response to changes in the securities markets, including changes in trading strategies and systems used in the marketplace, the Commission added exceptions to former Rule 10a–1 and granted numerous written requests for relief from the rule's restrictions. These market changes included decimalization, the increased use of matching systems that execute trades at independently derived prices during random times within specific time intervals,[26] and the spread of fully automated markets. In addition, market developments over the years led to the application of different price tests to securities trading in different markets.[27]

[14] *See, e.g.,* Securities Exchange Act Release No. 54891 (Dec. 7, 2006), 71 FR 75068, 75069 (Dec. 13, 2006) (''2006 Price Test Elimination Proposing Release''); 2003 Regulation SHO Proposing Release, 68 FR at 62974.

[15] *See id. See also* Securities Exchange Act Release No. 29278 (June 7, 1991), 56 FR 27280 (June 13, 1991); 2004 Regulation SHO Adopting Release, 69 FR 48008, n. 6; Boehmer, Ekkehart and Wu, Julie, *Short Selling and the Informational Efficiency of Prices* (Jan. 8, 2009).

[16] *See, e.g.,* 2006 Price Test Elimination Proposing Release, 71 FR at 75069; 2003 Regulation SHO Proposing Release, 68 FR at 62974.

[17] *See id.*

[18] *See id.* Arbitrageurs also contribute to pricing efficiency by utilizing short sales to profit from price disparities between a stock and a derivative security, such as a convertible security or an option on that stock. For example, an arbitrageur may purchase a convertible security and sell the underlying stock short to profit from a current price differential between two economically similar positions. *See id.*

[19] *See, e.g., U.S.* v. *Russo,* 74 F.3d 1383, 1392 (2d Cir. 1996) (short sales were sufficiently connected to the manipulation scheme as to constitute a violation of Exchange Act Section 10(b) and Rule 10b–5); *S.E.C.* v. *Gardiner,* 48 S.E.C. Docket 811, No. 91 Civ. 2091 (S.D.N.Y. March 27, 1991) (alleged manipulation by sales representative by directing or inducing customers to sell stock short in order to depress its price).

[20] Many people blamed ''bear raids'' for the 1929 stock market crash and the market's prolonged inability to recover from the crash. *See* 8 Louis Loss and Joel Seligman, Securities Regulation, section 8–B–3 (3d ed. 2006).

[21] *See* 2006 Price Test Elimination Proposing Release, 71 FR at 75069; 2003 Regulation SHO Proposing Release, 68 FR at 62074.

[22] 15 U.S.C. 78j(a).

[23] *See also* 2006 Price Test Elimination Proposing Release, 71 FR at 75068; 2003 Regulation SHO Proposing Release, 68 FR at 62973.

[24] The study covered two weekly periods, that of September 7–13, 1937, and that of October 18–23, 1937. *See* Securities Exchange Act Release No. 1548 (Jan. 24, 1938), 3 FR 213 (Jan. 26, 1938) (''Former Rule 10a–1 Adopting Release'').

[25] *See id.* Former Rule 10a–1 provided that, subject to certain exceptions, a listed security could be sold short (i) at a price above the price at which the immediately preceding sale was effected (plus tick), or (ii) at the last sale price if it was higher than the last different price (zero plus tick).

[26] *See, e.g.,* Letter from Larry E. Bergmann, Senior Associate Director, Division of Market Regulation, SEC, to Andre E. Owens, Schiff Hardin & Waite, dated April 23, 2003 (granting exemptive relief from former Rule 10a–1 for trades executed through an alternative trading system that matches buying and selling interest among institutional investors and broker-dealers at various set times during the day).

[27] *See, e.g.,* Securities Exchange Act Release No. 55245 (Feb. 5, 2007), 72 FR 6635 (Feb. 12, 2007). Former Rule 10a–1 applied only to short sale transactions in exchange-listed securities. In 1994, the Commission granted temporary approval to

In July 2004, the Commission adopted Rule 202T of Regulation SHO,[28] which established procedures for the Commission to temporarily suspend short sale price tests for a prescribed set of securities so that the Commission could study the effectiveness of these tests.[29] Pursuant to the process established in Rule 202T, the Commission issued an order creating a one year pilot (''Pilot'') temporarily suspending the tick test of former Rule 10a–1(a) and any price test of any exchange or national securities association for short sales of certain securities.[30] The Pilot was designed to assist the Commission in assessing whether changes to current short sale price test regulation were appropriate at that time in light of then-current market practices and the purposes underlying short sale price test regulation.[31]

OEA gathered the data made public during the Pilot, analyzed the data and provided the Commission with a summary report on the Pilot (''OEA Staff's Summary Pilot Report'').[32] The OEA Staff's Summary Pilot Report, which was made public, examined several aspects of market quality including the overall effect of price tests on short selling, liquidity, volatility and price efficiency.[33] The Pilot was also designed to allow the Commission and members of the public to examine whether the effects of short sale price tests were similar across stocks.[34]

As set forth in the OEA Staff's Summary Pilot Report, OEA found little empirical justification at that time for maintaining short sale price test restrictions, especially for actively traded securities. Amongst its results, OEA found that short sale price tests did not have a significant impact on daily volatility. However, OEA also found some evidence that short sale price tests dampened intraday volatility for smaller stocks.[35]

OEA also found that the Pilot data provided limited evidence that price test restrictions distort a security's price.[36] In addition, OEA found that price test restrictions resulted in an increase in quote depths.[37] Realized liquidity levels, however, were unaffected by the removal of short sale price test restrictions.[38] The Pilot data also provided evidence that short sale price test restrictions reduce the volume of executed short sales to total volume and, therefore, act as a constraint on short selling.[39] OEA did not find, however, a significant difference in short interest positions between those securities subject to a short sale price test versus those securities that were not subject to such a test during the Pilot.[40]

In addition, the Commission encouraged outside researchers to examine the Pilot data. In response to this request, the Commission received four completed studies (the ''Academic Studies'') from outside researchers that specifically examined the Pilot data.[41] The Commission also held a public roundtable (the ''Regulation SHO Roundtable'') that focused on the empirical evidence learned from the Pilot data (the OEA Staff's Summary Pilot Report, Academic Studies, and Regulation SHO Roundtable are referred to collectively herein as, the ''Pilot Results'').[42] The Pilot Results contained a variety of observations, which the Commission considered in determining whether or not to propose removal of then-current short sale price test restrictions and subsequently whether or not to eliminate such restrictions. Generally, the Pilot Results supported removal of short sale price test restrictions at that time.[43] In addition to the Pilot Results, thirteen other analyses by SEC staff and various third party

NASD to apply its own short sale rule, known as the ''bid test,'' on a pilot basis that was renewed annually until the Commission repealed short sale price tests. NASD's bid test prohibited short sales in Nasdaq Global Market securities (then known as Nasdaq National Market securities) at or below the current (inside) bid when the current best (inside) bid was below the previous best (inside) bid in a security. As a result, until the Commission eliminated former Rule 10a–1, and prohibited any self-regulatory organization (''SRO'') from having a short sale price test in July 2007, Nasdaq Global Market securities traded on Nasdaq or the OTC market and reported to a NASD facility were subject to a bid test. Other listed securities traded on an exchange, or otherwise, were subject to former Rule 10a–1. Nasdaq securities traded on exchanges other than Nasdaq were not subject to any price test. In addition, many thinly-traded securities, such as Nasdaq Capital Market securities, and securities quoted on the over-the-counter (''OTC'') Bulletin Board and Pink Sheets, were not subject to any price test wherever traded. According to the Commission's Office of Economic Analysis (''OEA''), in 2005, prior to the start of the Pilot, NASD Rule 3350 applied to approximately 2,800 securities, while former Rule 10a–1 applied to approximately 4,000 securities.

[28] 17 CFR 242.202T.

[29] *See* 17 CFR 242.202T; *see also* 2004 Regulation SHO Adopting Release, 69 FR at 48012–48013.

[30] *See* Pilot Release, 69 FR 48032 (commencing the Pilot on January 3, 2005 and terminating the Pilot on December 31, 2005). On November 29, 2004, the Commission issued an order resetting the Pilot to commence on May 2, 2005 and end on April 28, 2006 to give market participants additional time to make systems changes necessary to comply with the Pilot. *See* Securities Exchange Act Release No. 50747 (Nov. 29, 2004), 69 FR 70480 (Dec. 6, 2004). On April 20, 2006, the Commission issued an order extending the termination date of the Pilot to August 6, 2007. *See* Securities Exchange Act Release No. 53684 (April 20, 2006), 71 FR 24765 (April 26, 2006).

[31] *See* Pilot Release, 69 FR at 48032. In the 2004 Regulation SHO Adopting Release we noted that ''the purpose of the [P]ilot is to assist the Commission in considering alternatives, such as: (1) Eliminating a Commission-mandated price test for an appropriate group of securities, which may be all securities; (2) adopting a uniform bid test, and any exceptions, with the possibility of extending a uniform bid test to securities for which there is currently no price test; or (3) leaving in place the current price tests.'' 2004 Regulation SHO Adopting Release, 69 FR at 48010.

[32] *See supra* note 6.

[33] OEA selected the securities to be included in the Pilot by sorting the 2004 Russell 3000, first by listing market and then by average daily dollar volume from June 2003 through May 2004, and then within each listing market, selecting every third company starting with the second. Because the selection process relied on average daily dollar volume, companies that had their Initial Public Offering (''IPO'') in May or June 2004, just prior to the Russell reconstitution, were not included. The securities in the control group came from the remainder of the 2004 Russell 3000 not included in the Pilot (excluding the IPOs in May or June 2004 and any securities added to the Russell 3000 after June 2004). *See* OEA Staff's Summary Pilot Report at 22 (discussing the selection of securities included in the Pilot and the control group).

[34] In the 2004 Regulation SHO Adopting Release, the Commission stated its expectation that data on trading during the Pilot would be made available to the public to encourage independent researchers to study the Pilot. *See* 2004 Regulation SHO Adopting Release, 69 FR at 48009, n.9. Accordingly, nine SROs began publicly releasing transactional short selling data on January 3, 2005. The nine SROs at that time were the Amex, ARCA, BSE, CHX, NASD, Nasdaq, National Stock Exchange, NYSE and Phlx. The SROs agreed to collect and make publicly available trading data on each executed short sale involving equity securities reported by the SRO to a securities information processor. The SROs published the information on a monthly basis on their Internet Web sites.

[35] *See* OEA Staff's Summary Pilot Report, at 55 n. 61–63 and supporting text.

[36] On the day the Pilot went into effect, listed Pilot securities underperformed listed control group securities by approximately 24 basis points. The Pilot and control group securities, however, had similar returns over the first six months of the Pilot. *See* OEA Staff's Summary Pilot Report at 8.

[37] *See* OEA Staff's Summary Pilot Report, at 55 n. 61–63 and supporting text.

[38] This conclusion is based on the result that changes in effective spreads were not economically significant (less than a basis point) and that the changes in the bid and ask depth appear not to affect the transaction costs paid by investors. Arguably, the changes in bid and ask depth appeared to affect the intraday volatility. However, OEA concluded that overall, the Pilot data did not suggest a deleterious impact on market quality or liquidity. *See* OEA Staff's Summary Pilot Report at 42, 56.

[39] *See* OEA Staff's Summary Pilot Report at 35.

[40] *See id.*

[41] *See* Karl B. Diether, Kuan Hui Lee and Ingrid M. Werner, 2009, *It's SHO Time! Short-Sale Price-Tests and Market Quality,* Journal of Finance 64:37–73; Gordon J. Alexander and Mark A. Peterson, 2008, *The Effect of Price Tests on Trader Behavior and Market Quality: An Analysis of Reg. SHO,* Journal of Financial Markets 11:84–111; J. Julie Wu, *Uptick Rule, short selling and price efficiency,* August 14, 2006; Lynn Bai, 2008, *The Uptick Rule of Short Sale Regulation—Can it Alleviate Downward Price Pressure from Negative Earnings Shocks?* Rutgers Business Law Journal 5:1–63 (''Bai'').

[42] *See supra* note 5.

[43] *See* 2006 Price Test Elimination Proposing Release, 71 FR at 75072–75075 (discussing the Pilot Results).

researchers were conducted between 1963 and 2004 addressing price test restrictions.[44] Among these were several studies that evaluated short sale price tests during times of severe market decline, including the market break of May 28, 1962, the market decline in September and October 1976, the market break of October 19, 1987, and the Nasdaq market decline of 2000–2001. The results of these studies were mixed, but generally they found that former Rule 10a–1 did not prevent short sales in extreme down markets and did limit short selling in up markets and provided additional support for the removal of short sale price restrictions.

In December 2006, the Commission proposed to eliminate former Rule 10a–1 by removing restrictions on the execution prices of short sales, as well as prohibiting any SRO from having a price test.[45] The Commission received 27 comment letters in response to its proposal to eliminate former Rule 10a–1 and prohibit any SRO from having a short sale price test. The comments in response to the proposed amendments varied. Most commenters (including individual traders, academics, broker-dealers, SROs and trade associations) advocated removing all price test restrictions.[46] Generally, these commenters believed that price test restrictions were no longer necessary due to increased market transparency and the existence of real-time regulatory surveillance that could monitor for and detect any potential short sale manipulation.[47]

Two commenters (both individual investors) opposed the proposed amendments noting the need for price tests to prevent ''bear raids.'' [48] One commenter, although generally in support of removing all price test restrictions, stated the belief that at some level unrestricted short selling should be collared.[49] This commenter supported having a 10% circuit breaker to prevent panic in the event there is a major market collapse.[50] The NYSE also noted its concern about unrestricted short selling during periods of unusually rapid and large market declines. The NYSE stated that the effects of an unusually rapid and large market decline could not be measured or analyzed during the Pilot because such decline did not occur during the period studied.[51]

Effective July 3, 2007, the Commission eliminated former Rule 10a–1 and added Rule 201 of Regulation SHO prohibiting any SRO from having a short sale price test.[52] The Commission stated that it determined to eliminate all short sale price test restrictions after reviewing the comments received in response to its proposal to eliminate all short sale price test restrictions, the Pilot Results, and taking into account the market developments that had occurred in the securities industry since the Commission adopted former Rule 10a–1 in 1938.[53] In addition, the Commission stated that it believed that the amendments would bring increased uniformity to short sale regulation, level the playing field for market participants, and remove an opportunity for regulatory arbitrage.[54]

C. Changes in Market Conditions Since Elimination of Rule 10a–1

Recently, market volatility has increased markedly in the U.S., as well as in every major stock market around the world. Although we are not aware of specific empirical evidence that the elimination of short sale price tests has contributed to the increased volatility in U.S. markets, many members of the public currently associate the removal of former Rule 10a–1 with the recent volatility, including steep declines in some securities' prices, and the loss of investor confidence in our markets.

In addition, we have received numerous requests for reinstatement of short sale price test restrictions from a variety of individuals, including investors, issuers, academics, trade associations, and members of Congress.[55] Most of these commenters have asked that we reinstate short sale price test restrictions because they believe that such a measure would help restore investor confidence.[56]

[44] *See* OEA Staff's Summary Pilot Report at 14, 17–22 (discussing the thirteen studies).

[45] *See* 2006 Price Test Elimination Proposing Release, 71 FR 75068.

[46] *See, e.g.,* letter from Howard Teitelman, CSO, Trillium Trading (Feb. 6, 2007) (''Teitelman Letter''); letter from S. Kevin An, Deputy General Counsel, E*TRADE (Feb. 9, 2007) (''E*TRADE Letter''); letter from Carl Giannone (Feb. 11, 2007) (''Giannone Letter''); letter from David Schwarz (Feb. 12, 2007) (''Schwarz Letter''); letter from John G. Gaine, President, MFA (Feb. 12, 2007) (''MFA Letter''); letter from Lisa M. Utasi, Chairman of the Board and John C. Giesea, President and CEO, STA (Feb. 12, 2007) (''STA Letter''); letter from Gerard S. Citera, Executive Director, U.S. Equities, UBS (Feb. 14, 2007) (''UBS Letter''); letter from Mary Yeager, Assistant Secretary, NYSE (Feb. 14, 2007) (''NYSE Letter''); letter from James J. Angel, Ph.D., CFA, Associate Professor of Finance, McDonough School of Business, Georgetown University (Feb. 14, 2007) (''Angel Letter''); letter from Ira D. Hammerman, SIFMA Managing Director and General Counsel (Feb. 16, 2007) (''SIFMA Letter''); *see also* Securities Exchange Act Release No. 55970 (June 28, 2007), 72 FR 36348, 36350–36351 (July 3, 2007) (''2007 Price Test Adopting Release'') (discussing the comment letters).

[47] *See, e.g.,* Giannone Letter; E*TRADE Letter; STA Letter; UBS Letter; *see also* Securities Exchange Act Release No. 55970 (June 28, 2007), 72 FR 36348, 36350–36351 (July 3, 2007) (discussing the comment letters).

[48] *See, e.g.,* letter from Jim Ferguson (Dec. 19, 2006); letters from David Patch (Jan. 1, 2007; Jan. 12, 2007) (''Patch Letters'').

[49] *See* Giannone Letter.

[50] *See id.*

[51] *See* NYSE Letter.

[52] *See* 2007 Price Test Adopting Release, 72 FR 36348.

[53] *See id* at 36352.

[54] *See id.*

[55] *See, e.g.,* letter to Mary Schapiro, Chairman, from Rep. Barney Frank and other Members of the House Financial Services Committee, dated March 11, 2009; letter to Mary Schapiro, Chairman, Commission, from Professor Constantine Katsoris (''Katsoris letter''), Fordham University School of Law, dated March 4, 2009; letter from Albert C. Roelse, dated Feb. 20, 2009; letter from Robert A. Lee, dated Feb. 10, 2009; letter from Giulio Liotine, dated Jan. 22, 2009 (''Liotine Letter''); letter from Edward L. Yingling, American Bankers Association, dated Dec. 16, 2008 (''American Bankers Assn. 2008 Letter''); letter from Peter Brown, dated Dec. 12, 2008 (''Brown Letter''); letter to Christopher Cox, Chairman, Commission, from Peter T. King, Member of Congress, dated Oct. 7, 2008; letter to Christopher Cox, Chairman, Commission, from Bill Sali, Member of Congress, dated Oct. 1, 2008; letter to Christopher Cox, Chairman, Commission, from T.J. Rodgers, President and CEO, Cypress Semiconductor Corp., dated October 1, 2008; letter to Christopher Cox, Chairman, Commission, from Carl H. Tiedmann, General Partner, Tiedmann Investment Group, dated Sept. 22, 2008; letter to Christopher Cox, Chairman, Commission, from Hillary Rodham Clinton, Senator, dated Sept. 17, 2008 (''Clinton Letter''). The Commission's Office of Investor Education and Advocacy estimates that it has received over 4,000 requests (including duplicate requests) from individuals regarding reinstating a short sale price test.

[56] *See, e.g.,* letter from Chris Baratta, dated March 9, 2009 (''Baratta Letter''); letter from Paul Kent, dated March 7, 2009; letter from Troy Williams, dated March 6, 2009; letter from Briggs Diuguid, dated March 5, 2009 (''Diuguid Letter''); letter from Bob Young, dated March 5, 2009; letter from Kevin Girard, dated March 4, 2009; letter from Mike Rogers, dated March 3, 2009; letter from George Flagg, dated March 3, 2009; letter from Arleen Golden, dated March 2, 2009; letter from Doug Cameron, dated March 2, 2009; letter from Dr. Bill Daniel, dated Feb. 26, 2009; letter from Glenn Webster, dated Feb. 26, 2009; letter from Robert Lounsbury, dated Feb. 25, 2009; letter from Karl Findorff, dated Feb. 19, 2009; letter from Robert Levine, dated Feb. 17, 2009; letter from Robert Lee, dated Feb. 10, 2009; American Bankers Assn. 2008 letter; letter from David Campbell and Natalie Win, dated Nov. 25, 2008; letter from Josh Dodson, dated Nov. 21, 2008; letter from J. Geddes Parsons, dated Nov. 21, 2008; letter from Charles Rudisill, dated Nov. 21, 2008; letter from Mike Ryan, dated Nov. 21, 2008; letter from Jeff Brower, dated Nov. 20, 2008; letter from Mike Abraham, dated Nov. 20, 2008; letter from Marvin Dingott, dated Nov. 20, 2008; letter from W. Romain Spell, dated Nov. 19, 2008; letter from Phil Mason, dated Nov. 19, 2008; letter from David Sheridan, dated Nov. 18, 2008; letter from Lynn Miller, dated Nov. 13, 2008; letter from Patrick McQuaid, dated Oct. 29, 2008; letter from Scotland Settle, dated Oct. 27, 2008; letter from Jenna Spurrier, dated Oct. 24, 2008; letter from Joe Garrett, dated Oct. 15, 2008; letter from Peter Eckle, dated Oct. 11, 2008; letter from Maureen Christensen, dated Oct. 9, 2008; letter from Richard Vulpi, dated Sept. 24, 2008; *see also* Katsoris Letter (stating that elimination of former Rule 10a–1 ''* * * hardly generates confidence on the part of a true investor who is entrusting his or her life's savings * * * to the current market'').

Some of these commenters have stated that a lack of price test restrictions makes them question whether they should invest in the stock market.[57] Other commenters have stated that they believe a short sale price test would aid small investors.[58] In addition, some commenters have asserted that restricting the prices at which securities may be sold short would help address recent steep declines in securities' prices. For example, the American Bankers Association (the ''ABA'') noted that its members, ''both large and small, are telling [the ABA] that short sellers are taking advantage of the uptick rule's absence and that their stock prices are experiencing excessive downward price pressure * * *.'' [59] This commenter further noted that ''its members strongly believe that reinstatement of the uptick rule in some format would help limit these downward stock spirals and restore investor confidence.'' [60]

In commenting on the recent market volatility and the absence of a short sale price test, one member of Congress recently stated that ''[o]ne of the simplest but most important and effective initiatives that the SEC could undertake immediately to combat market volatility is the reinstatement of a * * * 'uptick rule'.'' [61] A former U.S. Senator urged the Commission to ''* * * give close consideration to the many calls for the immediate restoration of the uptick rule whose repeal has been linked to the recent market volatility and proliferation of abusive short sale transactions.'' [62] SRO representatives and others have also commented on the need for a short sale price test.[63] Researchers have also indicated that they believe that they have collected data that establishes a possible association between the current market downturn and the elimination of former Rule 10a–1.[64] In addition, we note that recently there are reports of significant short selling in connection with credit default swaps, particularly in the securities of significant financial institutions.[65] One commenter has suggested that the interaction between and amplifying effects of credit default swaps and short selling may be a reason to reinstate a short sale price test.[66]

Questions and comments have been raised about the role that short selling, and in particular potentially abusive short selling, may have in connection with the price fluctuations and disruption in our markets. As such, recently we took a number of short sale-related actions aimed at addressing these concerns. For example, due to our concerns that false rumors spread by short sellers regarding financial institutions of significance in the U.S. may have fueled market volatility in the securities of some of these institutions, on July 15, 2008, we issued an emergency order (''July Emergency Order'') [67] pursuant to Section 12(k)(2) of the Exchange Act [68] which imposed borrowing and delivery requirements on short sales of the equity securities of certain financial institutions. We noted in the July Emergency Order that false rumors can lead to a loss of confidence in our markets. Such loss of confidence can lead to panic selling, which may be further exacerbated by ''naked'' short selling. As a result, the prices of securities may artificially and unnecessarily decline well below the price level that would have resulted from the normal price discovery process.[69] If significant financial institutions are involved, this chain of events can threaten disruption of our markets.[70]

Due to our concerns regarding the impact of short selling on the prices of financial institution securities, on September 18, 2008, we issued another emergency order prohibiting short selling in the publicly traded securities of certain financial institutions.[71] Our concerns, however, have not been limited to financial institutions given the importance of confidence in our markets and recent rapid and steep declines in the prices of securities generally.[72] Such rapid and steep price declines can give rise to questions about the underlying financial condition of an institution, which in turn can erode confidence even without an underlying fundamental basis.[73] This erosion of confidence can impair the liquidity and ultimate viability of an institution, with potentially broad market consequences.[74]

These concerns resulted in our issuance on September 17, 2008 of an emergency order under Section 12(k)(2) of the Exchange Act, in part targeting

[57] *See, e.g.,* letter from Tim Zanni, dated Feb. 19, 2009; letter from Jeff Boyd, dated Feb. 10, 2009.

[58] *See, e.g.,* Baratta Letter (noting that while price test restrictions could not reasonably be expected to prevent market downturns, they would, in his opinion, ''give the little investor a chance'' in the current conditions). *See also* Young Letter (suggesting that reinstatement of the uptick rule ''will not be a quick or total fix, but it will help''); letter to Mary Schapiro, Chairman, Commission, from Paul D. Mendelsohn, President of Windham Financial Services, Inc., dated March 6, 2009 (stating that he believes former Rule 10a–1 ''protected'' the markets and that ''suspension of the uptick rule has opened a security hole into our financial system'').

[59] *See* American Bankers Assn. 2009 Letter.

[60] *See id.* See also letter to Christopher Cox, Chairman, Commission, from Paul Tudor Jones II, Tudor Investment Corporation, dated Oct. 10, 2008 (stating that he believes that one way to ''immediately stem the decline'' in the stock market would be to reinstate the uptick rule); letter to Mary Schapiro, Chairman, Commission, from James F. Kane, Jr., dated Feb. 6, 2009 (stating that he believes that reinstating ''the Up-tick Rule will go a long way in preventing speculators from ganging up on a particular stock and forcing it down''); Diuguid Letter (stating that while short sellers ''make efficient markets,'' he is nonetheless concerned that short selling may be a tool of manipulators when short sales are ''piled on'' a particular company).

[61] *See* letter to Mary Schapiro, Chairman, Commission, from Gary L. Ackerman, Member of Congress, dated Jan. 27, 2009.

[62] *See* Clinton Letter.

[63] *See, e.g.,* Edgar Ortega, *Short-Sale Rule Undermined as Bernanke Backs Review,* Bloomberg News Service, March 4, 2009 (noting comments by Duncan Niederauer, CEO, The NYSE/Euronext Group, Inc., that imposing a measure such as former Rule 10a–1 ''would go a long way to adding confidence'' in our markets); Ben Stein, *How to Deal with a 3 A.M. Fear,* The New York Times, March 8, 2009; Charles R. Schwab, *Restore the Uptick Rule, Restore Confidence,* Wall Street Journal Online, December 9, 2008. The Federal Reserve Chairman also recently noted that, while the ''traditional literature on this doesn't seem to find much effect of the uptick rule,'' short sale price test restrictions are ''worth looking at'' and that the rule (*i.e.,* former Rule 10a–1) ''might have had some benefit.'' *Monetary Policy and the State of the Economy: Hearing Before the House Financial Services Comm., 111th Cong., 1st Sess.* (Lexis Federal News Service at 33) (Feb. 25, 2009). *See also* letter from Duncan Niederauer, CEO, The NYSE/Euronext Group, Inc., Robert Greifeld, CEO, The NASDAQ OMX Group, Inc., Joe Ratterman, CEO, BATS Exchange, Inc., Joseph Rizzello, CEO, National Stock Exchange, dated March 24, 2009 (''National Exchanges Letter'') (stating that the United States national securities exchanges welcome the announcement that the Commission will consider a proposal to adopt a rule to combat abusive short selling and suggesting that any such rule proposal include a circuit breaker in the form discussed therein).

[64] *See* D. Harmon and Y. Bar-Yam, 2008, *Technical Report on the SEC Uptick Repeal Pilot,* New England Complex Systems Institute; *see also* Robert C. Pozen and Dr. Yaneer Bar-Yam, *There's a Better Way to Prevent Bear Raids,* The Wall Street Journal, Opinion, November 18, 2008 (stating that the ''uptick rule'' is an effective way to prevent ''bear raids''). *But cf.* John C. Bogle, Jr. and Howard Flinker, *Uptick Rule Won't Prevent More Raids by the Bear,* The Wall Street Journal, Opinion Section (November 26, 2008).

[65] *See* George Soros, *The Game Changer,* available at *http://www.ft.com/cms/s/0/49b1654a-ed60-11dd-bd60-0000779fd2ac.html.*

[66] *See id.* (concluding that Lehman, AIG and other financial institutions were destroyed by ''bear raids'' in which the shorting of stocks and buying of CDS amplified and reinforced each other).

[67] *See* Securities Exchange Act Release No. 58166 (July 15, 2008), 73 FR 42379 (July 21, 2008).

[68] 15 U.S.C. 78*l*(k).

[69] *See* July Emergency Order, 73 FR 42379.

[70] *See id.*

[71] *See* Securities Exchange Act Release No. 58592 (Sept. 18, 2008), 73 FR 55169 (Sept. 24, 2008).

[72] *See, e.g.,* July Emergency Order, 73 FR 42379; Securities Exchange Act Release No. 58592 (Sept. 18, 2008), 73 FR 55169 (Sept. 24, 2008) (''Short Sale Ban Emergency Order''); Securities Exchange Act Release No. 58572 (Sept. 17, 2008), 73 FR 54875 (Sept. 23, 2008) (''September Emergency Order'').

[73] *See* Short Sale Ban Emergency Order, 73 FR 55169; September Emergency Order, 73 FR 54875.

[74] *See id.*

short selling in all equity securities.[75] Pursuant to the September Emergency Order we imposed enhanced delivery requirements on sales of all equity securities under Rule 204T of Regulation SHO.[76]

The enhanced close-out requirements of Rule 204T of Regulation SHO in the September Emergency Order, which, among other things, require participants of a registered clearing agency to close-out fails to deliver resulting from short sales of any equity security by purchasing or borrowing the security by no later than the beginning of trading on the day after the fail to deliver occurs, appear to be having a positive effect toward achieving our goal of reducing fails to deliver.[77] As we stated in the October 2008 release adopting Rule 204T as an interim final temporary rule, we are concerned about the potentially negative market impact of large and persistent fails to deliver.[78] Thus, our adoption of Rule 204T followed a series of other steps aimed at reducing such fails to deliver and addressing potentially abusive short selling. Such steps included eliminating the ''grandfather'' and options market maker exceptions to Regulation SHO's close-out requirement,[79] and proposing and subsequently adopting a ''naked'' short selling anti-fraud rule, Rule 10b–21.[80] Although we recognize that fails to deliver can occur for legitimate reasons, we are concerned about the impact of large and persistent fails to deliver on market confidence. Preliminary results from OEA indicate that our actions to further reduce fails to deliver and, thereby, address potentially abusive short selling are having their intended effect. For example, preliminary results from OEA indicate that fails to deliver in all equity securities have declined significantly since the adoption of Rule 204T.[81]

Questions persist, however, about the rapid and steep declines in the prices of securities, and we recognize the concern over the continuing erosion of investor confidence in our markets. Thus, we have continued to examine whether there are other actions that the Commission might consider, including re-evaluating whether a short sale price test ought to be reintroduced or a circuit breaker rule should be imposed, in light of the extreme market declines and volatility, as well as the loss of investor confidence we continue to experience.

We also note that when we eliminated all short sale price test restrictions in July 2007, we acknowledged that circumstances may develop that would warrant relief from the prohibition in Rule 201 of Regulation SHO for a short sale price test, including a short sale price test of an SRO, to apply to short sales in any security.[82] Thus, in determining whether or not to propose a short sale price test rule or circuit breaker rule, we have considered the recent turmoil in the financial sector and steep declines and extreme volatility in securities prices. The turbulence in the financial markets has been underscored over the past 18 months by events such as the March 2008 sale of Bear Stearns Corporation, and the crisis surrounding the collapse of Lehman Brothers in September 2008.

In addition, between July 2007 and March 2009, the Dow Jones Industrial Average (''DJIA'') lost roughly 50% of its value, while the Standard and Poor's 500 Index fell approximately 54%.[83] The publicly traded securities of significant financial institutions have experienced large reductions in value in 2008 and early 2009.[84] For example, one significant financial institution's stock price declined from approximately $49 per share in the beginning of July 2007, to approximately $1 per share in March 2009. Similarly, in July 2007, another significant financial institution's stock price declined from approximately $49 per share to approximately $3 per share in March 2009. In addition, in 2008, a number of major banks became the subjects of federal seizure.[85] A total of 25 banks failed in 2008, resulting in a $33.5 billion expenditure of the fund used by the Federal Deposit Insurance Corporation (''FDIC'') to protect individual depositors' savings.[86] Put simply, market conditions have changed dramatically in recent months.[87]

In addition, as noted above, in response to the proposed amendments to eliminate former Rule 10a–1, one commenter expressed its concern about unrestricted short selling during periods of unusually rapid and large market declines.[88] This concern has been echoed in recent comment letters to the Commission.[89] We note, however, that in the 2007 Price Test Adopting Release, we noted that because of the Commission's stated objective when it adopted Rule 10a–1 and our concerns about the potential use of short sales to manipulate stock prices, OEA examined the Pilot data for any indication that there is an association between extreme price movements and price test

[75] *See* September Emergency Order, 73 FR 54875.

[76] *See id.* We subsequently issued an interim final temporary rule imposing the delivery requirements of Rule 204T of Regulation SHO until July 31, 2009. *See* Securities Exchange Act Release No. 58773 (Oct. 14, 2008), 73 FR 61706 (Oct. 17, 2008) (''Interim Final Temporary Rule 204T''). We and Commission staff are currently reviewing the comment letters received in response to that rule. In addition, we issued an emergency order, and subsequent interim final temporary rule, to require disclosure of short sales and short positions in certain securities. The temporary rule expires on August 1, 2009. We and Commission staff are currently reviewing comment letters received in response to the temporary rule. *See* Securities Exchange Act Release No. 58591 (Sept. 18, 2008). *See also* Securities Exchange Act Release No. 58785 (Oct. 15, 2008), 73 FR 61678 (Oct. 17, 2008).

[77] *See* September Emergency Order, 73 FR 54875.

[78] *See* Interim Final Temporary Rule 204T, 73 FR at 61708.

[79] *See* Securities Exchange Act Release No. 56212 (Aug. 7, 2007), 72 FR 45544 (Aug. 14, 2007) (eliminating the ''grandfather'' exception to Regulation SHO's close-out requirement); September Emergency Order, 73 FR 54875 (eliminating the options market maker exception to Regulation SHO's close-out requirement). Following the issuance of the September Emergency Order, we adopted amendments making permanent the elimination of the options market maker exception. *See* Securities Exchange Act Release No. 58775 (Oct. 14, 2008), 73 FR 61690 (Oct. 17, 2008).

[80] *See* Securities Exchange Act Release No. 58774 (Oct. 14, 2008), 73 FR 61666 (Oct. 17, 2008); Securities Exchange Act Release No. 57511 (March 17, 2008), 73 FR 15376 (March 21, 2008).

[81] *See* Memorandum from OEA Re: Impact of Recent SHO Rule Changes on Fails to Deliver, November 26, 2008 at *http://www.sec.gov/comments/s7-30-08/s73008-37.pdf;* Memorandum from OEA Re: Impact of Recent SHO Rule Changes on Fails to Deliver, March 20, 2009 at *http://www.sec.gov/comments/s7-30-08/s73008-107.pdf* (stating, among other things, that the average daily number of aggregate fails to deliver for all securities decreased from 1.1 billion to 582 million for a total decline of 47.2% when comparing a pre-Rule to post-Rule period).

[82] *See* 2007 Price Test Adopting Release, 72 FR 36348.

[83] On July 3, 2007, the DJIA closed at 13,577, and on March 3, 2009, the DJIA closed at 6,726. On July 3, 2007, the S&P 500 Index closed at 1524.87, and on March 3, 2009, the S&P 500 Index closed at 700.82.

[84] We note that we have no empirical evidence that such falling prices are the result of short selling activity and the lack of short sale price test restrictions.

[85] *See, e.g.,* Office of Thrift Supervision, *Receivership Of A Federal Saving Association,* dated Sept. 25, 2008 at *http://files.ots.treas.gov/680024.pdf;* Office of Thrift Supervision, *Pass-Through Receivership Of A Federal Savings Association Into A De Novo Federal Savings Association That Is Placed Into Conservatorship With the FDIC,* dated July 11, 2008 at *http://files.ots.treas.gov/680018.pdf.*

[86] *See* Alison Vekshin, *Bair Says Insurance Fund Could Be Insolvent This Year, http://www.bloomberg.com/apps/news?pid=washingtonstory&sid=alsJZqIFuN3k,* March 4, 2009.

[87] We note, however, that stock markets have incurred significant declines in value under former short sale price test restrictions, most notably the 1987 Market Crash and the 2000 Tech Bubble Burst.

[88] *See* NYSE letter.

[89] *See, e.g.,* Brown Letter (noting that ''the investigation performed before the uptick rule was rescinded was insufficient, particularly [because] it covered a period of relative market stability and studied the side effects of the rule rather than the primary effect of the rule which would only be seen in a sharply down market such as we have just suffered''); Liotine Letter (stating that ''[t]he research done prior to the [amendment] of rule 10–A was far too short'' and that the study should have lasted longer to ''ensure at least one bear market was involved in the study'').

restrictions. OEA, however, did not find any such association.[90]

Due to the extreme market conditions with which we are currently faced and the resulting deterioration in investor confidence, we believe it is appropriate at this time to propose amending Regulation SHO to add a short sale price test or a circuit breaker rule. In issuing this proposing release, we seek empirical data regarding the costs and benefits of reinstating short sale price test restrictions or imposing circuit breaker rules, including the potential impact on legitimate short selling. We note that although we have received numerous letters requesting reinstatement of short sale price test restrictions, such requests have not included empirical data, but rather focus on what such commenters believe might be the impact on the markets of reinstating such restrictions. In addition, such requests do not discuss the potential impact of short sale price test restrictions on the benefits of legitimate short selling.

As discussed in this release, we remain mindful that there are benefits of short selling. For example, legitimate short selling can play an important and constructive functional role in the markets, providing liquidity and price efficiency. Short sellers also play an important role in correcting upward stock price manipulation.[91] Because short sale price test restrictions may lessen some of these benefits, it is important that any short sale price test regulation be designed to limit any potentially unnecessary impact on legitimate short selling.

We also recognize that some market participants may be advocating for a short sale price test because such participants may believe that it would put them at a competitive advantage over other participants who may be less able to implement or adjust their trading strategies to account for a short sale price test or may otherwise benefit at the expense of investors. Other market participants may favor a short sale price test due to concerns about the imposition of a greater restriction on short selling.

We believe that all arguments, both for and against a short sale price test rule and a possible circuit breaker rule, should be considered and addressed in light of current market conditions and recent experience. Thus, we believe it is important at this time to propose and obtain informed public comment regarding restricting the prices at which securities can be sold short before determining whether or not to impose any such restrictions, and what any such restrictions should be, as well as the proposed circuit breaker rules.

As discussed in detail below, we are proposing two alternative price tests. The first test would be the proposed modified uptick rule that would be based on the national best bid. The second test would be the proposed uptick rule that would be a modified version of the tick test under former Rule 10a–1. We are also proposing amendments to Rule 200(g) of Regulation SHO that would require that a broker-dealer mark certain sell orders ''short exempt.''

In considering whether to reinstitute short sale price test restrictions, it is important that the Commission take into account any extant empirical data and analyses that would shed light on the potential impact of such restrictions on capital markets. In that connection, we note that OEA has analyzed the impact that a short sale price test might have had during a thirteen day period in September of 2008 [92] as well as whether and the extent to which short selling drove prices downward during a volatile period in early September 2008.[93] The first of these studies noted that, although its data were limited to historical trade and quote data from a period when no price test was in place and the shape of order book and trading sequences might have differed had a price test been in place, a price test would likely have been most restrictive during periods of low volatility, with greatest impact on short selling in lower priced and more active stocks.[94] The second study found that long sellers were primarily responsible for price declines during this period. It also found that, on average, short sale volume as a fraction of total volume was highest during periods of positive returns, noting, however, that it was also possible that there were instances in which short selling activity peaked during periods of extreme negative returns.[95] The Commission looks forward to receiving additional analysis of relevant data and factors.

Similarly, it is important that the Commission take into account any extant empirical data and analyses that would shed light on the potential impact of such restrictions on capital markets, and it looks forward to receiving analysis of relevant data.

III. Discussion of Proposed Short Sale Restrictions

We discuss below our price test approach, the alternatives contained therein and our circuit breaker approach. As noted above, we preliminarily believe that a price test based on the national best bid would have advantages over a test based on the last sale price in today's markets. In particular, we believe that bids generally are a more accurate reflection of current prices for a security than last sale prices due to delays that can occur in the reporting of last sale price information and because last sale price information is published to the markets in reporting rather than trade sequence.

In adopting a final rule, we could take several different approaches, or a combination of approaches. For example, we could consider a straight prohibition approach prohibiting all persons from effecting short sales under a price test that references either the national best bid or the last sale price; a policies and procedures approach imposing obligations on market participants to adopt policies and procedures to guard against impermissible short selling; or a combination of a straight prohibition and a policies and procedures approach.

We discuss below the proposed modified uptick rule which would require trading centers to have policies and procedures reasonably designed to prevent the execution or display of short sales at impermissible prices. As an alternative, in Section II.B, below, we discuss the proposed uptick rule that is based on the last sale price and that, similar to former Rule 10a–1, would apply a straight prohibition approach that would prohibit any person from effecting short sales at impermissible prices. However, either alternative could ultimately be implemented through a policies and procedures or through a straight prohibition approach or some combination thereof.

We also discuss below our circuit breaker approach, which includes two basic alternatives—a halt and a price test. The proposed circuit breaker price test rule would temporarily result in either the proposed modified uptick rule or the proposed uptick rule applying to a specific security if there was a severe decline in the price of that security. As with the proposed short sale price test rules, the proposed circuit breaker price test rules could also be in the form of either a straight prohibition

[90] *See* 2007 Price Test Adopting Release, 72 FR at 36351.

[91] *See* OEA Staff's Summary Pilot Report, at 9.

[92] *See* Office of Economic Analysis, *Analysis of a short sale price test using intraday quote and trade data,* Dec. 17, 2008.

[93] *See* Office of Economic Analysis, *Analysis of Short Selling Activity during the First Weeks of September, 2008,* Dec. 16, 2008.

[94] *See* OEA analysis (Dec. 17, 2008), *supra* note 92.

[95] *See* OEA analysis (Dec. 16, 2008), *supra* note 93.

or a policies and procedures approach. The proposed circuit breaker halt rule, which would temporarily halt short selling in a specific security if there is a severe price decline in that security, could operate either in addition to, or in place of, a proposed short sale price test rule.

A. Proposed Modified Uptick Rule

1. Operation of the Proposed Modified Uptick Rule

We are proposing to amend Rule 201 of Regulation SHO to add a short sale price test that would use the national best bid as a reference point for short sale orders. Specifically, the proposed modified uptick rule would provide that ''[a] trading center shall establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order in a covered security at a down-bid price.'' [96] The proposed modified uptick rule defines a ''down-bid price'' as ''a price that is less than the current national best bid or, if the last differently priced national best bid was greater than the current national best bid, a price that is less than or equal to the current national best bid.'' [97]

Thus, under the proposed modified uptick rule, a trading center would be required to have policies and procedures reasonably designed to prevent it from executing or displaying any short sale order, absent an exception, at a price that is below the national best bid. If the current national best bid is below the last differently priced national best bid, a trading center would be required to have policies and procedures reasonably designed to prevent it from executing or displaying the order unless the order is priced above the current national best bid. Such a rule might help prevent short sellers from driving the market down. In addition, the proposed modified uptick rule might help prevent short sales from being used as a tool to accelerate a declining market.

The following example demonstrates the operation of the proposed modified uptick rule. If the current national best bid in a security is $47.00, and the immediately preceding national best bid was $46.99 (*i.e.,* the current bid is above the previous bid), a trading center could immediately execute a short sale order at $47.00 or above. Similarly, a trading center could display a short sale order priced at $47.00 or above.[98] If the current national best bid in a security is $47.00, and the immediately preceding bid was $47.01 (*i.e.,* the current bid is below the previous bid), a trading center could execute or display a short sale order at a price above $47.00.[99] If the current national best bid in a security is $47.00, and the immediately preceding national best bid was $47.00, but that bid was above the prior national best bid (*i.e.,* the last differently priced national best bid), a trading center could execute a short sale order at $47.00 or above. Similarly, a trading center could display a short sale order priced at $47.00 or above.[100] If the current national best bid is $47.00, and the immediately preceding national best bid was $47.00, but that was below the prior national best bid (*i.e.,* the last differently priced national best bid), a trading center could execute or display a short sale at a price above $47.00.[101]

The proposed modified uptick rule would apply to any ''covered security,'' which is defined as an ''NMS stock'' under Rule 600(b)(47) of Regulation NMS.[102] Rule 600(b)(47) of Regulation NMS defines an ''NMS stock'' as ''any NMS security other than an option.'' [103] Rule 600(b)(46) of Regulation NMS defines an ''NMS security'' as ''any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options.'' [104] Thus, the proposed modified uptick rule would apply to any security or class of securities, except options, for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan.[105] As a result, the proposed modified uptick rule generally would cover all securities, except options, listed on a national securities exchange whether traded on an exchange or in the over-the-counter (''OTC'') market. It would not include non-NMS stocks quoted on the OTC Bulletin Board or elsewhere in the OTC market. We are not proposing to apply the proposed modified uptick rule to non-NMS stocks quoted on the OTC Bulletin Board or elsewhere in the OTC market because a national best bid and offer currently is not required to be collected, consolidated, and disseminated for such securities. In addition, former Rule 10a–1 did not apply to non-exchange listed securities quoted on the OTC Bulletin Board or elsewhere in the OTC market. We recognize, however, that issuers of securities quoted in the OTC market may believe that they are particularly vulnerable to abusive short selling. Thus, we seek specific comment regarding whether the proposed modified uptick rule or some other form of price test, or any other restrictions on short sales, should apply to these types of securities.

The scope of securities covered by the proposed modified uptick rule would be similar to the scope of securities covered by former Rule 10a–1. Former Rule 10a–1(a) applied to securities registered on, or admitted to unlisted trading privileges on, a national securities exchange, if trades of the security were reported pursuant to an effective transaction reporting plan and information regarding such trades was made available in accordance with such plan on a real-time basis to vendors of market transaction information. All securities that would have been subject to former Rule 10a–1 would also be subject to the proposed modified uptick rule. In addition, certain securities, *i.e.,* securities traded on Nasdaq prior to its regulation as an exchange, that were not subject to former Rule 10a–1, would be subject to the proposed modified uptick rule.[106]

Market information for NMS stocks, including quotes, is disseminated pursuant to three different national market system plans.[107] The national

[96] *See* Proposed Rule 201(b)(1).

[97] Proposed Rule 201(a)(2).

[98] A trading center could display a short sale order priced at $47.00 provided such order would comply with the locking or crossing requirements of any Commission or SRO rule. *See, e.g.,* 17 CFR 242.610(d).

[99] Any such execution or display would also need to be in compliance with applicable rules regarding minimum pricing increments. *See* 17 CFR 242.612.

[100] A trading center could display a short sale order priced at $47.00 provided such order would comply with the locking or crossing requirements of any Commission or SRO rule. *See, e.g.,* 17 CFR 242.610(d).

[101] Any such execution or display would also need to be in compliance with applicable rules regarding minimum pricing increments. *See* 17 CFR 242.612.

[102] *See* proposed Rule 201(a)(1).

[103] 17 CFR 242.600(b)(47).

[104] 17 CFR 242.600(b)(46).

[105] *See* proposed Rule 201(a)(1) (providing that a ''covered security'' shall mean all ''NMS stock'' as defined in § 242.600(b)(47) of Regulation NMS).

[106] When Nasdaq became a national securities exchange in 2006, absent an exemption from former Rule 10a–1, all Nasdaq securities would have been subject to former Rule 10a–1. The Commission provided Nasdaq with an exemption from the application of the provisions of former Rule 10a–1 to securities traded on Nasdaq because the Pilot was already in progress, and the Commission believed it was necessary and appropriate to maintain the status quo for short sale price tests during the Pilot, and to ensure that market participants would not be burdened with costs associated with implementing a price test that might be temporary. *See* letter to Marc Menchel, Executive Vice President and General Counsel, NASD, Inc., June 26, 2006.

[107] The three joint-industry plans are (1) the Consolidated Tape Association Plan (''CTA Plan''), which disseminates transaction information for

securities exchanges and FINRA participate in these joint-industry plans (''Plans'').[108] The Plans establish three separate networks to disseminate market information for NMS stocks.[109] These networks are designed to ensure that, among other things, consolidated bids from the various trading centers that trade NMS stocks are continually collected and disseminated on a real-time basis, in a single stream of information. Thus, all trading centers would have access to the consolidated bids for all the securities that would be subject to the proposed modified uptick rule.[110] As discussed in further detail below, however, we note that the national best bid can change rapidly and repeatedly and potentially there might be latencies in obtaining data regarding the national best bid.

The proposed modified uptick rule would apply to any trading center that executes or displays a short sale order in a covered security. It would define a ''trading center'' as ''a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.'' [111] The proposed definition encompasses all entities that may execute short sale orders. Thus, the proposed modified uptick rule would apply to any entity that executes short sale orders.

Under the proposed modified uptick rule, a trading center would be required to have written policies and procedures reasonably designed to prevent the execution or display of short sale orders on a down-bid price. Thus, upon receipt of a short sale order, a trading center's policies and procedures would have to require that the trading center be able to determine whether or not the short sale order could be executed or displayed in accordance with the provisions of proposed Rule 201(b)(1). If the order is marketable at a permissible price, the trading center would be able to present the order for immediate execution or, if not immediately marketable, hold for execution later at its specified price.

The proposed modified uptick rule would permit a trading center to display an order provided it is permissibly priced at the time the trading center displays the order. If an order is impermissibly priced, the trading center could, in accordance with policies and procedures reasonably designed to prevent the execution or display of a short sale order at a down-bid price, re-price the order at the lowest permissible price and hold it for later execution at its new price or better.[112] As quoted prices change, the proposed rule would allow a trading center to repeatedly re-price and display an order at the lowest permissible price down to the order's original limit order price (or, if a market order, until the order is filled).

In addition, paragraph (b)(1)(i) of the proposed rule would require a trading center's policies and procedures to be reasonably designed to permit a trading center to execute a displayed short sale order at a down-bid price provided that, at the time the order was displayed by the trading center it was permissibly priced, *i.e.,* not on a down-bid price.[113] This exception for properly displayed short sale orders would help avoid a conflict between the proposed modified uptick rule and the ''Quote Rule'' under Rule 602 of Regulation NMS. The Quote Rule requires that, subject to certain exceptions, the broker-dealer responsible for communicating a quotation shall be obligated to execute any order to buy or sell presented to him, other than an odd lot order, at a price at least as favorable to such buyer or seller as the responsible broker-dealer's published bid or published offer in any amount up to his published quotation size.[114] Thus, pursuant to this exception, a trading center would be able to comply with the ''firm quote'' requirement of Rule 602 of Regulation NMS by executing a presented order to buy against its displayed offer to sell as long as the displayed offer to sell was permissibly priced under the proposed rule at the time it was first displayed, even if the execution of the transaction would be on a down-bid price at the time of execution.

Because a trading center could re-price and display a previously impermissibly priced short sale order the proposed modified uptick rule potentially allows for the more efficient functioning of the markets than the proposed uptick rule because trading centers would not have to reject or cancel impermissibly priced orders unless instructed to do so by the trading center's customer submitting the short sale order. We recognize that some trading centers might not want to re-price an impermissibly priced short sale order. Thus, re-pricing would not be a requirement under the proposed modified uptick rule.

In addition, the proposed modified uptick rule would provide trading centers and their customers with flexibility in determining how to handle orders that are not immediately executable or displayable by the trading center because the order is impermissibly priced. For example, trading centers could offer their customers various order types regarding the handling of impermissibly priced orders such that a trading center either could reject an impermissibly priced order or re-price the order at the lowest permissible price until the order is filled.

The proposed modified uptick rule would focus on a trading center's written policies and procedures as the mechanism through which to prevent the execution or display of short sale orders on a down-bid price. Under this approach, trading centers would be required to have policies and procedures reasonably designed to prevent the execution or display of short sale orders at impermissible prices and to surveil the effectiveness of the policies and procedures. Thus, short sale orders executed or displayed at impermissible prices would require the trading center that executed or displayed the short sales to take prompt action to remedy any deficiencies.

We also note that the policies and procedures requirements of the proposed modified uptick rule are similar to those set forth under

securities primarily listed on an exchange other than Nasdaq, (2) the Consolidated Quotation Plan (''CQ Plan''), which disseminates consolidated quotation information for securities primarily listed on an exchange other than Nasdaq, and (3) the Nasdaq UTP Plan, which disseminates consolidated transaction and quotation information for securities primarily listed on Nasdaq.

[108] Rule 603(b) of Regulation NMS provides that every national securities exchange on which an NMS stock is traded and national securities association shall act jointly pursuant to one or more effective national market system plans to disseminate consolidated information, including a national best bid and national best offer, for NMS stocks. *See* 17 CFR 242.603(b).

[109] These networks can be categorized as follows: (1) Network A—securities primarily listed on the NYSE; (2) Network B—securities listed on exchanges other than the NYSE and Nasdaq; and (3) Network C—securities primarily listed on Nasdaq.

[110] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37503 (June 29, 2005) (''Regulation NMS Adopting Release'').

[111] *See* 17 CFR 242.600(b)(78); *see also* proposed Rule 201(a)(7) (providing that the term ''trading center'' shall have the same meaning as in § 242.600(b)(78) of Regulation NMS).

[112] For example, if a trading center receives a short sale order priced at $47.00 when the current national best bid in the security is $47.00, but the immediately preceding national best bid was $47.01 (*i.e.,* the current bid is below the previous bid), the trading center could re-price the order at the permissible offer price of $47.01, and display the order for execution at this new limit price.

[113] *See* proposed Rule 201(b)(1)(i).

[114] *See* 17 CFR 242.602(b)(2). We note that to the extent that a short sale order is undisplayed, the proposed modified uptick rule would prevent the trading center from executing the order unless at the time of execution, the execution price complies with the proposed modified uptick rule at the time of execution of the order.

Regulation NMS.[115] In accordance with Regulation NMS, trading centers must have in place written policies and procedures in connection with that Regulation's order protection rule.[116] Thus, trading centers are already familiar with establishing, maintaining, and enforcing trading-related policies and procedures, including programming their trading systems in accordance with such policies and procedures. This familiarity should reduce the implementation costs of the proposed modified uptick rule on trading centers.

Similar to the requirements under Regulation NMS in connection with the order protection rule,[117] at a minimum, a trading center's policies and procedures would need to enable a trading center to monitor, on a real-time basis, the national best bid, and whether the current national best bid is an up- or down-bid from the last differently priced national best bid, so as to determine the price at which the trading center may execute or display a short sale order. In addition, a trading center would need to have policies and procedures reasonably designed to permit the execution or display of a short sale order of a covered security marked ''short exempt'' without regard to whether the order is at a down-bid price.[118] A trading center's policies and procedures would not, however, have to include mechanisms to determine on which provision a broker-dealer is relying in marking an order ''short exempt'' in accordance with paragraph (c) or (d) of the proposed modified uptick rule.[119]

A trading center would also need to take such steps as would be necessary to enable it to enforce its policies and procedures effectively. For example, trading centers could establish policies and procedures that could include regular exception reports to evaluate their trading practices. If a trading center's policies and procedures include exception reports, any such reports would need to be examined by the trading center to affirm that a trading center's policies and procedures have been followed by its personnel and properly coded into its automated systems and, if not, promptly identify the reasons and take remedial action.

To help ensure compliance with the proposed modified uptick rule, trading centers could also have policies and procedures that would enable a trading center to have a record identifying the current national best bid at the time of execution or display of a short sale order, as well as the last differently priced national best bid. Such ''snapshots'' of the market would aid SROs in evaluating a trading center's written policies and procedures and compliance with the proposed modified uptick rule. In addition, such snapshots would aid trading centers in verifying that a short sale order was priced in accordance with the provisions of proposed Rule 201(b)(1) if bid ''flickering,'' *i.e.,* rapid and repeated changes in the current national best bid during the period between identification of the current national best bid and the execution or display of the short sale order, creates confusion regarding whether or not the short sale order was executed or displayed at a permissible price. Snapshots of the market at the time of execution or display of an order would also aid trading centers in dealing with time lags in receiving data regarding the national best bid from different data sources. A trading center's policies and procedures would be required to address latencies in obtaining data regarding the national best bid. In addition, to the extent such latencies occur, a trading center's policies and procedures would need to implement reasonable steps to monitor such latencies on a continuing basis and take appropriate steps to address a problem should one develop.

Trading centers would be required to conduct surveillance under the proposed modified uptick rule. Proposed Rule 201(b)(2) provides that a trading center must regularly surveil to ascertain the effectiveness of the policies and procedures required under the proposed modified uptick rule and must take prompt action to remedy deficiencies in such policies and procedures.[120] This provision would reinforce the ongoing maintenance and enforcement requirements of proposed Rule 201(b)(1) by explicitly assigning an affirmative responsibility to trading centers to surveil to ascertain the effectiveness of their policies and procedures.[121] Thus, under the proposed modified uptick rule, trading centers would not be able to merely establish policies and procedures that may be reasonable when created and assume that such policies and procedures would continue to satisfy the requirements of proposed Rule 201(b). Rather, trading centers would be required to regularly assess the continuing effectiveness of their procedures and take prompt action when needed to remedy deficiencies. In particular, trading centers would need to engage in regular and periodic surveillance to determine whether executions or displays of short sale orders on impermissible bids are occurring without an applicable exception and whether the trading center has failed to implement and maintain policies and procedures that would have reasonably prevented such impermissible executions or displays of short sale orders.

The proposed modified uptick rule would differ from the tick test of former Rule 10a–1, and the alternative proposed uptick rule discussed below. Similar to former Rule 10a–1, the alternative proposed uptick rule would be based on the last sale price, rather than the national best bid, and it would not include an explicit policies and procedures requirement. The proposed uptick rule would prevent the execution of short sale orders below the last sale price, unless an exception applies. The proposed modified uptick rule would prevent the execution or display of short sale orders below the current national best bid, unless, among other things, the order is marked ''short exempt.'' Because the proposed modified uptick rule would use the national best bid as its reference point, short selling could occur below the last sale price.

The two proposed alternative short sale price tests would operate similarly, however, in that they would be designed to achieve a similar purpose. In addition, to help limit the impact of the proposed alternative short sale price tests on legitimate short selling, both rules would permit short selling at an increment above the national best bid, or the last sale price, as applicable, in a declining market. As commenters have noted, the higher the increment the more restrictive such an increment could be on short selling and could even be tantamount to a ban on short selling.[122]

In addition, the proposed modified uptick rule, similar to the proposed uptick rule, would not result in the type of disparate short sale regulation that existed under former Rule 10a–1.[123] The proposed modified uptick rule would apply a uniform rule to trades in the same securities that can occur in

[115] *See* Regulation NMS Adopting Release, 70 FR 37496; *see also* 17 CFR 242.611.

[116] *See id.*

[117] *See id.*

[118] *See* Section V below discussing short sale orders marked ''short exempt.''

[119] *See* proposed Rules 201(c) and 201(d).

[120] *See* proposed Rule 201(b)(2).

[121] We note that Rule 611(a)(2) of Regulation NMS contains a similar provision for trading centers. *See* 17 CFR 242.611(a)(2).

[122] *See supra* note 94; *see also* letter from Dan Mathisson, Managing Director, Credit Suisse Securities USA, LLC, dated March 30, 2009 (''letter from Credit Suisse'') (stating that ''requiring an uptick of more than one cent would be tantamount to a total ban for any stock that trades actively'').

[123] *See* proposed Rule 201(e).

multiple, dispersed, and diverse markets. One of the reasons for the elimination of former Rule 10a–1 and the prohibition on any SRO from having a short sale price test in July 2007 was because the application of short sale price tests had become disjointed with different price tests applying to the same securities trading in different markets. Under the proposed modified uptick rule, all covered securities, wherever traded, would be subject to one short sale price test, the proposed modified uptick rule. To further this goal of having a uniform short sale price test, subsection (e) of proposed Rule 201 would provide that no SRO shall have any rule that is not in conformity with, or conflicts with proposed Rule 201.[124] In addition, just as market participants would be familiar with the proposed uptick rule because it is a modified version of former Rule 10a–1 that was in existence for almost 70 years, market participants would also be familiar with using the current national best bid as a reference point because NASD's bid test, which was in existence from 1994 to mid-2007, was based on the current national best bid.[125]

We preliminarily believe that a short sale price test based on the national best bid would be more suitable to today's markets than a short sale price test based on the last sale price. Although we recognize that a quotation proposes a transaction, whereas the last trade price reflects an actual trade, we note that pursuant to Commission and SRO rules, quotations for all covered securities must be firm.[126] By requiring that quotations are firm, the Commission intended to ensure that quotations provide reliable information to the marketplace so that broker-dealers are able to make best execution decisions for their customers' orders and customers are able to make informed investment decisions.[127] Moreover, quotation information has significant value to the marketplace because it reflects the various factors affecting the market, including current levels of buying and selling interest.[128] Both retail and institutional investors rely on quotation information to understand the market forces at work at a given time and to assist in the formulation of investment strategies.[129]

Further, we believe that bids generally are a more accurate reflection of current prices for a security because changes in the national best bid are sequenced across trading centers. In contrast, transactions may be reported within a 90 second window, which can easily result in out-of-sequence reports. Even transactions that are executed and reported automatically may be out of sequence if they occur in different trading centers. For example, trade reporting for covered securities can involve multiple trading centers reporting trades in the same stock from different locations using different means of reporting. In addition, trades are published in reporting sequence, not trade sequence.[130] Thus, for those covered securities for which a significant amount of trading occurs manually, or in multiple trading centers, a price test based on the national best bid may be a fairer and more effective means of regulating short selling than a test based on the last sale price because the manner in which trades are reported may create up-ticks and down-ticks that may not accurately reflect actual price movements in the security for the purpose of a test based on the last sale price.

The proposed modified uptick rule would be designed to restrict short selling at successively lower prices and, thereby, might help prevent short selling, including potentially abusive or manipulative short selling, from being used as a tool to drive the markets down and from being used to accelerate a decline in the market by exhausting all remaining bids at one price level. By seeking to advance these goals, the proposed modified uptick rule might restore investor confidence in our securities markets.

In addition, the proposed modified uptick rule would be designed to preserve instant execution and liquidity by allowing relatively unrestricted short selling in an advancing market. As discussed above, one of the benefits of legitimate short selling is that it provides market liquidity by, for example, adding to the selling interest of stock available to purchasers, and, when sellers are covering their short sales, adding to the buying interest of stock available to sellers.

In addition, we believe the proposed modified uptick rule would accommodate trading systems and strategies used in the marketplace today, such as the automated trade matching systems that offer price improvement based on the national best bid and offer. These passive pricing systems often effect trades at an independently-derived price, such as at the mid-point of the bid-offer spread. Such pricing would often not satisfy the tick test of former Rule 10a–1 because matches could potentially occur at a price below the last reported sale price. Thus, we provided a limited exception from former Rule 10a–1 for these trading systems.[131] The proposed modified uptick rule would accommodate matching systems that execute trades at an independently derived price because such systems are designed so that matches occur above the current national best bid.[132] Thus, even in a declining market where a trading center could execute or display an order only if it is priced above the current national best bid at the time of execution or display, such matching system executions would comply with the proposed modified uptick rule.

If we were to adopt the proposed modified uptick rule, we are proposing that there would be a three month implementation period such that trading centers would have to comply with the proposed modified uptick rule three months following the effective date of the proposed modified uptick rule. We believe that a proposed three month implementation period would provide trading centers with sufficient time in which to modify their systems and procedures in order to comply with the requirements of the proposed modified uptick rule. Because the proposed modified uptick rule would require the implementation of policies and procedures similar to those required for trading centers under Regulation NMS, we believe that a three month implementation period would be reasonable. The addition of an implementation period should alleviate any potential disruptive effects of the proposal.

We realize, however, that a shorter or longer implementation period may be manageable or preferable. In the Solicitation of Comment below, we seek specific comment as to what length of implementation period would be necessary or appropriate, and why, such that trading centers would be able to

[124] *See* proposed Rule 201(e).

[125] *See supra* note 27 (discussing NASD Rule 3350). Similar to the proposed modified uptick rule, NASD's bid test referenced the national best bid and was designed to help prevent short selling at or below the current national best bid in a declining market. NASD's bid test, however, took a straight prohibition approach, rather than a policies and procedures approach, and, by its terms, applied only to Nasdaq Global Market securities.

[126] *See e.g.,* 17 CFR 242.602.

[127] *See* Securities Exchange Act Release No. 43085 (July 28, 2000), 65 FR 47918 (Aug. 4, 2000).

[128] *See id.*

[129] *See id.*

[130] *See* FINRA Rule 6380A.

[131] *See, e.g., supra* note 26.

[132] *See id.*; *see e.g.,* letter from James A. Brigagliano, Acting Associate Director, Division of Market Regulation, to Alan J. Reed, Jr., First Vice President and Director of Compliance, Instinet Group, LLC. (June 15, 2006) (granting Instinet modified exemptive relief from Rule 10a–1 for certain transactions executed through Instinet's Intraday Crossing System); POSIT letter.

meet the proposed short sale price test restrictions, if adopted.

2. ''Short Exempt'' Provision of Proposed Modified Uptick Rule

Paragraph (b)(1)(ii) of the proposed modified uptick rule provides that a trading center's policies and procedures must be reasonably designed to permit the execution or display of a short sale order of a covered security marked ''short exempt'' without regard to whether the order is at a down-bid price.[133] Thus, a trading center's policies and procedures must be reasonably designed to recognize when an order is marked ''short exempt'' so that the trading center's policies and procedures would not prevent the execution or display of such orders on a down-bid price.[134]

As discussed in more detail below, proposed Rule 200(g)(2) of Regulation SHO provides that a sale order shall be marked ''short exempt'' only if the provisions of paragraph (c) or (d) of proposed Rule 201 are met.[135] Paragraphs (c) and (d) of the proposed modified uptick rule set forth when a broker-dealer may mark a short sale order ''short exempt.'' The provisions contained in paragraphs (c) and (d) of the proposed modified uptick rule are designed to promote the workability of the proposed modified uptick rule, while at the same time furthering the Commission's stated goals.

In addition, we note that the provisions contained in paragraph (d) of proposed Rule 201 would parallel exceptions to former Rule 10a–1 and exemptive relief granted pursuant to that rule. These exceptions and exemptions from former Rule 10a–1, as applicable, had been in place under former Rule 10a–1 for several years. We are not aware of any reason that the rationales underlying these exceptions and exemptions from former Rule 10a–1 would not still hold true today. Moreover, due to the limited scope of these exceptions and exemptions to former Rule 10a–1, we do not believe that including provisions that would parallel these exceptions and exemptions to former Rule 10a–1 would undermine the Commission's stated goals for proposing short sale price test restrictions.

Thus, the provisions in proposed Rule 201(d) parallel exceptions to and exemptive relief granted under former Rule 10a–1, as applicable.[136] As set forth in more detail below, however, we seek comment regarding each of these provisions, including whether or not these provisions would be appropriate or necessary under the proposed modified uptick rule.

a. Broker-Dealer Provision

Proposed Rule 201(c) provides that a broker-dealer may mark a short sale order of a covered security ''short exempt'' if a broker-dealer that submits a short sale order to a trading center identifies that the short sale order is not on a down-bid price at the time of submission of the order to the trading center.[137] The proposed rule would require any broker-dealer relying on this provision to establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent the incorrect identification of orders as being priced in accordance with the requirements of proposed Rule 201(c)(1).[138]

We are proposing this provision to provide broker-dealers with the option to manage their order flow, rather than having to always rely on their trading centers to manage their order flow on their behalf. In addition, we note that this provision would not undermine the Commission's goals for short sale regulation because any broker-dealer marking an order ''short exempt'' in accordance with this provision would have to address whether its short sale order was not on a down-bid price at the time of submission of the order to a trading center.

As discussed in more detail below, we are proposing amendments to Rule 200(g) of Regulation SHO to require, in part, that a sale order shall be marked ''short exempt'' only if the provisions of paragraph (c) of proposed Rule 201 of the proposed modified uptick rule are met.[139]

To mark an order ''short exempt'' pursuant to paragraph (c) of the proposed modified uptick rule, the broker-dealer must have mechanisms in place to enable the broker-dealer to identify the short sale order as priced in accordance with the provisions of proposed Rule 201(c)(1). In accordance with proposed Rule 201(c)(1), these mechanisms must include written policies and procedures reasonably designed to prevent the incorrect identification of orders as being permissibly priced in accordance with the provisions of proposed Rule 201(c)(1).[140] Thus, although a broker-dealer relying on this provision in marking an order ''short exempt'' would not need to identify the order as permissibly priced to the trading center, it would need to have written policies and procedures in place reasonably designed to enable it to identify that an order was permissibly priced at the time of submission of the order to a trading center.[141]

At a minimum, a broker-dealer's policies and procedures would need to be reasonably designed to enable a broker-dealer to monitor, on a real-time basis, the national best bid, and whether the current national best bid is an up- or down-bid from the last differently priced national best bid, so as to determine the price at which the broker-dealer may submit a short sale order to a trading center in compliance with the provisions of proposed Rule 201(c)(1).

A broker-dealer would also need to take such steps as would be necessary to enable it to enforce its policies and procedures effectively.[142] For example, broker-dealers could establish policies and procedures that could include regular exception reports to evaluate their trading practices. If a broker-dealer's policies and procedures include exception reports, any such reports would need to be examined to affirm that a broker-dealer's policies and procedures have been followed by its personnel and properly coded into its automated systems and, if not, promptly identify the reasons and take remedial action.

To ensure compliance with proposed Rule 201(c)(1), a broker-dealer could also have policies and procedures that would enable it to have a record identifying the current national best bid at the time of submission of a short sale order, as well as the last differently priced national best bid. Such ''snapshots'' of the market would also aid SROs in evaluating a broker-dealer's written policies and procedures and compliance with proposed Rule 201(c). In addition, such snapshots would aid broker-dealers in verifying that a short sale order was priced in accordance with the provisions of proposed Rule 201(c)(1) if bid flickering during the period between identification of the current national best bid and the

[133] *See* proposed Rule 201(b)(1)(ii).

[134] *See* proposed Rule 201(b)(1)(ii).

[135] *See* Section V below discussing proposed Rule 200(g)(2).

[136] We note that NASD Rule 3350 contained exceptions to that rule similar to exceptions to former Rule 10a–1. In addition, we note NASD Rule 3350 included an exception related to bona fide market making activity. *See infra* note 190 and accompanying text (discussing our decision not to propose that a broker-dealer may mark an order ''short exempt'' in connection with bona fide market making activity). *See also supra* note 125.

[137] *See* proposed Rule 201(c)(1).

[138] *See* proposed Rule 201(c)(1).

[139] *See* proposed Rule 200(g)(2).

[140] *See* proposed Rule 201(c)(1).

[141] Such policies and procedures would be similar to those required for trading centers complying with paragraph (b) of the proposed modified uptick rule.

[142] *See* proposed Rule 201(c)(1).

submission of the short sale order to a trading center creates confusion regarding whether or not the short sale order was submitted at a permissible price. Snapshots of the market at the time of submission of an order would also aid broker-dealers in dealing with time lags in receiving data regarding the national best bid from different data sources. A broker-dealer's policies and procedures would be required to address any such latencies in obtaining data regarding the national best bid. In addition, to the extent such latencies occur, a broker-dealer's policies and procedures would need to implement reasonable steps to monitor such latencies on a continuing basis and take appropriate steps to address a problem should one develop.

Surveillance would be a required part of a broker-dealer's satisfaction of its legal obligations. Proposed Rule 201(c)(1) provides that a broker-dealer must regularly surveil to ascertain the effectiveness of the policies and procedures required under proposed Rule 201(c)(2) and must take prompt action to remedy deficiencies in such policies and procedures.[143] This provision would reinforce the ongoing maintenance and enforcement requirements of proposed Rule 201(c)(2) by explicitly assigning an affirmative responsibility to broker-dealers to surveil to ascertain the effectiveness of their policies and procedures.[144] Thus, under proposed Rule 201(c)(1) and (c)(2), broker-dealers would not be able to merely establish policies and procedures that may be reasonable when created and assume that such policies and procedures would continue to satisfy the requirements of the proposed rule. Rather, broker-dealers would be required to regularly assess the continuing effectiveness of their procedures and take prompt action when needed to remedy deficiencies. In particular, each broker-dealer would need to engage in regular and periodic surveillance to determine whether it is submitting short sale orders marked ''short exempt'' without complying with the requirements of proposed Rule 201(c)(1) and whether the broker-dealer has failed to implement and maintain policies and procedures that would have reasonably prevented such impermissible submissions.

b. Seller's Delay in Delivery

The proposed modified uptick rule provides that a broker-dealer may mark an order ''short exempt'' if the broker-dealer has a reasonable basis to believe that the seller owns the security being sold and that the seller intends to deliver the security as soon as all restrictions on delivery have been removed.[145] Specifically, proposed Rule 201(d)(1) provides that a broker-dealer may mark a short sale order of a covered security ''short exempt'' if the broker-dealer has a reasonable basis to believe the short sale order of a covered security is by a person that is deemed to own the covered security pursuant to Rule 200 of Regulation SHO,[146] provided that the person intends to deliver the security as soon as all restrictions on delivery have been removed.[147]

Rule 200(g)(1) of Regulation SHO provides that a sale can be marked ''long'' only if the seller is deemed to own the security being sold and either (i) the security is in the broker-dealer's physical possession or control, or (ii) it is reasonably expected that the security will be in the broker-dealer's physical possession or control by settlement of the transaction.[148] Thus, even where a seller owns a security, if delivery will be delayed, such as in the sale of formerly restricted securities pursuant to Rule 144 of the Securities Act of 1933, or where a convertible security, option, or warrant has been tendered for conversion or exchange, but the underlying security is not reasonably expected to be received by settlement date, such sales must be marked ''short.'' As a result, proposed Rule 201(d)(1) would be necessary to allow for sales of securities that although owned, are subject to the provisions of Regulation SHO governing short sales due solely to the seller being unable to deliver the security to its broker-dealer prior to settlement based on circumstances outside the seller's control.

c. Odd Lot Transactions

Proposed Rule 201(d)(2) would provide that a broker-dealer may mark a short sale order ''short exempt'' if the broker-dealer has a reasonable basis to believe that the short sale order is by a market maker to off-set a customer odd-lot[149] order or liquidate an odd-lot position which changes such broker-dealer's position by no more than a unit of trading.[150]

Under former Rule 10a–1, an exception for certain odd-lot transactions was created in an effort to reduce the burden and inconvenience that short sale restrictions would place on odd-lot transactions. In 1938, the Commission found that odd-lot transactions played a very minor role in potential manipulation by short selling. Initially, sales of odd-lots were not subject to the restrictions of Rule 10a–1.[151] However, the Commission became concerned over the volume of odd-lot transactions, which possibly indicated that the exception was being used to circumvent the rule. As a result, the exception was changed to include the two odd lot exceptions described below.[152]

Former Rule 10a–1(e)(3) contained a limited exception for odd-lot dealers registered in the security and third market makers. The exception allowed short sales by odd-lot dealers registered in the security and by third market makers of covered securities to fill customer odd lot orders. Former Rule 10a–1(e)(4) provided an exception under the rule for any sale to liquidate an odd-lot position by a single round lot sell order that changed the broker-dealer's position by no more than a unit of trading.

We believe that a provision that would allow a broker-dealer to mark a short sale order ''short exempt'' if it has a reasonable basis to believe that the

[143] *See* proposed Rule 201(c)(2).

[144] We note that Rule 611(a)(2) of Regulation NMS contains a similar surveillance provision. *See* 17 CFR 242.611(a)(2).

[145] Subsection (e)(1) of former Rule 10a–1 contained an exception relating to a seller's delay in the delivery of securities. The provision in proposed Rule 201(d)(1) parallels the exception contained in former Rule 10a–1(e)(1).

[146] 17 CFR 242.200.

[147] *See* proposed Rule 201(d)(1). This proposed provision is also consistent with Rule 203(b)(2)(ii) of Regulation SHO that provides an exception from the ''locate'' requirement of Rule 203(b)(1) of Regulation SHO for ''[a]ny sale of a security that a person is deemed to own pursuant to § 242.200, provided that the broker or dealer has been reasonably informed that the person intends to deliver such security as soon as all restrictions on delivery have been removed * * *'' 17 CFR 242.203(b)(2)(ii).

[148] *See* 17 CFR 242.200(g)(1).

[149] Proposed Rule 201(a)(5) provides that the term ''odd lot'' shall have the same meaning as in 17 CFR 242.600(b)(49). Rule 600(b)(49) defines an ''odd lot'' as ''an order for the purchase or sale of an NMS stock in an amount less than a round lot.'' 17 CFR 242.600(b)(49).

[150] *See* proposed Rule 201(d)(2). SRO rules define a ''unit of trading'' or ''normal unit of trading,'' and generally means 100 shares, *i.e.*, a round lot. For example, FINRA Rule 6320A(7) defines a ''normal unit of trading'' to mean ''100 shares of a security unless, with respect to a particular security, FINRA determines that a normal unit of trading shall constitute other than 100 shares.'' NYSE Rule 55 states that ''[t]he unit of trading in stocks shall be 100 shares, except that in the case of certain stocks designated by the Exchange the unit of trading shall be such lesser number of shares as may be determined by the Exchange, with respect to each stock so designated * * *.''

[151] The Commission initially adopted three exceptions for odd-lot transactions. While the first one, excepting all odd-lot transactions, seemed to make other odd-lot exceptions unnecessary, the 1938 adopting release included all three exceptions without discussion. *See supra* note 24, Former Rule 10a–1 Adopting Release 3 FR 213.

[152] *See* Securities Exchange Act Release No. 11030 (Sept. 27, 1974), 39 FR 35570 (Oct. 2, 1974).

short sale order is by a market maker to off-set a customer odd-lot order or liquidate an odd-lot position which changes such broker-dealer's position by no more than a unit of trading would continue to be of utility under the proposed modified uptick rule because it would not be in conflict with the goals of the proposed rule.

Thus, the provision in proposed Rule 201(d)(2) parallels the exceptions in subsections (e)(3) and (e)(4) of former Rule 10a–1. In addition, however, we propose extending the provision to cover all market makers acting in the capacity of an odd-lot dealer. When former Rule 10a–1 was adopted, odd-lot dealers dealt exclusively with odd-lot transactions, and were so registered. Today, market makers registered in a security typically also act as odd-lot dealers of the security. Thus, we propose to broaden the provision in proposed Rule 201(d)(2) to all broker-dealers acting as ''market makers'' in odd lots.[153]

We believe that this provision would be appropriate. Because odd-lot transactions by market makers to facilitate customer orders are not of a size that could facilitate a downward movement in the market, we do not believe that proposed Rule 201(d)(2) would adversely affect the goals of short sale regulation that the proposed modified uptick rule seeks to advance. Thus, we believe that a broker-dealer should be able to mark such orders ''short exempt'' so that those acting in the capacity of a ''market maker,'' with the commensurate negative and positive obligations, would be able to off-set a customer odd-lot order and liquidate an odd-lot position without a trading center's policies and procedures preventing the execution or display of such orders at a down-bid price.

d. Domestic Arbitrage

Proposed Rule 201(d)(3) would provide that a broker-dealer may mark ''short exempt'' short sale orders associated with certain bona fide domestic arbitrage transactions. Subsection (e)(7) of former Rule 10a–1 contained an exception related to domestic arbitrage.[154] That exception applied to bona fide arbitrage undertaken to profit from a current difference in price between a convertible security and the underlying common stock.[155] The term ''bona fide arbitrage'' describes an activity undertaken by market professionals in which essentially contemporaneous purchases and sales are effected in order to lock in a gross profit or spread resulting from a current differential in pricing of two related securities.[156] For example, a person may sell short securities to profit from a current price differential based upon a convertible security that entitles him to acquire an equivalent number of securities of the securities sold short. We continue to believe that bona fide arbitrage activities are beneficial to the markets because they tend to reduce pricing disparities between related securities.[157] Thus, bona fide arbitrage transactions promote market efficiency.

Proposed Rule 201(d)(3) would parallel the exception in former Rule 10a–1(e)(7). Specifically, proposed Rule 201(d)(3) would provide that a broker-dealer may mark a short sale order of a covered security ''short exempt'' if the broker-dealer has a reasonable basis to believe that the short sale order is ''for a good faith account by a person who owns another security by virtue of which he is, or presently will be, entitled to acquire an equivalent number of securities of the same class as the securities sold, provided such sale, or the purchase which such sale offsets, is effected for the bona fide purpose of profiting from the difference between the price of the security sold and the security owned and that such right of acquisition was originally attached to or represented by another security or was issued to all the holders of any such securities of the issuer.'' [158]

The domestic arbitrage exception in former Rule 10a–1 was intended to be consistent with the arbitrage provision of Regulation T.[159] Thus, consistent with that provision, former Rule 10a–1(e)(7) referred to a ''special arbitrage account'' and not a ''good faith account.'' [160] The Federal Reserve Board amended Regulation T in 1998 to eliminate the ''special arbitrage account'' and allow the functions formerly effected in that account to be effected in a ''good faith account.'' Thus, proposed Rule 201(d)(3) also refers to a ''good faith account.'' We note, however, that we request specific comment regarding whether or not the use of a ''good faith account'' or any other separate account continues to be appropriate or necessary for purposes of this proposed Rule 201(d)(3).

Because allowing domestic arbitrage at a down-bid price would potentially promote market efficiency, the proposed modified uptick rule would include a limited provision to allow broker-dealers to mark short sale orders ''short exempt'' provided the broker-dealer has a reasonable basis to believe that the conditions in proposed Rule 201(d)(3) have been met. Thus, the proposed rule is designed to permit the execution or display on a down-bid price of such orders in connection with bona fide arbitrage transactions involving convertible, exchangeable, and other rights to acquire the securities sold short, where such rights of acquisition were originally attached to, or represented by, another security, or were issued to all the holders of any such class of securities of the issuer.

e. International Arbitrage

Proposed Rule 201(d)(4) would provide that a broker-dealer may mark ''short exempt'' short sale orders associated with certain international arbitrage transactions. Former Rule 10a–1(e)(8) included an international arbitrage exception that was adopted in 1939.[161] In adopting the exception, the Commission stated that it was necessary

[153] Section 3(a)(38) of the Exchange Act defines a ''market maker,'' and includes specialists. *See* 15 U.S.C. 78c(a)(38).

[154] *See* Securities Exchange Act Release No. 1645 (Apr. 8, 1938).

[155] *See* Securities Exchange Act Release No. 42037 (Oct. 20, 1999), 64 FR 57996 (Oct. 28, 1999) (''1999 Concept Release'').

[156] 1999 Concept Release, 64 FR at n.54 and accompanying text (discussing the domestic arbitrage exception under former Rule 10a–1). *See also* Section 220.6(b) of Regulation T which states that the term ''bona fide arbitrage'' means: ''(1) A purchase or sale of a security in one market together with an offsetting sale or purchase of the same security in a different market at as nearly the same time as practicable for the purpose of taking advantage of a difference in prices in the two markets; or (2) A purchase of a security which is, without restriction other than the payment of money, exchangeable or convertible within 90 calendar days of the purchase into a second security together with an offsetting sale of the second security at or about the same time, for the purpose of taking advantage of a concurrent disparity in the prices of the two securities.'' 12 CFR 220.6(b). *See also* Securities Exchange Act Release No. 15533 (Jan. 29, 1979), 44 FR 6084 (Jan. 31, 1979) (interpretation concerning the application of Section 11(a)(1) to bona fide arbitrage).

[157] *See* Securities Exchange Act Release No. 15533 (Jan. 29, 1979), 44 FR 6084 (Jan. 31, 1979) (interpretation concerning the application of Section 11(a)(1) to bona fide arbitrage).

[158] Proposed Rule 201(d)(3).

[159] *See* 12 CFR 220.6.

[160] Section 220.3(b) of Regulation T, titled ''Separation of accounts,'' generally provides that requirements for an account may not be met by considering items in any other account. Further, Regulation T identifies three types of customer accounts—cash accounts, margin accounts and good faith accounts—in which customer transactions may be booked. A broker-dealer can extend credit to customers through a margin account or a good faith account. Generally, positions held in a good faith account are subject to good faith margin, whereas positions held in a margin account are subject to the margin requirements otherwise set forth in Regulation T and SRO margin requirements.

[161] *See* Securities Exchange Act Release No. 2039 (Mar. 10, 1939), 4 FR 1209 (Mar. 14, 1939).

to facilitate ''transactions which are of a true arbitrage nature, namely, transactions in which a position is taken on one exchange which is to be immediately covered on a foreign market.'' [162] We believe likewise that such transactions would have utility under the proposed modified uptick rule. As discussed above in connection with domestic arbitrage, bona fide arbitrage transactions promote market efficiency because they equalize prices at an instant in time in different markets or between relatively equivalent securities. Thus, we do not believe that permitting broker-dealers to mark these orders ''short exempt'' would undermine the goals of short sale price test regulation.

Proposed Rule 201(d)(4) would parallel the exception contained in former Rule 10a–1(e)(8). Specifically, proposed Rule 201(d)(4) would provide that a broker-dealer may mark a short sale order of a covered security ''short exempt'' if the broker-dealer has a reasonable basis to believe that the short sale order is ''for a good faith account submitted to profit from a current price difference between a security on a foreign securities market and a security on a securities market subject to the jurisdiction of the United States, provided that the short seller has an offer to buy on a foreign market that allows the seller to immediately cover the short sale at the time it was made.'' [163]

In proposed Rule 201(d)(4), we have simplified the language of former Rule 10a–1(e)(8) to make it more understandable.[164] In addition, we have changed the reference in former Rule 10a–1(e)(8) from a ''special international arbitrage account'' to a ''good faith account.'' As discussed above in connection with the domestic arbitrage provision of proposed Rule 201(d)(3), this revision is necessary to make the proposed provision consistent with the arbitrage provision in Regulation T. We note, however, that we request specific comment regarding whether or not the use of a ''good faith account'' or any other separate account continues to be appropriate or necessary for purposes of proposed Rule 201(d)(4).

In addition, we have incorporated language from the exception in former Rule 10a–1(e)(12) that provided that, for purposes of the international arbitrage exception, a depository receipt for a security shall be deemed to be the same security represented by the receipt. This language was originally included in the Commission's 1939 release adopting the international arbitrage exception, but was incorporated separately in former Rule 10a–1(e)(12).[165] We likewise believe this language is appropriate and should be incorporated into proposed Rule 201(d)(4). We seek comment, however, regarding whether for purposes of the international arbitrage provision, a depository receipt for a security should be deemed to be the same security represented by the receipt.

As with the exception in former Rule 10a–1(e)(8), proposed Rule 201(d)(4) would apply only to bona fide arbitrage transactions. Thus, this provision would only be applicable if at the time of the short sale there is a corresponding offer in a foreign securities market, so that the immediate covering purchase would have the effect of neutralizing the short sale. We believe proposed Rule 201(d)(4) would be necessary to facilitate arbitrage transactions in which a position is taken in a security in the U.S. market, and which is to be immediately covered in a foreign market.[166]

f. Over-Allotments and Lay-Off Sales

Proposed Rule 201(d)(5) would provide that a broker-dealer may mark ''short exempt'' short sale orders by underwriters or syndicate members participating in a distribution in connection with an over-allotment, and any short sale orders with respect to lay-off sales by such persons in connection with a distribution of securities through a rights or standby underwriting commitment.

Former Rule 10a–1(e)(10) contained an exception for over-allotment and lay-off sales.[167] Although the exception was not adopted until 1974, the Commission's approval of the concept of excepting over-allotments and lay-off sales from short sale rules is long-standing.[168] In addition, we note that recently we excepted these sales from the July Emergency Order, which among other things required that short sellers borrow or arrange to borrow securities prior to effecting a short sale, stating that it was not necessary for the Order to cover such sales because such activity is covered by Regulation M under the Exchange Act,[169] an anti-manipulation rule.[170] In accordance with the long-standing Commission position regarding these sales, we are including through proposed Rule 201(d)(5) a provision for short sale orders in connection with over-allotment and lay-off sales that would parallel the exception in former Rule 10a–1(e)(10).

g. Riskless Principal Transactions

Proposed Rule 201(d)(6) would provide that a broker-dealer may mark ''short exempt'' short sale orders where broker-dealers are facilitating customer buy orders or sell orders where the customer is net long, and the broker-dealer is net short but is effecting the sale as riskless principal.[171]

In 2005, the Commission granted exemptive relief under former Rule 10a–1 for any broker-dealer that facilitates a customer buy or long sell order on a riskless principal basis.[172] In granting the relief, the Commission noted representations made in the letter requesting relief that in the situation where the amount of securities that the broker-dealer purchases for the customer may not be sufficient to give the broker-dealer an overall net ''long'' position, former Rule 10a–1 would constrain the ability of the broker-dealer to fill the customer buy order. Further, the Commission noted representations in the letter requesting relief that because such short sales would be effected only in response to a customer buy order, this should vitiate any concerns about such sales having a depressing impact on the security's price.[173]

In addition, the Commission noted representations made in the letter

[162] *See id.*

[163] Proposed Rule 201(d)(4).

[164] Former Rule 10a–1(e)(8) provided that the short sale price test restrictions of that rule shall not apply to: ''Any sale of a security registered on, or admitted to unlisted trading privileges on, a national securities exchange effected for a special international arbitrage account for the bona fide purpose of profiting [sic] from a current difference between the price of such security on a securities market not within or subject to the jurisdiction of the United States and on a securities market subject to the jurisdiction of the United States; provided the seller at the time of such sale knows or, by virtue of information currently received, has reasonable grounds to believe that an offer enabling him to cover such sale is then available to him such foreign securities market and intends to accept such offer immediately.''

[165] *See supra* note 161.

[166] We note that the requirement that the transaction be ''immediately'' covered on a foreign market requires the foreign market to be open for trading at the time of the transaction. *See* 2003 Regulation SHO Proposing Release, 68 FR at 62986.

[167] *See* Securities Exchange Act Release No. 11030 (Sept. 7, 1974), 39 FR 35570 (Oct. 2, 1974).

[168] *See, e.g.,* Securities Exchange Act Release No. 3454 (July 6, 1946), in which the Commission approved the NYSE's special offering plan, which permitted short sales in the form of over-allotments to facilitate market stabilization.

[169] 17 CFR 242.100 *et seq.*

[170] *See* Securities Exchange Act Release No. 58190 (July 18, 2008), 73 FR 42837 (July 23, 2008) (amending the July Emergency Order to include exceptions for certain short sales).

[171] *See* proposed Rule 201(d)(6).

[172] *See* letter from James A. Brigagliano to Ira Hammerman, Senior Vice President and General Counsel, Securities Industry Association, dated July 18, 2005 (''Riskless Principal Letter'').

[173] *See id.*

requesting relief that where a broker-dealer is facilitating a customer long sale order in a riskless principal transaction, because the ultimate seller is long the shares being sold, these transactions present none of the potential abuses that former Rule 10a–1 was designed to address.[174] The Commission also noted representations that the application of former Rule 10a–1 to riskless principal transactions involving a customer long sale can inhibit the broker-dealer's ability to provide timely (or any) execution to such customer long sale. Specifically, if the broker-dealer has a net short position, the broker-dealer will be restricted from executing its own principal trade to complete the first leg of the riskless principal transaction.[175] Thus, compliance with former Rule 10a–1 would adversely affect a broker-dealer's ability to provide best execution to a customer order.[176]

Consistent with the relief granted in the Riskless Principal Letter, we believe that including a provision to permit a broker-dealer to mark ''short exempt'' short sale orders in connection with riskless principal transactions would be appropriate and would not undermine our goals in proposing short sale price test regulation. In particular, we note that such a provision would facilitate a broker-dealer's ability to provide best execution to customer orders. Accordingly, taken together proposed Rules 201(a)(6) and (d)(6) would parallel the conditions for relief in the Riskless Principal Letter.[177]

Specifically, proposed Rule 201(a)(6) would define the term ''riskless principal'' to mean ''a transaction in which a broker or dealer, after having received an order to buy a security, purchases the security as principal at the same price to satisfy the order to buy or, after having received an order to sell, sells the security as principal at the same price to satisfy the order to sell.'' [178] Proposed Rule 201(d)(6) would provide that a broker-dealer may mark a short sale order ''short exempt'' if the broker-dealer has a reasonable basis to believe that the short sale order is to effect the execution of a customer purchase or the execution of a customer ''long'' sale on a riskless principal basis and provided the sell order is given the same per-share price at which the broker-dealer bought shares to satisfy the facilitated order, exclusive of any explicitly disclosed markup or markdown, commission equivalent or other fee.[179] In addition, proposed Rule 201(d)(6) would require the broker-dealer, if it marks an order ''short exempt'' under this provision, to have policies and procedures in place to assure that, at a minimum: the customer order was received prior to the offsetting transaction; the offsetting transaction is allocated to a riskless principal or customer account within 60 seconds of execution; and that it has supervisory systems in place to produce records that enable the broker-dealer to accurately and readily reconstruct, in a time-sequenced manner, all orders on which the broker-dealer relies pursuant to this provision.[180]

We believe that proposed Rule 201(d)(6) would provide broker-dealers with additional flexibility to facilitate customer orders and provide best execution. In addition, we believe that the conditions set forth in proposed Rule 201(d)(6) would provide a mechanism for the surveillance of the provision's use by linking it to specific incoming orders and executions, and by requiring broker-dealers to establish procedures for handling such transactions. These requirements would help ensure that broker-dealers are complying with proposed Rule 201(d)(6).

h. Transactions on a Volume-Weighted Average Price Basis

Proposed Rule 201(d)(7) would provide that a broker-dealer may mark ''short exempt'' certain sale orders executed on a volume-weighted average price (''VWAP'') basis. Under former Rule 10a–1, the Commission granted limited relief from that rule in connection with short sales executed on a VWAP basis.[181] The relief was limited to VWAP transactions that are arranged or ''matched'' before the market opens at 9:30 a.m., but are not assigned a price until after the close of trading when the VWAP value is calculated. The Commission granted the exemptions based, in part, on the fact that these VWAP short sale transactions appeared to pose little risk of facilitating the type of market effects that former Rule 10a–1 was designed to prevent.[182] In particular, the Commission noted that the pre-opening VWAP short sale transactions do not participate in or affect the determination of the VWAP for a particular security.[183] Moreover, the Commission stated that all trades used to calculate the day's VWAP would continue to be subject to former Rule 10a–1.[184]

Consistent with the relief granted under former Rule 10a–1, we propose providing that a broker-dealer may mark ''short exempt'' certain short sale orders executed at the VWAP. Proposed Rule 201(d)(7) would differ from the relief granted under former Rule 10a–1, however, in that it would not be limited to VWAP transactions that are arranged or ''matched'' before the market opens at 9:30 a.m., or that are not assigned a price until after the close of trading when the VWAP value is calculated. We believe this restriction would not be necessary because VWAP short sale transactions appear to pose little risk of facilitating the type of market effects that a short sale price test restriction would be designed to prevent. In addition, in accordance with proposed Rule 201(d)(7), no short sale orders used to calculate the VWAP may be marked ''short exempt.'' [185] This would help limit any potential for manipulation.

Thus, pursuant to proposed Rule 201(d)(7), a broker-dealer may mark a short sale order of a covered security ''short exempt'' if the broker-dealer has a reasonable basis to believe that the short sale order is for the sale of a covered security at the VWAP that meets the following conditions: [186] (1) The VWAP for the covered security is calculated by: Calculating the values for every regular way trade reported in the consolidated system for the security during the regular trading session, by multiplying each such price by the total

[174] *See id.*

[175] *See id.*

[176] *See id.*

[177] These conditions are also consistent with the definition of ''riskless principal transactions'' under Rule 10b–18 of the Exchange Act. *See* 17 CFR 240.10b–18(a)(12).

[178] In addition to being consistent with the conditions in the Riskless Principal Letter and Rule 10b–18 of the Exchange Act, this definition is consistent with the definition of ''riskless principal'' in FINRA Rule 6642.

[179] This requirement is also consistent with FINRA's trade reporting rules which require a riskless principal transaction in which both legs are executed at the same price to be reported once, in the same manner as an agency transaction, exclusive of any markup, markdown, commission equivalent, or other fee. *See* FINRA Rule 6380A(d)(3)(B).

[180] *See* proposed Rule 201(d)(6).

[181] *See e.g.* letter from Larry E. Bergmann, Senior Associate Director, Division of Market Regulation, SEC, to Edith Hallahan, Counsel, Phlx, dated March 24, 1999; letter from Larry E. Bergmann, Senior Associate Director, Division of Market Regulation, SEC, to Soo J. Yim, Wilmer, Cutler & Pickering, dated December 7, 2000; letter from James Brigagliano, Assistant Director, Division of Market Regulation, SEC, to Andre E. Owens, Schiff Hardin & Waite, dated March 30, 2001; letter from James Brigagliano, Assistant Director, Division of Market Regulation, SEC, to Sam Scott Miller, Esq., Orrick, Herrington & Sutcliffe LLP, dated May 12, 2001; letter from James Brigagliano, Assistant Director, Division of Market Regulation, SEC, to William W. Uchimoto, Esq., Vie Institutional Services, dated February 12, 2003.

[182] *See id.*

[183] *See id.*

[184] *See id.*

[185] *See* proposed Rule 201(b)(7).

[186] *See* proposed Rule 201(d)(7).

number of shares traded at that price; compiling an aggregate sum of all values; and dividing the aggregate sum by the total number of reported shares for that day in the security; (2) the transactions are reported using a special VWAP trade modifier; (3) no short sales used to calculate the VWAP are marked ''short exempt''; (4) the VWAP matched security qualifies as an ''actively traded security'' (as defined under Rules 101(c)(1) and 102(d)(1) of Regulation M), or where the subject listed security is not an ''actively traded security,'' the proposed short sale transaction will be permitted only if it is conducted as part of a basket transaction of twenty or more securities in which the subject security does not comprise more than 5% of the value of the basket traded; (5) the transaction is not effected for the purpose of creating actual, or apparent, active trading in or otherwise affecting the price of any security; and (6) a broker or dealer will act as principal on the contra-side to fill customer short sale orders only if the broker-dealer's position in the subject security, as committed by the broker-dealer during the pre-opening period of a trading day and aggregated across all of its customers who propose to sell short the same security on a VWAP basis, does not exceed 10% of the covered security's relevant average daily trading volume, as defined in Regulation M.[187]

Except as discussed above, the conditions set forth in proposed Rule 201(d)(7) parallel the conditions contained in the exemptive relief from former Rule 10a–1 granted for VWAP short sale transactions. We believe that these conditions worked well in restricting the exemptive relief to situations that generally would not raise the harms that short sale price tests are designed to prevent. We believe they would be similarly effective in serving that function today and, therefore, should be incorporated into proposed Rule 201(d)(7).

i. Decision Not To Propose That a Broker-Dealer May Mark an Order ''Short Exempt'' in Connection With Bona Fide Market Making Activity

Former Rule 10a–1(e)(5) provided a limited exception from the restrictions of that rule for ''[a]ny sale * * * by a registered specialist or registered exchange market maker for its own account on any exchange with which it is registered for such security, or by a third market maker for its own account over-the-counter, (i) Effected at a price equal to or above the last sale, regular way, reported for such security pursuant to an effective transaction reporting plan. * * * *Provided, however,* That any exchange, by rule, may prohibit its registered specialist and registered exchange market makers from availing themselves of the exemption afforded by this paragraph (e)(5) if that exchange determines that such action is necessary or appropriate in its market in the public interest or for the protection of investors.'' Unless prohibited by exchange rule, this exception was intended to permit registered specialists or market makers to protect customer orders against transactions in other markets in the consolidated system by allowing them to sell short at a price equal to the last trade price reported to the consolidated system, even if that sale was on a minus or zero-minus tick.[188] Although former Rule 10a–1 included this exception for market makers, exchanges adopted rules that prohibited their registered specialists and market makers from availing themselves of this exception.[189] In addition, former Rule 10a–1 did not contain a general exception for short selling in connection with bona fide market making activities.[190]

Consistent with former Rule 10a–1, the proposed modified uptick rule would not permit a broker-dealer to mark a short sale order ''short exempt'' if the broker-dealer is engaging in bona fide market making activity. By requiring trading centers to have policies and procedures reasonably designed to prevent the execution or display of a short sale order at a down-bid price, the proposed modified uptick rule might help prevent short selling, including potentially abusive or manipulative short selling, from being used as a tool to drive down a market and from being used to accelerate a declining market by exhausting all remaining bids at one price level, and causing successively lower prices to be established by long sellers. By seeking to advance these goals, the proposed modified uptick rule might help restore investor confidence.

As set forth above, paragraphs (c) and (d) of proposed Rule 201 would permit a broker-dealer to mark a short sale order ''short exempt'' under certain circumstances.[191] Further, if an order is marked ''short exempt,'' proposed Rule 201(b)(1)(ii) provides that a trading center's policies and procedures must be reasonably designed to permit the execution or display of such order without regard to whether the order is at a down-bid price.[192] We have proposed these provisions to facilitate the proposed modified uptick rule's workability, while at the same time, not undermine our goals in proposing short sale price test restrictions.

We believe that permitting broker-dealers to mark ''short exempt'' short sale orders in connection with bona fide market making activity may undermine the goals of our proposed short sale price test restrictions at this time. In particular, we believe that for the proposed modified uptick rule to have the effect of helping to prevent declines in securities prices and restore investor confidence, provisions relating to when a broker-dealer may mark an order ''short exempt'' should be limited in scope.

In addition, we note that the proposed provision that would allow broker-dealers to mark short sale orders as ''short exempt'' in connection with riskless principal transactions would provide broker-dealers with flexibility to facilitate customer orders. A trading center's policies and procedures would also be designed to permit the execution or display of short sale orders at the offer. Additionally, in an advancing market, in accordance with proposed Rule 201(b)(1), a trading center's policies and procedures would be reasonably designed to permit the execution or display of short sale orders at the current national best bid and, therefore, in an advancing market, market makers could provide liquidity to the markets and meet purchasing demand.[193] For all these reasons, we do not believe it would be appropriate to provide that a broker-dealer may mark an order ''short exempt'' where the short

[187] 17 CFR 242.100(b).

[188] *See* Securities Exchange Act Release No. 11030 (Sept. 27, 1974), 39 FR 35570 (Oct. 2, 1974). Former Rule 10a–1(a)(1)(i) referenced the last sale price reported to an effective transaction reporting plan, but former Rule 10a–1(a)(2) also permitted an exchange to make an election to use the last sale price reported in that exchange market. Certain exchanges, such as the NYSE, implemented short sale price test rules consistent with former Rule 10a–1(a)(2). *See, e.g.,* former NYSE Rule 440B.

[189] *See id.*

[190] We note, however, that NASD's bid test contained an exception for short sales executed by qualified market makers in connection with bona fide market making. When, however, the Commission approved NASD's bid test and the market maker exception to the bid test it noted concerns that the market maker exception could create opportunities for abusive short selling. *See* 1994 NASD Bid Test Approval, 59 FR 34885. *See also supra* notes 125 and 136 (discussing NASD Rule 3350).

[191] *See* proposed Rule 201(c) and 201(d).

[192] *See* proposed Rule 201(b)(1)(ii).

[193] *See also* McCormick, D. Timothy and Zeigler, Bram, 1997, *The Nasdaq short sale rule: Analysis of market quality effects and the market maker exemption. Working paper, NASD Economic Research,* p. 28 (finding that market makers' short sales at the bid or below on down-bids amounted to only 1.17% of their trading).

sale order is in connection with bona fide market making activity.

We seek comment, however, on the importance of a market maker provision in the context of a market maker's role in providing liquidity, including the extent to which market makers would need to sell short at or below the current national best bid in their market making capacity. We also seek comment on the extent to which the proposed riskless principal provision, as well as any other proposed provisions, would address concerns regarding the need for a more general market maker provision. In addition, we seek comment regarding what conditions should apply if a general market maker provision were added to when a broker-dealer may mark an order ''short exempt'' under the proposed modified uptick rule. We also seek comment on whether a general market maker exception should be limited to registered market makers.

3. Proposed Modified Uptick Rule and After-Hours Trading

Regular trading hours in the U.S. are from 9:30 a.m. to 4 p.m. Eastern Time (''ET'').[194] A high volume of trading occurs, however, outside of these regular trading hours. Accordingly, the Commission interpreted former Rule 10a–1 to apply to all trades in covered securities, whenever they occurred.[195] By its terms, former Rule 10a–1 used as a reference point the last sale price reported to the consolidated tape. Thus, after the consolidated tape ceased to operate, the rule prevented any person from effecting a short sale in a listed security at a price lower than the last sale reported to the consolidated tape.[196] Although former Rule 10a–1 applied in the after-hours market, we do not believe that the proposed modified uptick rule should apply to covered securities during periods that the national best bid is not collected, calculated and disseminated.

As discussed above, market information for quotes in NMS stocks is disseminated pursuant to two different national market system plans, the CQ Plan, and Nasdaq UTP Plan.[197] Quotation information is made available pursuant to the CQ Plan between 9 a.m. and 6:30 p.m. ET, while one or more participants is open for trading. In addition, quotation information is made available pursuant to the CQ Plan during any other period in which any one or more participants wish to furnish quotation information to the Plan.[198] Quotation information is made available by the Nasdaq UTP Plan between 9:30 a.m. and 4 p.m. ET. The Nasdaq UTP Plan also collects, processes, and disseminates quotation information between 4 a.m. and 9:30 a.m. (ET), and after 4 p.m. when any participant is open for trading, until 8 p.m. ET.[199]

During the time periods in which these Plans do not operate, real-time quote information is not collected, calculated and disseminated. We do not believe that it would further the goals of short sale price test regulation to apply the proposed modified uptick rule when the national best bid is not being collected, calculated and disseminated on a real-time basis. Thus, the proposed modified uptick rule would only apply at times when quotation information and, therefore, the national best bid, is collected, processed, and disseminated pursuant to a national market system plan. Thus, proposed Rule 201(f) limits application of the proposed modified uptick rule to times when ''a national best bid for [an] NMS stock is calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan.'' [200] However, we seek comment on these issues.

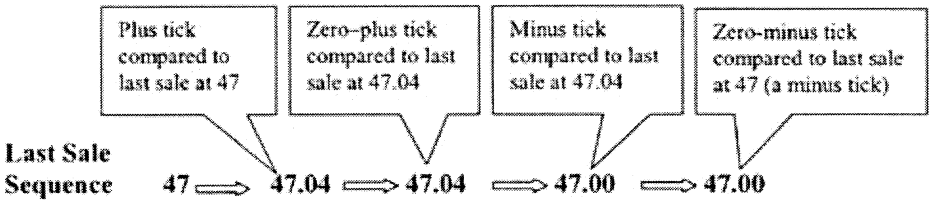
B. Proposed Uptick Rule

1. Operation of the Proposed Uptick Rule

As an alternative to proposing a short sale price test based on the national best bid, we are proposing a modified version of former Rule 10a–1 to provide the public with an opportunity to comment on the utility of such a price test, especially in light of the recent changes in market conditions.[201] The proposed uptick rule would use the last sale price as the reference point for short sale orders.

Specifically, the proposed uptick rule would provide that ''[n]o person shall, for his own account or for the account of any other person, effect a short sale of any covered security, if trades in such security are reported pursuant to an effective transaction reporting plan [202] and information as to such trades is made available in accordance with such plan on a real-time basis to vendors of market transaction information: (i) Below the price at which the last sale thereof, regular way, was reported pursuant to an effective transaction reporting plan; or (ii) At such price unless such price is above the next preceding different price at which a sale of such security, regular way, was reported pursuant to an effective transaction reporting plan.'' [203] Thus, under the proposed uptick rule, no short sale order may be effected below the last sale price. Short sale orders may be effected at the last sale price only if the last sale price is above the last different price. Otherwise, all short sale orders must be effected above the last sale price.

The following transactions illustrate the operation of the proposed uptick rule:



[194] *See, e.g.,* Rule 600(64) of Regulation NMS, defining the term ''regular trading hours.''

[195] *See* 2003 Regulation SHO Proposing Release, 68 FR at 62997 (stating that the Commission interprets former Rule 10a–1 to apply to all trades in listed securities whenever they occur).

[196] We note, however, that NASD did not extend its short sale price test rule to the after-hours market. *See* NASD Head Trader Alert #2000–55.

[197] *See supra* note 107. *See also* 17 CFR 242.603(b). Rule 603 of Regulation NMS requires that every national securities exchange on which an NMS stock is traded and national securities association shall act jointly pursuant to one or more effective national market system plans to disseminate consolidated information, including a national best bid and national best offer, on quotations for and transactions in NMS stocks.

[198] *See http://www.nyxdata.com/cta.*

[199] *See http://www.utpdata.com/docs/UTP_PlanAmendment.pdf.*

[200] *See* proposed Rule 201(e).

[201] *See supra* Section II, discussing the history of short sale price test regulation in the United States and changes in market conditions and resulting erosion of investor confidence.

[202] Proposed Rule 201(a)(3) provides that the term ''transaction reporting plan'' shall have the same meaning as in § 242.600(22) of Regulation NMS.

[203] Proposed Rule 201(b).

The first execution at 47.04 is a plus tick since it is higher than the previous last trade price of 47.00. The next transaction at 47.04 is a zero-plus tick since there is no change in trade price but the last change was a plus tick. Short sales could be executed at 47.04 or above in both of these cases. The final two transactions at 47.00 are minus and zero-minus transactions, respectively. Short sales in these two circumstances would have to be effected at a price above 47.00 in order to comply with proposed uptick rule.

Similar to the proposed modified uptick rule, the proposed uptick rule would apply to any ''covered security,'' which is defined as an ''NMS stock'' under Rule 600(a)(47) of Regulation NMS. Rule 600(a)(47) of Regulation NMS defines an ''NMS stock'' as ''any NMS security other than an option.'' [204] Rule 600(a)(46) of Regulation NMS defines an ''NMS security'' as ''any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options.'' [205] As a result, the proposed uptick rule would effectively cover all securities, other than options, listed on a national securities exchange whether traded on an exchange or in the OTC market. It would not include non-NMS stocks quoted on the OTC Bulletin Board or elsewhere in the OTC market.

We are not proposing to apply the proposed uptick rule to non-NMS stocks quoted on the OTC Bulletin Board or elsewhere in the OTC market because these securities were not subject to former Rule 10a–1. We recognize, however, that issuers of non-NMS stocks, which often are less actively traded securities than NMS stocks, may believe that they are particularly vulnerable to abusive short selling. Thus, we seek specific comment regarding whether the proposed uptick rule or some other form of price test should apply to these types of securities.

As discussed above in connection with the proposed modified uptick rule, the scope of securities covered by the proposed uptick rule would be similar to the scope of securities covered by former Rule 10a–1. Former Rule 10a–1(a) applied to securities registered on, or admitted to unlisted trading privileges on, a national securities exchange, if trades of the security were reported pursuant to an effective transaction reporting plan and information regarding such trades was made available in accordance with such plan on a real-time basis to vendors of market transaction information. All securities that would have been subject to former Rule 10a–1 would also be subject to the proposed uptick rule. In addition, certain securities, such as securities traded on Nasdaq, that were not subject to former Rule 10a–1, would be subject to the proposed uptick rule.[206]

As discussed in more detail above, the Commission eliminated former Rule 10a–1 and prohibited any SRO from having a price test in an effort in part to modernize and simplify short sale regulation in light of current trading systems and strategies used in the marketplace. In supporting its elimination of former Rule 10a–1, the Commission noted that the increased demand for exemptions from the Rule, and the disjointed application of short sale price tests had limited the reach of short sale price test restrictions, created confusion and compliance difficulties as well as an un-level playing field among market participants. In addition, the Commission noted that decimal increments had resulted in a rule that was no longer suited to the wide variety of trading strategies and systems used in the marketplace. The Commission also discussed that following its study of the effects of removing short sale price tests, OEA had found little empirical justification for maintaining former Rule 10a–1 and that, on balance, elimination of short sale price test restrictions for pilot stocks had not had a deleterious effect on market quality based on the examination of transactions during the period covered by the Pilot.[207]

Similar to the proposed modified uptick rule, the proposed uptick rule is designed to allow relatively unrestricted short selling in an advancing market. In addition, it is designed to restrict short selling at successively lower prices and, thereby, might help prevent short selling, including potentially abusive or manipulative short selling, from being used as a tool for driving the market down or from being used to accelerate a declining market by exhausting all remaining bids at one price level, causing successively lower prices to be established by long sellers. In addition, the proposed uptick rule, similar to the proposed modified uptick rule, would not result in the type of disparate short sale regulation that existed under former Rule 10a–1 because proposed Rule 201(d) would include a requirement that no SRO shall have any rule that is not in conformity with, or conflicts with, the short sale price test requirements of the proposed uptick rule. Another potential advantage to the proposed uptick rule is that market participants would be familiar with the test because it would be based on former Rule 10a–1 which was in existence for almost 70 years, and was only recently eliminated.

At the same time, some of the reasons cited by the Commission for eliminating former Rule 10a–1, which are unique to the proposed uptick rule as a price test based on the last sale price, remain today. For example, as discussed in more detail below, as a short sale price test that is based on the last sale price, the proposed uptick rule includes a number of exceptions necessary to accommodate the various trading strategies and systems used in today's marketplace. For example, the proposed uptick rule includes an exception for automated trading systems that utilize passive pricing and trading systems that offer price improvement based on the national best bid. The proposed uptick rule also includes an exception to allow market makers or specialists publishing two-sided quotes to sell short at the offer to facilitate customer market or marketable limit buy orders regardless of the last sale price.

In addition, as noted above in connection with our discussion of the proposed modified uptick rule, we believe the spread of more fully automated markets may make a test based on the last sale price less effective at regulating short selling than a test based on the national best bid due to delays in reporting of last sale price information and because last sale price information is published in reporting sequence and not trade sequence. Such trade reporting may create up-ticks and down-ticks that may not accurately

[204] 17 CFR 242.600(a)(47).

[205] 17 CFR 242.600(a)(46).

[206] *See supra* note 106. We note that former Rule 10a–1(b) applied the restrictions of former Rule 10a–1 to short sales on a national securities exchange in securities for which trades were not reported pursuant to an ''effective transaction reporting plan,'' as defined in Rule 600 of Regulation NMS, and for which information as to such trades was not made available in accordance with such plan on a real-time basis to vendors of market transaction information. Former Rule 10a–1(b) provided, in part: ''No person shall, for his own account or for the account of any other person, effect on a national securities exchange a short sale of any security not covered by paragraph (a) of this rule, 1. below the price at which the last sale thereof, regular way, was effected on such exchange, or 2. at such price unless such price is above the next preceding different price at which a sale of such security, regular way, was effected on such exchange.'' A similar provision would not be applicable to the proposed uptick rule because the proposed uptick rule applies to all NMS stocks, which, by definition, include only those stocks for which trades are collected, processed, and made available pursuant to an effective transaction reporting plan. *See* 17 CFR 242.600(b)(47) and (b)(46).

[207] *See* 2006 Price Test Elimination Proposing Release, 71 FR at 75073.

reflect price movements in the security for purposes of the proposed uptick rule. Because last trade prices can be reported out of sequence, for various reasons, we believe bids may be a more accurate reflection of current prices for a security.

Although former Rule 10a–1 was only recently eliminated, we recognize that due to the extensive systems changes that have occurred in the last couple of years in response to Regulation NMS, programming systems for the proposed uptick rule may be burdensome. For example, we note that at the same time that we proposed and subsequently adopted amendments to eliminate former Rule 10a–1, market participants were programming their systems to comply with Regulation NMS. It is our understanding that some market participants may not have included in their programming coding that would have allowed for the application of short sale price test restrictions at that time.[208]

Although the proposed uptick rule does not take a policies and procedures approach, it is likely that market participants would use a policies and procedures approach as part of their efforts to comply with the proposed prohibition. As such, for either proposed approach (prohibition or policies and procedures), market participants could consider whether to build off the policies and procedures they already have in place under Regulation NMS. As discussed above in connection with the proposed modified uptick rule, trading centers have been required to develop policies and procedures in accordance with Regulation NMS that would be similar to the types of policies and procedures that would be required under the proposed modified uptick rule.

The proposed uptick rule may be more burdensome to apply than the proposed modified uptick rule, however, because the prohibition approach of the proposed uptick rule would not allow any short sale at an impermissible price, even if in error or inadvertent, unless an exception applies. If the Commission were to decide to provide an exception for inadvertent errors, that could reduce the differences between the two proposed approaches. In addition, the proposed uptick rule could follow a policies and procedures approach similar to the approach discussed in connection with the proposed modified uptick rule. Such a policies and procedures approach would require that market participants continuously surveil for compliance and take prompt remedial steps to limit the execution or display of short sales at impermissible prices.

As discussed above, we are proposing a short sale price test based on the last sale price, and, in particular, we are proposing a modernized version of former Rule 10a–1 to provide the public with the opportunity to comment on this test in light of changes that have occurred in market conditions and investor confidence since the elimination of former Rule 10a–1 in mid-2007. Because we want to provide the public with the opportunity to comment on a short sale price test similar to former Rule 10a–1, we are not proposing a policies and procedures type of approach in connection with the proposed uptick rule because this would be a substantial change from how former Rule 10a–1 was applied. We note, however, that some commenters may believe that a policies and procedures approach similar to the approach discussed under the proposed modified uptick rule that references the last sale price, rather than the national best bid, might be preferable to either the proposed modified uptick rule or the proposed uptick rule. Thus, we seek specific comment regarding such an approach.

If we were to adopt the proposed uptick rule, we are proposing that there would be a three month implementation period such that market participants would have to comply with the proposed uptick rule three months following the effective date of the proposed uptick rule. We believe that a proposed implementation period of three months after the effective date would provide market participants with sufficient time in which to modify their systems and procedures in order to comply with the requirements of the proposed uptick rule. Among other things, we believe this period would be a reasonable period because market participants would be familiar with the changes to their trading systems necessary to implement the proposed uptick rule as the proposed uptick rule would be similar to former Rule 10a–1. The addition of an implementation period should help alleviate potential disruptive effects of the proposal.

We realize, however, that a shorter or longer implementation period may be manageable or preferable. Thus, we seek specific comment as to what length of implementation period would be necessary or appropriate, and why, such that market participants would be able to meet the proposed short sale price test restrictions, if adopted.

2. Exceptions to Proposed Uptick Rule

Paragraph (c) of Rule 201 of the proposed uptick rule sets forth exceptions to the proposed rule to promote its workability. Rule 201(c) of the proposed uptick rule would include exceptions that parallel provision set forth in proposed Rule 201(d) of the proposed modified uptick rule pursuant to which a broker-dealer may mark an order ''short exempt'' for purposes of that proposed rule. Thus, proposed Rule 201(c) of the proposed uptick rule would also include exceptions for: (i) A seller's delay in delivery as set forth in Section III.A.2.b above; (ii) odd lots, as set forth in Section III.A.2.c. above; (iii) domestic arbitrage, as set forth in Section III.A.2.d. above; (iv) international arbitrage, as set forth in Section III.A.2.e. above; (v) over-allotments and lay-off sales, as set forth in Section III.A.2.f. above; (vi) transactions on a VWAP basis, as set forth in Section III.A.2.h above; and (vii) riskless principal transactions as set forth in Section III.A.2.g. above. We believe that the rationale for these provisions under the proposed modified uptick rule would be equally applicable to the proposed uptick rule. Thus, we do not repeat the discussions of these provisions in connection with our discussion regarding the proposed uptick rule.

The following discussion sets forth the rationale regarding exceptions that would be unique to the proposed uptick rule. The exceptions contained in paragraph (c) of proposed Rule 201 are based upon exceptions contained in former Rule 10a–1 and exemptive relief granted pursuant to that rule. These exceptions and exemptions, as applicable, had been in place under former Rule 10a–1 for several years. We are not aware of any reason that the

[208] In connection with the elimination of former Rule 10a–1 and all short sale price test restrictions, we noted that commenters to the proposed amendments to eliminate all short sale price test restrictions discussed potential reprogramming costs that market participants may incur if the proposed amendments were not effective prior to the date for which all automated trading centers were required to have fully operational Regulation NMS-compliant trading systems, *i.e.,* July 9, 2007 (the ''Regulation NMS Compliance Date''). For example, we noted that the Securities Industry Financial Markets Assn. (''SIFMA'') urged the Commission to take steps to eliminate price test restrictions prior to the Regulation NMS Compliance Date to alleviate the need for firms to, in the course of instituting programming changes to meet the new requirements of Regulation NMS, program systems to comply with price test restrictions, only to be required to reverse such programming costs shortly thereafter. After considering these comments, we made the elimination of short sale price test restrictions immediately effective to provide market participants with sufficient notice and time prior to the Regulation NMS Compliance Date to reprogram their systems without regard to the then-current short sale price test restrictions. *See* 2007 Price Test Adopting Release, 72 FR at 36356, 36359.

rationales underlying these exceptions and exemptions would not still hold true today. Moreover, due to the limited scope of the proposed exceptions and exemptions, we do not believe that they would undermine the Commission's stated goals for proposing short sale price test restrictions.

Thus, the exceptions in proposed Rule 201(c) parallel exceptions to and exemptive relief granted under former Rule 10a–1. As set forth in more detail below, however, we seek comment regarding each of these exceptions, including whether or not these exceptions would be appropriate or necessary under the proposed modified uptick rule particularly in light of trading systems and strategies used in today's marketplace.

a. Error in Marking a Short Sale

Proposed Rule 201(c)(2) would provide an exception from the proposed uptick rule where a broker-dealer effects a sale order marked ''long'' by another broker-dealer, but the order was mis-marked such that it should have been marked as a ''short'' sale order. Specifically, proposed Rule 201(c)(2) provides that the proposed uptick rule shall not apply to ''[a]ny sale by a broker or dealer of a covered security for an account in which it has no interest, pursuant to an order marked long.'' [209]

The broker-dealer that marks the order ''long'' must comply with the order marking requirements of Rule 200(g) of Regulation SHO.[210] Subsection (e)(2) of former Rule 10a–1 contained an exception for mis-marked short sales. The exception was included in former Rule 10a–1 when the rule was adopted in 1938 and was provided to ''avoid implicating in any violation of the rules a member whose participation in the violation [was] unwitting and unintentional.'' [211] The exception in proposed Rule 201(c)(2) would avoid implicating the broker-dealer effecting the sale where the broker-dealer's participation in the violation was neither knowing nor reckless.[212]

b. Electronic Trading Systems

Proposed Rule 201(c)(8) would provide an exception from the proposed uptick rule for sales of securities in certain electronic trading systems that match and execute trades at various times and at independently-derived prices, such as at the mid-point of the NBBO. The Commission granted limited exemptive relief in connection with these systems under former Rule 10a–1 because matches could potentially occur at a price below the last sale price.[213] Similarly, under the proposed uptick rule, matches could potentially occur at a price below the last sale price and, therefore, violate the provisions of proposed Rule 201(b) prohibiting short sales on a minus or zero-minus tick, absent an exception.

This exception provides that the proposed uptick rule shall not apply to any sale of a covered security in an electronic trading system that matches buying and selling interest at various times throughout the day if: (1) Matches occur at an externally derived price within the existing market and above the current national best bid; (2) sellers and purchasers are not assured of receiving a matching order; (3) sellers and purchasers do not know when a match will occur; (4) persons relying on the exception are not represented in the primary market offer or otherwise influence the primary market bid or offer at the time of the transaction; (5) transactions in the electronic trading system are not made for the purpose of creating actual, or apparent, active trading in, or depressing or otherwise manipulating the price of, any security; (6) the covered security qualifies as an ''actively-traded security'' (as defined in Rules 101(c)(1) and 102(d)(1) of Regulation M), or where the subject listed security is not an ''actively-traded security,'' the proposed short sale transaction will be permitted only if it is conducted as part of a basket transaction of twenty or more securities in which the subject security does not comprise more than 5% of the value of the basket traded; and (7) during the period of time in which the electronic trading system may match buying and selling interest, there is no solicitation of customer orders, or any communication with customers that the match has not yet occurred.[214]

The conditions set forth in the exception in proposed Rule 201(c)(8) parallel the conditions provided in the exemptive relief granted under former Rule 10a–1. Consistent with the relief granted under former Rule 10a–1 and the rationales provided in granting such relief, we believe it is appropriate to propose an exception to the proposed uptick rule for short sales submitted to these electronic trading systems because such rationales still hold true today. In particular, we note that due to the passive nature of pricing and the lack of price discovery, trades executed through these systems generally would not involve the types of abuses that the proposed uptick rule would be designed to prevent.

c. Trade-Throughs

Proposed Rules 201(c)(10) and (11) would provide exceptions from the requirements of the proposed uptick rule that would help address any potential conflict between the proposed uptick rule and the Quote Rule under the Exchange Act.[215] These exceptions parallel the exceptions contained in former Rule 10a–1(e)(5)(ii) and (e)(11), respectively.

Former Rule 10a–1(e)(5)(ii) was added to former Rule 10a–1 to address a potential conflict between the operation of former Rule 10a–1 and the ''firm quote requirement'' of the Quote Rule [216] in situations where execution of an offer quotation by a broker-dealer would be rendered unlawful because of a trade-through,[217] even though the offer had been at a price permitted under former Rule 10a–1 at the time that the broker-dealer had communicated it to its exchange or association for inclusion in the consolidated quotation system.[218]

[209] Proposed Rule 201(c)(2).

[210] *See* 17 CFR 242.200(g).

[211] *See* Former Rule 10a–1 Adopting Release, 3 FR 213.

[212] Knowledge may be inferred where a broker-dealer has previously accepted orders marked ''long'' from the same counterparty that required borrowed shares for delivery or that resulted in a ''fail to deliver.'' *See* 2004 Regulation SHO Adopting Release, 69 FR at 48019, n.111 (stating that ''[i]t may be unreasonable for a broker-dealer to treat a sale as long where orders marked 'long' from the same customer repeatedly require borrowed shares for delivery or result in 'fails to deliver.' A broker-dealer also may not treat a sale as long if the broker-dealer knows or has reason to know that the customer borrowed shares being sold.'').

[213] *See e.g., supra* note 26.

[214] *See* Proposed Rule 201(c)(8).

[215] *See* 17 CFR 242.602.

[216] At the time the Commission adopted former Rule 10a–1(e)(5)(ii), the Quote Rule was included in Rule 11Ac1–1 under the Exchange Act. The Quote Rule is now in Rule 602 of Regulation NMS. *See* 17 CFR 242.602.

[217] A ''trade-through'' generally means the purchase or sale of a security at a price that is lower than a protected bid or higher than a protected offer. *See* 17 CFR 242.600(a)(77) (defining the term ''trade-through'' for purposes of Regulation NMS).

[218] The following example from the release adopting the exception illustrates the potential conflict: A market maker who currently has a short position in XYZ stock communicates an offer which, if executed against at that time, would be in compliance with Rule 10a–1, *e.g.*, at a price of 20⅛ when the last trade price reported in the consolidated system is also 20⅛. There is a ''trade through'' of the market maker's offer on another trading venue that causes an up-tick to be reported in the consolidated system at 20¼. Finally, a buy order is sent to the market maker after the trade through at 20¼ has been reported. In order to ensure compliance with 10a–1, the market maker must refuse to execute the order at his offer of 20⅛ because doing so would result in a short sale being effected on an impermissible minus tick, however, in refusing to effect the trade, he would arguably violate the ''firm quote requirement'' of the Quote Rule. In addition, when a market maker ''backs away'' from an order, he may, in effect be revealing that he had a short position in the security, thus

Continued

To resolve this potential conflict, the Commission adopted the exception in subsection (e)(5)(ii) of former Rule 10a–1 to permit market makers to execute transactions at their offer following a trade-through, and (e)(11) to permit non-market makers to effect a short sale at a price equal to the price associated with their most recently communicated offer up to the size of that offer [219] provided the offer was at a price, when communicated, that was permissible under former Rule 10a–1. The (e)(11) exception was added in response to several comments that, in addition to orders for their own account, specialists and other floor members also often represent as part of their displayed quotation orders of other market participants (*e.g.*, public agency orders or proprietary orders of non-market makers) that also might be ineligible for execution under former Rule 10a–1 following a trade-through in another market.[220]

We believe that the rationale for adopting the exceptions in former Rule 10a–1(e)(5)(ii) and (e)(11) and proposed in subsections (c)(10) and (c)(11) of the proposed uptick rule, namely resolving a conflict between a short sale price test based on the last sale price and the Quote Rule would exist under the proposed uptick rule. Thus, the proposed exceptions would parallel the exceptions in former Rule 10a–1(e)(5)(ii) and (e)(11).[221]

Specifically, proposed Rule 201(c)(10) would provide that the restrictions of the proposed uptick rule shall not apply to: ''[A]ny sale of a covered security (except a sale to a stabilizing bid complying with § 242.104 of Regulation M) by a registered specialist or registered exchange market maker for its own account on any exchange with which it is registered for such security, or by a third market maker for its own account over-the-counter, (i) Effected at a price equal to the most recent offer communicated for the security by such registered specialist, registered exchange market maker or third market maker to an exchange or a national securities association (''association'') pursuant to § 242.602 of this chapter, if such offer, when communicated, was equal to or above the last sale, regular way, reported for such security pursuant to an effective transaction reporting plan. *Provided*, *however*, (ii) That any self-regulatory organization, by rule, may prohibit its registered specialist and registered exchange market makers from availing themselves of the exemption afforded by this paragraph (c)(10) if that self-regulatory organization determines that such action is necessary or appropriate in its market in the public interest or for the protection of investors.'' [222]

We believe that the rationale for adopting former Rule 10a–1(e)(5)(ii) still holds true today and, therefore, we have incorporated the language of that exception into proposed Rule 201(c)(10). Consistent with former Rule 10a–1(e)(5)(ii), the proposed exception would include language that would permit SROs to prohibit registered specialists and registered exchange market makers from availing themselves of this exception. We note that under former Rule 10a–1, SROs such as the NYSE prohibited registered specialists and registered exchange market makers from availing themselves of this exception.[223] We believe it would be appropriate to continue to provide this option to SROs.

Proposed Rule 201(c)(11) would provide that the restrictions of the proposed uptick rule shall not apply to: ''[A]ny sale of a covered security (except a sale to a stabilizing bid complying with § 242.104 of this chapter) by any broker or dealer, for his own account or for the account of any other person, effected at a price equal to the most recent offer communicated by such broker or dealer to an exchange or association pursuant to § 242.602 of this chapter in an amount less than or equal to the quotation size associated with such offer, if such offer, when communicated, was: (i) Above the price at which the last sale, regular way, for such security was reported pursuant to an effective transaction reporting plan; or (ii) At such last sale price, if such last sale price is above the next preceding different price at which a sale of such security, regular way, was reported pursuant to an effective transaction reporting plan.'' We believe that the rationale for adopting former Rule 10a–1(e)(11) still holds true today and, therefore, we have incorporated the language of that exception into proposed Rule 201(c)(10).

d. Facilitation of Customer Buy Orders

Proposed Rule 201(c)(12) would provide for an exception from the proposed uptick rule for short sales by registered market makers or specialists publishing two-sided quotes to sell short at the offer to facilitate customer market and marketable buy limit orders regardless of the last sale price.[224] We believe that this exception would be necessary because some third market makers in exchange-listed securities offer trade execution for eligible customer orders at a price equal to or better than the national best offer. Under the proposed uptick rule, if the national best offer were below the previous last reported sale in a security and the third market maker or specialist has a short position, sales at the national best offer would violate the proposed uptick rule. The proposed exception would provide limited relief in a decimals environment to registered market makers and specialists so that they could provide liquidity in response to customer buy limit orders. Because this relief is limited to short selling only at the national best offer and only in response to customer buy limit orders we believe that it would not undermine the goals of short sale price test regulation, including helping to prevent short selling from being used as a tool to drive the market down.

3. Proposed Uptick Rule and After-Hours Trading

As discussed above in connection with the proposed modified uptick rule, the Commission interpreted former Rule 10a–1 to apply to all trades in covered securities, whenever they occurred. By its terms, former Rule 10a–1 used as a reference point the last sale price reported to the consolidated tape. Thus, after the consolidated tape ceased to operate, the rule prevented any person from effecting a short sale in a listed

making it more difficult to liquidate that position at favorable prices. *See* Securities Exchange Act Release No. 17314 (Nov. 20, 1980), 45 FR 79018 (Nov. 28, 1980).

[219] The Commission explained in the release that the scope of the exception in former Rule 10a–1(e)(11) was limited to the size of the broker-dealer's displayed offer because the need for the exception only arises to the extent that the broker-dealer's obligations under the Quote Rule may conflict with former Rule 10a–1. Because the firm quote requirement of the Quote Rule only applies to a broker-dealer's displayed offer, it was deemed appropriate to limit the exception to the size of the displayed offer. *See supra* note 218 at n.20.

[220] This concern was illustrated in the release adopting the amendments with the following example: A specialist who is short XYZ stock quotes an offer for 1,000 shares at 20⅛ at a time when the last sale reported in the consolidated system was such that the offer, if executed at that time, would be in compliance with Rule 10a–1. This offer for 1,000 shares consists of 300 shares offered by the specialist, a 400-share limit order in the specialist's book, and an offer from the crowd at the specialist's post for 300 shares, all at 20⅛. A trade through of this offer occurs on another exchange and an up-tick is reported in the consolidated system at 20¼. A buy order for 1,000 shares at 20⅛ is then sent to the exchange—after the trade through at 20¼ is reported. Without (e)(11), filling the complete order for 1,000 shares would not be permissible, since (e)(5)(ii), by its terms, applied only to a sale by a market maker for its own account. *See supra* note 218 at n.18.

[221] *See* Proposed Rule 201(c)(10) and (c)(11).

[222] *See* Proposed Rule 201(c)(10).

[223] *See* former NYSE Rule 440B.

[224] *See* proposed Rule 201(c)(12). This exception parallels exemptive relief provided by the Commission under former Rule 10a–1.

security at a price lower than the last sale reported to the consolidated tape.[225] Although former Rule 10a–1 applied in the after-hours market, similar to the proposed modified uptick rule, we do not believe that the proposed uptick rule should apply to covered securities while last sale price information is not collected, processed, and disseminated.[226]

As discussed above, last sale price information for NMS stocks is disseminated pursuant to a national market system plan, the CTA Plan.[227] The CTA Plan disseminates last sale price information during the hours in which any of its participants that regularly reports to the Plan is open for trading. In addition, the Plan disseminates last sale price information at other times during which any of its exchange participants is open for trading.[228] During times in which the CTA Plan does not collect, process, and disseminate last sale price information, real-time last sale price information is not available. For the same reasons discussed in connection with the proposed modified uptick rule, we do not believe that it would further the goals of short sale price test regulation to apply the proposed uptick rule when last sale price information is not being collected and disseminated on a real-time basis. Thus, proposed Rule 201(e) limits application of the proposed uptick rule to times when ''a last sale price for [an] NMS stock is collected and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan.'' [229]

C. The Proposed Circuit Breaker Rules

We also are proposing for comment, as an alternative to the proposed price test restrictions, circuit breaker rules. The proposed circuit breaker halt rule would, when triggered by a specified decline in the price of a particular security, temporarily prohibit any person from selling short a particular NMS stock during severe market declines in that security, subject to certain exceptions. The proposed circuit breaker modified uptick rule would, when triggered by a specified decline in the price of a particular security, temporarily impose the proposed modified uptick rule for that security.

As discussed above, questions persist about the reasons for the rapid speed of steep declines in the prices of securities. A short selling circuit breaker rule would be designed to target only those securities that experience rapid severe intraday declines and, therefore, might help to prevent short selling from being used to drive the price of a security down or to accelerate the decline in the price of those securities.

In line with the Commission's position that market impediments should be minimized, a short selling circuit breaker when applied might benefit the market as a narrowly tailored response to extraordinary circumstances.[230] Unlike the market wide circuit breakers that halt all trading, a short selling circuit breaker would apply only to those individual securities that are facing a severe intraday decline in share price. A short selling circuit breaker could be structured in a number of ways. We set forth below three forms of circuit breakers.

1. Background on Circuit Breakers

To protect investors and the markets, the Commission has approved proposals to restrict or halt trading if key market indexes fall by specified amounts. For example, the Commission approved such proposals from various exchanges (''SRO Circuit Breakers'') in response to the October 1987 market break. These measures were designed to permit brief, coordinated cross-market halts to provide opportunities during a severe market decline to re-establish equilibrium between buying and selling interests in an orderly fashion, and help to ensure that market participants have a reasonable opportunity to become aware of, and respond to, significant price movements.[231]

Currently, all stock exchanges and FINRA have rules or policies to implement coordinated circuit breaker halts.[232] The options markets also have rules applying circuit breakers.[233] The futures exchanges that trade index futures contracts have adopted circuit breaker halt procedures in conjunction with their price limit rules for index products.[234] Finally, security futures products are required to have cross-market circuit breaker regulatory halt procedures in place.[235] In addition, the Commission has authority under Section 12(k)(1) of the Exchange Act to suspend trading in the securities of individual issuers.[236] Moreover, SROs have rules or policies in place to coordinate individual security trading halts corresponding to significant news events.[237] Information on the securities subject to SRO regulatory trading halts is disseminated to market participants through the Common Messaging System (''CMS'') and other electronic media.[238]

The current SRO Circuit Breakers impose percentage based triggers that result in trading halts of varying lengths, dependent on the DJIA's rate of decline.[239] Unlike the original SRO

[225] We note, however, that NASD did not extend its short sale price test rule to the after-hours market. *See* NASD Head Trader Alert #2000–55.

[226] *See supra* Section III.A.2. (discussing our belief that the proposed modified uptick rule should not apply when the national best bid is not collected, processed, and disseminated on a real-time basis).

[227] *See* 17 CFR 242.603(b). Rule 603 of Regulation NMS requires that every national securities exchange on which an NMS stock is traded and national securities association shall act jointly pursuant to one or more effective national market system plans to disseminate consolidated information, including a national best bid and national best offer, on quotations for and transactions in NMS stocks.

[228] *See http://www.nyxdata.com/cta.*

[229] *See* proposed Rule 201(e).

[230] *See* Securities Exchange Act Release No. 39846 (Apr. 9, 1998), 63 FR 18477 (Apr. 15, 1998) (order approving proposals by Amex, BSE, CHX, NASD, NYSE, and Phlx) (''1998 Release'').

[231] *See* Securities Exchange Act Release No. 26198 (Oct. 19, 1988), 53 FR 41637 (Oct. 24, 1988) (approving rules of the Amex, CBOE, NASD, NYSE).

[232] *See* 1998 Release *supra* note 230. *See also* NYSE Rule 80B. The circuit breaker procedures call for cross-market trading halts when the Dow Jones Industrial Average (DJIA) declines by 10 percent, 20 percent, and 30 percent from the previous day's closing value. *See e.g.,* BATS Exchange Rule 11.18.

[233] *See* Amex Rule 950 (applying Amex Rule 117, Trading Halts Due to Extraordinary Market Volatility, to options transactions); CBOE Rule 6.3B; ISE Rule 703; NYSE Arca Options Rule 7.5; and Phlx Rule 133.

[234] *See, e.g.,* CME Rule 35102.I. The CME will implement a trading halt on S&P 500 Index futures contracts if a NYSE Rule 80B trading halt is imposed in the primary securities market. Trading of S&P 500 Index futures contracts will resume upon lifting of the NYSE Rule 80B trading halt.

[235] *See* Securities Exchange Act Release No. 45956 (May 17, 2002), 67 FR 36740 (May 24, 2002).

[236] *See* 15 U.S.C. 78*l*(k)(1).

[237] *See, e.g.,* FINRA Rule 6120.

[238] For example, in addition to disseminating news of trading halts through the CMS, Nasdaq publishes a daily list of securities subject to trading halts indicating the name of the issuer, the time the halt was initiated, and where applicable, the times at which quoting and trading may resume.

[239] *See* 1998 Release 63 FR 18477 *supra* note 230 and accompanying text (The SRO Circuit Breakers, as adopted in 1988, called for a one-hour trading halt if the DJIA declined by 250 points from the previous day's close, and a two-hour halt in the event of a 400 point decline.). *See* Securities Exchange Act Release No. 26198 (Oct. 19, 1988), 53 FR 41637 (Oct.24, 1988) (approving rules of the Amex, CBOE, NASD, NYSE). The original circuit breaker parameters were amended in 1996 to limit the duration of trading halts, and again in 1997 after it was determined that the 250 and 400 point thresholds were too low given the substantial increase in the value of the DJIA in the years following implementation of 1988 policies. The 1997 amendments increased the SRO Circuit Breakers' ''trigger values'' to 350 and 500 points respectively for the one-hour and two-hour trading halt scenarios. *See* Securities Exchange Act Release No. 38221 (Jan. 31, 1997) 62 FR 5871 (Feb. 7, 1997). The Commission approved the various Exchanges' circuit breaker revisions on a one year pilot basis. The SRO Circuit Breakers were revised again in 1998 to put into place circuit breakers triggered by certain percentage declines. *See* Securities

Continued

Circuit Breakers, which used set point values to determine when a trading halt should be imposed, the current SRO Circuit Breakers are governed by percentage based declines tied to specific point values that are calculated at the beginning of each calendar quarter using the average daily DJIA closing for the previous month.[240]

Under the current SRO Circuit Breakers, a 10% decline prior to 2 p.m. will result in a one hour trading halt. Should the 10% decline occur after 2 p.m. but prior to 2:30 p.m., exchanges must halt trading for 30 minutes. If the 10% threshold is crossed after 2:30 p.m., trading will not be halted. A 20% decline in the DJIA will result in a two-hour trading halt, if the decline occurs prior to 1 p.m. and a one-hour trading halt if the threshold is reached between 1 p.m., and 2 p.m. If the DJIA declines by 20% after 2 p.m., under the current circuit breaker rules, trading will halt for the remainder of the day. Should the market decline by 30% at any point, trading will halt for the remainder of the day.[241] The coordinated cross-market trading halts provided by the SRO Circuit Breakers operate only during significant market declines and are intended to substitute orderly, pre-planned halts for the *ad hoc* and destabilizing halts which can occur when market liquidity is exhausted.[242]

The SRO Circuit Breakers focus on market indexes rather than on the market for an individual security. The SRO Circuit Breakers apply a market-wide trading halt, rather than a halt in an individual security, or a short selling halt. The proposed circuit breaker rules, in contrast, would temporarily restrict only short selling (and only) in an individual NMS security that suffers a severe price decline.

We believe that either a short sale price test restriction or a circuit breaker rule may be appropriate to address the recent change in market conditions and erosion of investor confidence. As discussed above, investors have become increasingly concerned about sudden and excessive declines in prices that appear to be unrelated to issuer fundamentals.[243] Circuit breakers that are triggered by severe declines in the price of individual securities may be a targeted response to address these concerns.

2. Proposed Circuit Breaker Halt Rule

We are proposing a short selling circuit breaker that, when triggered by a severe price decline in a particular security, would prohibit any person from selling short that security, wherever it is traded, while the circuit breaker is in effect, subject to certain exceptions.

While the Commission does not favor market closings as a general matter, the proposed circuit breaker halt rule would not be as broad as a market-wide trading halt. Furthermore, the Commission has recognized that circumstances may infrequently call for a trading pause that allows participants to reassess conditions.[244] We believe that a pause in short selling resulting from a significant decline in the price of an individual equity security might provide a similar measure of stability.

We seek comment on whether it would be appropriate for the Commission to impose a circuit breaker that when triggered would halt all short selling in an individual equity security, wherever it is traded, for the remainder of the trading day if the price of the security has declined by at least 10% from the prior day's closing price for that security, as measured by the closing price of the security on the consolidated system. Like the proposed modified uptick rule and the proposed uptick rule, we propose that it would apply to all NMS stocks as that term is defined under Rule 600(a)(47) of Regulation NMS.[245] We seek comment regarding the scope of a potential circuit breaker's application and to which securities it might most appropriately apply.

We preliminarily believe that a 10% decline in a security's price as measured from the prior day's closing price, as reported in the consolidated system, would be an appropriate level at which to trigger a circuit breaker that results in a short selling halt. As discussed above, such a percentage decline would be consistent with the current SRO Circuit Breakers.[246] The 10% threshold for a circuit breaker that, when triggered, results in a short selling halt in an individual security would reflect the format of current SRO Circuit Breakers and use a trigger based on a fluctuating value, the share price, to strike a balance between the need to halt short selling in moments of severe decline in a security's price and the market participant's expectation that its short selling strategy will be available in an efficient and open marketplace. We note that a group of national securities exchanges recommended a 10% decline threshold in connection with a short selling circuit breaker combined with a short sale price test restriction.[247] Another commenter supported a 10% minimum threshold, but also recommended a ''rolling'' circuit breaker that when triggered would impose short selling halts of varying lengths, depending on the level of decline in the price of an individual equity security.[248] We recognize that a lesser or greater percentage decline or some other measure of decline may be appropriate, and seek comment on that question.

As described in more detail below, the price decline would be based on the security's price during the trading day as reported in the consolidated system as compared to the prior day's closing price as reported in the consolidated system. The prior day's closing price would be the last price reported during regular trading hours[249] the prior day.

The proposed circuit breaker halt rule would, once triggered by a 10% decline in the price of a security from the prior day's closing price on any trading day, impose a short selling halt in the individual security at times when the last sale price is calculated and disseminated in the consolidated system. We based the time period on the calculation and dissemination of last sale price because the circuit breaker is triggered by a percentage decline in the security's intra-day last sale price relative to the prior day's last sale price at the end of regular trading hours on the prior day.

In addition, to avoid market disruption that may occur if a circuit breaker is triggered late in the trading day, the proposed circuit breaker rules would not be triggered if the specified market decline threshold is reached in an NMS security within thirty minutes of the end of regular trading hours. Former NYSE Rules 80A(a) and 80A(b) provided that a circuit breaker would not trigger program trading restrictions after 3:25 p.m., or approximately thirty-five minutes before the close. We seek comment as to whether thirty minutes is an appropriate balance to ensure that

Exchange Act Release No. 39846 (Apr. 9, 1998) 63 FR 18477 (Apr. 15, 1998).

[240] *See id.*

[241] *See* 1998 Release, 63 FR 18477 *supra* note 230.

[242] *See* Circuit Breaker Report by the Staff of the President's Working Group on Financial Markets (Aug. 18, 1998) (Circuit Breaker Report), n. 33.

[243] *See supra* Section II.C. (discussing investor confidence).

[244] *See* 1998 Release, 63 FR 18477 *supra* note 230.

[245] *See* proposed Rule 201(a)(1).

[246] *See* 1998 Release, 63 FR 18477 *supra* note 230 and accompanying text.

[247] *See* National Exchanges letter, *supra* note 63.

[248] *See* letter from Credit Suisse, *supra* note 122.

[249] ''Regular trading hours'' has the same meaning as in Rule 600(b)(64) of Regulation NMS. Rule 600(b)(64) provides that ''*Regular trading hours* means the time between 9:30 a.m. and 4 p.m. Eastern Time, or such other time as is set forth in the procedures established pursuant to § 242.605(a)(2).''

the goals of the proposed rule would be met while also reducing the potential for market disruption toward the close of regular trading hours.

We believe that a short selling halt that persists at times when the last sale price is calculated and disseminated following a 10% decline in a security's price might be appropriate. We are concerned that a short selling halt for a lesser time might not provide sufficient time to re-establish equilibrium between buying and selling interest in the individual security in an orderly fashion. We also believe that a short selling halt for this length of time might be necessary to help ensure that market participants have a reasonable opportunity to become aware of, and respond to, a significant decline in a security's price. We seek comment below, however, regarding whether a longer or shorter short selling halt would be appropriate, or whether it would be appropriate to impose a short selling halt on a rolling basis as suggested by an industry commenter.[250]

We are also seeking comment on the potential costs and benefits of a short selling circuit breaker that when triggered results in a temporary halt on short selling. The Commission has previously noted that circuit breakers may benefit the market by allowing participants an opportunity to reevaluate circumstances and respond to volatility.[251] Unlike the proposed modified uptick rule and the proposed uptick rule, this proposed circuit breaker halt rule would halt all short selling for an individual security for the specified period of time. In discussing a short selling circuit breaker, one commenter noted that such a measure could address the issue of ''bear raids'' while limiting the market impact that may arise from other forms of short sale price test restrictions.[252] The Commission has long held the view that coordinated circuit breakers might restore investor confidence during times of substantial uncertainty.[253] We believe the proposed circuit breaker halt rule might produce similar benefits.

We recognize, however, that there are potential costs associated with implementation of a short selling circuit breaker that when triggered results in a temporary short selling halt. As discussed below, we anticipate that market participants charged with implementation of such a short selling circuit breaker would have to invest human and financial resources to update systems as necessary for compliance. Furthermore, as discussed above, short selling is an important tool in price discovery and the provision of liquidity to the market, and we recognize that imposition of a short selling circuit breaker that when triggered imposes short selling halts could restrict otherwise legitimate short selling activity during periods of extreme volatility.

We also understand there are concerns about a potential ''magnet effect'' that could arise as an unintended consequence of a circuit breaker that halts short selling and results in short sellers driving down the price of an equity security in a rush to execute short sales before the circuit breaker is triggered. One commenter noted that a short sale circuit breaker could exacerbate downward pressure on stocks as their value reached the threshold level.[254] Another commenter, however, in discussing the issue of a ''magnet effect'' cited empirical studies that question whether a circuit breaker would result in artificial pressure on the price of individual securities.[255] We are also concerned about another type of ''magnet effect'' in which short selling demand is built up until the circuit breaker is lifted.

Similar to the short sale price test restrictions, the proposed circuit breaker halt rule would apply to NMS securities other than options. However, we seek comment below on whether such a rule should also apply to non-NMS securities.

The proposed circuit breaker halt rule would include exceptions substantially identical to exceptions that were included in the Short Sale Ban Emergency Order,[256] as amended by the Commission on September 21, 2008 (''September 21, 2008 Amended Order'') (collectively, the ''Short Sale Ban'').[257] We believe the proposed circuit breaker halt rule should include exceptions that mirror certain of the exceptions in the Short Sale Ban because the proposed rule shares the same goal of prohibiting short selling that might exacerbate a price decline during a period of sudden and excessive price declines, while being designed to maintain functions that, for example, would be necessary to help provide adequate liquidity. Short sales effected under these exceptions would be marked ''short exempt.''

The proposed circuit breaker halt rule could operate in place of, or in addition to, a short sale price test restriction. For instance, in addition to the imposition of a permanent, market-wide price test restriction, a circuit breaker halt rule could also prohibit any person from selling short any security that suffers a severe price decline.

a. Market Makers and Options Market Makers Engaged in Bona Fide Market Making Activities

The Short Sale Ban excepted registered market makers, block positioners, or other market makers obligated to quote in the over-the-counter market, if they were selling short a publicly traded security covered by the Short Sale Ban as part of bona fide market making in such security.[258] The purpose of the exception was to permit market makers to continue to provide liquidity to the markets, facilitate orders including customer buy orders, and otherwise comply with their obligations as market makers.

The term ''market maker'' includes any specialist permitted to act as a dealer, any dealer acting in the capacity of a block positioner, and any dealer who, with respect to a security, holds itself out (by entering quotations in an inter-dealer quotation system or otherwise) as being willing to buy and sell such security for its own account on a regular or continuous basis.[259] As the Commission has stated previously, a market maker engaged in bona fide market making is a ''broker-dealer that deals on a regular basis with other broker-dealers, actively buying and selling the subject security as well as regularly and continuously placing quotations in a quotation medium on both the bid and ask side of the market.''[260] We recently provided guidance on bona fide market making for purposes of Regulation SHO Rule 203(b), and believe that such guidance would also be appropriate with regard to a market maker exception for the proposed circuit breaker halt rule.[261] We believe it is appropriate to include a market maker exception for this proposed alternative because a halt in short selling in a security would, during the period of the halt, have far greater effects on liquidity and legitimate price discovery activity than the proposed modified uptick rule or proposed uptick

[250] *See* letter from Credit Suisse *supra* note 122.

[251] *See* 1998 Release, 63 FR 18477.

[252] *See* Brown Letter *supra* note 55.

[253] *See* 1998 Release, 63 FR 18477 *supra* note 230.

[254] *See* letter to Mary Schapiro, Chairman, from Direct Edge, dated March 30, 2009.

[255] *See* letter from Credit Suisse *supra* note 122.

[256] *See* Short Sale Ban Emergency Order, 73 FR 55169–02 (Sept. 24, 2008).

[257] *See* September 21, 2008 Amendment, 73 FR 55556–01 (Sept. 25, 2008).

[258] *See id.*

[259] *See* 2004 Regulation SHO Adopting Release, 69 FR at 48015, n. 66 (citing to Section 3(a)(38) of the Exchange Act).

[260] *See* Exchange Act Release No. 32632 (July 14, 1993), 58 FR 39072, 39074 (July 21, 1993).

[261] *See* Exchange Act Release No. 58775 (Oct. 14, 2008); 73 FR 61690 (Oct. 17, 2008).

rule, which, as discussed above, are each based on a trading unit increment.

b. Bona Fide Market Making in Derivatives

The Short Sale Ban also included an exception for any person that is a market maker that effects a short sale as part of bona fide market making and hedging activity related directly to bona fide market making in derivatives on the publicly traded securities of any security covered by the Short Sale Ban.[262] Under the Short Sale Ban, this exception applied to all market makers, including over-the-counter market makers, and to bona fide market making and hedging activity related directly to bona fide market making in exchange traded funds and exchange traded notes of which securities included in the Short Sale Ban were a component. We stated that the purpose of the exception was to permit market makers to continue to provide liquidity to the markets.[263] Similarly, we believe such an exception would be appropriate for the proposed circuit breaker halt rule.

During the period that the Short Sale Ban was effective, to help ensure that the exception would not result in increased short exposure in securities covered by the Short Sale Ban, we limited the exception so that if a customer or counterparty position in a derivative security based on the security was established after the effectiveness of the September 21 Amended Order, a market maker could not effect the short sale if the market maker knew that the customer's or counterparty's transaction would result in the customer or counterparty establishing or increasing an economic net short position (*i.e.,* through actual positions, derivatives, or otherwise) in the issued share capital of a firm covered by the Short Sale Ban. This provision was included to address potential circumvention of the Short Sale Ban during the several weeks that it was in effect.[264] However, we do not believe such a provision is necessary for the proposed circuit breaker halt rule because the rule as proposed only contemplates a one-day (or less than one day depending on when during the day the circuit breaker is triggered) prohibition on short selling of any NMS security that becomes subject to the circuit breaker.

c. Options and Futures Contract Expiration

The Short Sale Ban included an exception to allow short sales that occurred as a result of automatic exercise or assignment of an equity option held prior to effectiveness of the Short Sale Ban due to expiration of the option.[265] It also allowed short sales that occurred as a result of the expiration of futures contracts held prior to effectiveness of the Short Sale Ban.[266]

We propose including a similar exception for the proposed circuit breaker halt rule for short sales that occur as a result of automatic exercise or assignment of an equity option held before a circuit breaker on a particular security is triggered and a short selling halt is imposed in that security due to expiration of the option. We are also proposing an exception to the proposed circuit breaker halt rule to allow short sales that occur as a result of the expiration of futures contracts held before a circuit breaker is triggered in a particular security.

Persons that purchased or sold options prior to the effectiveness of a circuit breaker halt entered into such transactions with the expectation that they would be able to fulfill their contractual obligations and receive the benefits of their bargain in return. Generally, options contracts are purchased or sold prior to the day in which a circuit breaker might be triggered. Therefore, providing an exception to the proposed circuit breaker halt rule to allow such persons to continue to rely on their pre-existing transactions until completion does not raise the concerns that the proposed circuit breaker halt rule is intended to address. As with the Short Sale Ban, we propose to limit this exception to automatic exercises and assignments to prevent it from being abused by more discretionary options exercises.

d. Exception for Assignment To Call Writers Upon Exercise of an Option

To allow for creation of long call options, the Short Sale Ban included an exception to permit short sales that occur as a result of assignment to call writers upon exercise.[267] When options are exercised, call writers may be required to sell short in order to satisfy their obligations. Because call writers do not have discretion, and because the short sales are effected in order to fill buying demand, we believe that including this exception in the proposed circuit breaker halt rule would benefit the markets while not opening the door to the abuses that the proposed rule is intended to address.

e. Owned Securities

The Short Sale Ban provided that sales of Rule 144 securities were excepted from its requirements because Rule 144 securities are owned securities and do not raise the concerns that the Short Sale Ban was designed to address.[268] We believe a similar exception for securities that a seller is deemed to own under Rule 200(b) should be included in the proposal.

Rule 200(g)(1) of Regulation SHO provides that a sale can be marked ''long'' only if the seller is deemed to own the security being sold and either (i) the security is in the broker-dealer's physical possession or control, or (ii) it is reasonably expected that the security will be in the broker-dealer's physical possession or control by settlement of the transaction.[269] Thus, even where a seller owns a security, if delivery will be delayed, such as in the sale of formerly restricted securities pursuant to Rule 144 of the Securities Act of 1933, or where a convertible security, option, or warrant has been tendered for conversion or exchange, but the underlying security is not reasonably expected to be received by settlement date, such sales must be marked ''short.''[270] As a result, during a halt triggered by a circuit breaker, sellers would be permitted to sell securities that although owned, are subject to the provisions of Regulation SHO governing short sales due solely to the seller being unable to deliver the security to its broker-dealer prior to settlement based on circumstances outside the seller's control.

Although the Short Sale Ban only excepted Rule 144 securities, we believe that other securities considered ''deemed to own'' for purposes of Rule 200(b) should also be excepted from the proposed circuit breaker halt rule because these are owned securities that do not raise the same concerns that the proposed rule is designed to address.

3. Proposed Circuit Breaker Price Test Rules

We are also proposing a short selling circuit breaker that, when triggered by a severe decline in the price of a particular security, would impose short sale price restrictions for that security

[262] *See* Short Sale Ban Emergency Order, 73 FR 55169–02.

[263] *See id.*

[264] *See* September 21, 2008 Amendment, 73 FR 55556–01.

[265] *See* Short Sale Ban Emergency Order, 73 FR 55169–02.

[266] *See id.*

[267] *See* September 21, 2008 Amendment, 73 FR 55556–01.

[268] *See id.*

[269] *See* 17 CFR 242.200(g)(1).

[270] *See id.*

wherever it is traded for the remainder of the trading day. Such a circuit breaker would be imposed in place of a permanent, market-wide short sale price test restriction.

Similar to the reasons stated in the discussion above regarding the proposed circuit breaker halt rule, a circuit breaker price test rule would be triggered by a 10% intraday decline in the price of an individual equity security from the prior day's closing price as reported in the consolidated system. We preliminarily believe that a 10% decline in a security's price as measured from the prior day's closing price, as reported in the consolidated system, would be an appropriate level at which to trigger a circuit breaker that results in a short sale price test restriction. As discussed above, such a percentage decline would be consistent with the current SRO Circuit Breakers.[271] We recognize that a lesser or greater percentage decline or some other measure of decline may be appropriate.

We also seek comment regarding the form of the short sale price test restrictions that could be imposed when the proposed circuit breaker is triggered. Such a circuit breaker when triggered could impose a short sale price test restriction in the form of the proposed modified uptick rule based on the national best bid, or in the form of the proposed uptick rule based on the last sale price of the individual security. This would include the same proposed short sale price test and provisions that would be used in the proposed modified uptick and proposed uptick rules, permitting certain sales to occur notwithstanding the price limitations otherwise applicable under the two proposed rules.[272] We believe these provisions would be justified for the same reasons described regarding the proposed modified uptick rule and the proposed uptick rule, respectively.[273]

As described in more detail below, the price decline would be based on the security's price during the trading day as reported in the consolidated system as compared to the prior day's closing price as reported in the consolidated system. The prior day's closing price would be the last price reported during regular trading hours[274] the prior day.

The proposed circuit breaker modified uptick rule would, once triggered by a 10% decline in the price of a security from the prior day's closing price, impose the modified uptick rule in the individual security at times when the national best bid is calculated and disseminated in the consolidated system, for the remainder of the trading day. We based the time period on the calculation and dissemination of the national best bid in the consolidated system because the proposed modified uptick rule is based on the national best bid as calculated and disseminated in the consolidated system.

Similarly, the proposed circuit breaker uptick rule would, once triggered by a 10% decline in the price of a security from the prior day's closing price on any trading day, impose the uptick rule in the individual security at times when the last sale price is calculated and disseminated in the consolidated system. We based the time period on the calculation and dissemination of the last sale price because the proposed uptick rule is based on the last sale price as calculated and disseminated in the consolidated system.

To avoid market disruption that may occur if a circuit breaker is triggered late in the trading day, the proposed circuit breaker rules would not be triggered if the specified market decline threshold is reached in an NMS security within thirty minutes of the end of regular trading hours. Former NYSE Rules 80A(a) and 80A(b) provided that a circuit breaker would not trigger program trading restrictions after 3:25 p.m., or approximately thirty-five minutes before the close of regular trading hours. As with the proposed circuit breaker halt rule, we seek comment as to whether thirty minutes is an appropriate balance to ensure that the goals of the proposed rule would be met while also reducing the potential for market disruption toward the close of regular trading hours.

We believe that the temporary imposition of the proposed modified uptick rule, after a circuit breaker is triggered, that operates at times when the national best bid is disseminated following a 10% decline in a security's price might be appropriate. Similarly, we believe that the temporary imposition of the proposed uptick rule, after a circuit breaker is triggered, that operates at times when the last sale price is calculated and disseminated following a 10% decline in a security's price might be appropriate. We seek comment below, however, regarding whether longer or shorter time periods would be appropriate.

We are seeking comment on the potential benefits and costs of the proposed circuit breaker price test rule. We believe that such a rule might be a narrowly tailored means to help restore investor confidence and stabilize the market for individual securities. Such a rule might also help prevent short selling, including potentially abusive or manipulative short selling, from being used as a tool for driving the market down or from being used to accelerate a declining market by exhausting all remaining bids at one price level, causing successively lower prices to be established by long sellers. Further, we note that allowing short selling to continue with price test restrictions once the circuit breaker is triggered might have a lesser impact on legitimate short selling and normal market activity including price discovery and the provision of liquidity than a circuit breaker that triggers a short selling halt. We also believe that a circuit breaker rule that triggers a price test restriction, because it is based on a trading increment of a penny as opposed to a short sale halt, may also alleviate some concerns over the possibility of artificial downward pressure that might arise from a ''magnet effect'' prior to reaching the trigger threshold.

We recognize that a short selling circuit breaker that, when triggered, imposes short sale price test restrictions for the remainder of the trading day, would result in costs on market participants responsible for implementing and assuring compliance with the requirements of such restrictions. There might be significant operational costs associated with reprogramming systems to comply with short sale price test restrictions, and we anticipate that these costs might be greater than those required to comply with a short selling circuit breaker that, when triggered, imposes halts on short selling in individual securities. There might also be requirements for additional staff and costs associated with personnel hiring and training related to maintaining and ensuring compliance with any short sale price test restrictions.[275]

Further, we recognize that short sale price test restrictions imposed as a result of a circuit breaker might result in many of the same costs discussed in detail in Section IX pertaining to the implementation of market-wide short

[271] *See* 1998 Release, 63 FR 18477 *supra* note 230 and accompanying text.

[272] *See* Section III.A. and III.B. (discussing the operation of the proposed modified uptick rule and the proposed uptick rule respectively).

[273] *See* Sections III.A.2. and III.B.2. (discussing the short exempt provisions of the proposed modified uptick rule and proposed uptick rule, respectively).

[274] ''Regular trading hours'' has the same meaning as in Rule 600(b)(64) of Regulation NMS. Rule 600(b)(64) provides that ''*Regular trading hours* means the time between 9:30 a.m. and 4 p.m. Eastern Time, or such other time as is set forth in the procedures established pursuant to § 242.605(a)(2).''

[275] *See, e.g.,* Credit Suisse letter, *supra* note 122.

sale price test restrictions.[276] Those costs might include a reduction of the benefit of legitimate short selling and a subsequent reduction in the quantity of short selling, which we have noted might lead to a decrease in market quality and price discovery, less protection against upward stock price manipulations, a less efficient allocation of capital, an increase in trading costs, and a decrease in liquidity.[277] We are seeking comment on the extent of these and other costs associated with a circuit breaker that when triggered imposes short sale price test restrictions.

The proposed circuit breaker price test rule would result in either the proposed modified uptick rule or the proposed uptick rule, for the remainder of the trading day, as each proposed rule is described above. For instance, a circuit breaker resulting in the proposed modified uptick rule would require that trading centers establish, maintain, and enforce policies and procedures reasonably designed to prevent short selling on a downbid in a security where the circuit breaker has been triggered by a severe decline in the price of that NMS security. Broker-dealers could mark certain short sale orders ''short-exempt'' under the conditions set forth above. A circuit breaker that resulted in the proposed uptick rule would, when triggered by a decline in the price of a particular security, prohibit any person from selling short that security on a downtick. This would be a more limited approach than a short sale price test rule that is in place at all times and thus might result in fewer of the potential disadvantages that would result from a short sale price test that was in place at all times.

Under the proposed circuit breaker price test rule, a price test would not be in place on a permanent and market-wide basis for all securities. Under the proposed circuit breaker that results in the proposed modified uptick rule, trading centers would need to establish and maintain reasonable policies and procedures in advance so that they are able to comply with the proposed circuit breaker rule whenever triggered. It would not be reasonable for a trading center to wait until the circuit breaker is triggered to begin establishing policies and procedures to prevent the execution or display of the particular security on a downbid. Thus, a circuit breaker that triggers the proposed modified uptick rule would result in some immediate upfront costs to trading centers.

In the Solicitation of Comments, we seek comment on whether the short sale price test restrictions should remain in place for a longer or shorter period of time, whether a 10% decline would be an appropriate trigger for the circuit breaker proposals, or if for example, a 5% or 20% threshold might be more appropriate, and what additional costs may be associated with a proposed circuit breaker price test rule.

IV. Request for Comment

In addition to the specific requests for comment found throughout this proposing release, we seek comment generally from all members of the public on all aspects of the proposed amendments to Rules 200(g) and 201 of Regulation SHO. We request that commenters provide empirical data to support their views and arguments related to these proposals. In addition to the questions set forth above, commenters are welcome to offer their views on any other matter raised by the proposed amendments to Regulation SHO. Specifically, are there any other possible restrictions on short selling that the Commission should consider, particularly ones that might be helpful in a severe market decline?

Questions Regarding Proposed Short Sale Price Tests Generally

1. Should short sales be subject to a short sale price test restriction, or should we continue to rely on current short sale regulations and anti-fraud and anti-manipulation provisions of the securities laws to address potentially abusive short selling?

2. We note that our decision to propose a short sale price test was based, in part, on the recent changes in market conditions and investor confidence.[278] To what extent, if any, would a short sale price test, such as the proposed modified uptick rule or the proposed uptick rule, be necessary or appropriate in light of recent changes in market conditions? Please explain and provide empirical data in support of any arguments and/or analyses. How would the proposed modified uptick rule or the proposed uptick rule affect market conditions today? Please explain and provide empirical data in support of any arguments and/or analyses.

3. How effective would the proposed modified uptick rule or the proposed uptick rule be in allowing relatively unrestricted short selling in an advancing market? Please explain and provide empirical data in support of any arguments and/or analyses. How effective would the proposed modified uptick rule or proposed uptick rule be at helping to prevent short selling, including potentially abusive or manipulative short selling, from being used as a tool for driving the market down or from being used to accelerate a declining market by exhausting all remaining bids at one price level, causing successively lower prices to be established by long sellers? Please explain and provide empirical data in support of any arguments and/or analyses. Could the proposed modified uptick rule or proposed uptick rule be modified to better meet these goals? If so, how? Please explain and provide empirical data in support of any arguments and/or analyses.

4. We also note our concern regarding investor confidence based on the numerous requests for reinstatement of short sale price test restrictions.[279] Would reinstating a short sale price test restriction such as the proposed modified uptick rule or proposed uptick rule help restore investor confidence? If so, why? If not, why not? Please explain and provide empirical data or other specific information in support of any arguments and/or analyses.

5. In addition to investor confidence and market volatility, we have stated that we are concerned about potentially abusive short selling. Would the proposed modified uptick rule or proposed uptick rule help address potentially abusive short selling? If so, how? If not, why not? Please explain and provide empirical data in support of any arguments and/or analyses.

6. We note that short selling provides the market with important benefits, including market liquidity and pricing efficiency.[280] What effect, if any, would the proposed modified uptick rule or proposed uptick rule have on market liquidity? Please explain and provide empirical data in support of any arguments and/or analyses. What effect, if any, would the proposed modified uptick rule or proposed uptick rule have on pricing efficiency? Please provide empirical data in support of any arguments and/or analyses.

7. We also note that short selling may be used to illegally manipulate stock prices.[281] What impact, if any, would the proposed modified uptick rule or proposed uptick rule have on ''bear raids''? Please explain and provide empirical data in support of any arguments and/or analyses. To what extent, if any, does unrestricted short

[276] *See* Section IX (discussing costs and benefits of the proposed modified uptick rule and the proposed uptick rule).

[277] *See* Section IX.B.

[278] *See* Section II.C.

[279] *See id.*

[280] *See* Section II.A.

[281] *See id.*

selling exacerbate a declining market? Please explain and provide empirical data in support of any arguments and/or analyses.

8. Is there a need for short sale price test restrictions? If there is a need for a short sale price test, would the proposed modified uptick rule be the best test? If so, why? If not, why not? Would the proposed uptick rule be the best test? If so, why? If not, why not? What are the costs and benefits of the proposed modified uptick rule versus the proposed uptick rule? What would be the general costs and benefits of short sales being subject to the proposed modified uptick rule? What would be the general costs and benefits of short sales being subject to the proposed uptick rule? Should we consider other forms of short sale price tests? If so, what forms? What would be the costs and benefits of any alternative forms of short sale price tests? Please explain and provide empirical data in support of any arguments and/or analyses.

9. Would the proposed modified uptick rule or proposed uptick rule be an appropriate short sale price test in the current decimals environment? Would the proposed modified uptick rule or proposed uptick rule be more suitable in a decimals environment with multiple trading centers? Please explain and provide empirical data in support of any arguments and/or analyses.

10. Should the proposed modified uptick rule or proposed uptick rule be limited to specific sectors or industries, such as financials, due to the unique harms or susceptibility to harms to those industries or sectors from the potential adverse effect of short selling in a declining market? If so, please describe the types of industries or sectors that should be covered and the unique harms or susceptibility to harm to which they are subject. Please also describe the mechanisms or criteria that should be used to determine which entities fall within these industries or sectors.

11. One of the reasons for the elimination of former Rule 10a–1 and the prohibition on any SRO from having a short sale price test in July 2007 was because the application of short sale price tests had become disjointed with different price tests applying to the same securities trading in different markets. Under both proposed rules, all covered securities, wherever traded, would be subject to one short sale price test. What are the advantages or disadvantages of having a uniform short sale price test in the covered securities across all markets? Please explain.

12. How would trading systems and strategies used in today's marketplace be impacted by the proposed modified uptick rule or proposed uptick rule? How might market participants alter their trading systems and strategies in response to either proposed rule, if adopted? To further the goal of having a uniform short sale price test, both the proposed modified uptick rule and proposed uptick rule would provide that no SRO shall have any rule that is not in conformity with, or conflicts with either proposed rule. Is this prohibition necessary or appropriate? Would there ever be a need for an SRO to institute its own short sale price test? If so, why?

13. One of the reasons for the elimination of former Rule 10a–1 was that the disjointed application of the rule resulted in an un-level playing field among market participants. Could implementation of a short sale price test through a policies and procedures approach applicable to a ''trading center'' lead to disproportionate burden among market participants? In what way? Would a straight prohibition implementation approach be preferable in this regard? To what extent could the proposed exceptions to either alternative rule contribute to a disproportionate burden on certain market participants? What effect might there be on relative competitive advantages of different market participants if the short sale price test were based on an increment larger than a penny?

14. What impact, if any, would the trading requirements of Regulation NMS have on implementing the proposed modified uptick rule or proposed uptick rule?

15. To what extent does the ability to obtain a short position through the use of derivative products such as options, futures, contracts for difference, warrants, credit default swaps or other swaps (so-called ''synthetic short sales'') or other instruments (such as inverse leveraged exchange traded funds) undermine the goals of short sale price test restrictions, such as the proposed modified uptick rule and the proposed uptick rule? Will synthetic short sales increase if the Commission adopts either alternative short sale price test? What effects might such an increase have on market liquidity and pricing efficiency? Please explain.

16. Before determining whether to adopt a short sale price test restriction on a permanent basis, should we adopt a rule that would apply, on a pilot basis, the operation of a short sale price test restriction for specified securities? Such an approach would allow us to study the effects on, among other things, market volatility, price efficiency, and liquidity during the recent changes in market conditions. What would be other benefits of taking this approach? What would be the costs of taking this approach? Would the costs associated with programming systems to apply a short sale price test restriction on specified securities outweigh any benefits of having a pilot? If we were to take this approach, how long would it take to program systems to apply a short sale price test restriction to specified securities? Similar to the Pilot conducted immediately prior to the elimination of former Rule 10a–1, the securities that could be subject to the pilot could be comprised of a subset of the Russell 3000 index, or such other securities as necessary or appropriate in the public interest and consistent with the protection of investors after giving due consideration to the security's liquidity, volatility, market depth and trading market. Would it be appropriate for such a pilot to be comprised of a subset of the Russell 3000 index? How should the securities that would comprise a pilot be selected? Please explain the reasons for any suggested selection method. Such a pilot could remain in effect for one or two years. Would a one or two year pilot be an appropriate period of time? If so, why? If not, why not? Please provide specific reasons to support any views in favor of establishing another time period. Please provide any additional details regarding how a pilot could be structured in terms of the securities to be selected, the time-frame of the pilot, and the types of restrictions that could be placed on short selling of such securities.

17. In connection with the Pilot conducted immediately prior to our elimination of former Rule 10a–1, SROs publicly released transactional short selling data so that data would be available to the public to encourage independent researchers to study the Pilot. If we were to adopt a rule that would apply, on a pilot basis, a short sale price test restriction on specified securities, we would expect to make information obtained during any such pilot publicly available. In addition, we would expect SROs to again make data available to the public during any such pilot. Would there be any costs associated with making short selling data available to the public during the period of a pilot? What would be the benefits of making such data available to the public?

18. Commenters have stated that the Pilot conducted prior to the elimination of former Rule 10a–1 was insufficient, in part, because it only covered a period

of relative market stability [282] and that the Pilot should have lasted longer to ''ensure at least one bear market was involved in the study.'' [283] Did the Pilot cover a sufficient period of time?

19. The proposed implementation period for both of the proposed rules would be three months from the effective date of the proposed rule, if adopted. Would a three month implementation period be appropriate for the proposed modified uptick rule? Would a three month implementation period be appropriate for the proposed uptick rule? Should there be a shorter or longer implementation period for either proposed rule? Please explain.

Questions Regarding Proposed Modified Uptick Rule

1. The proposed modified uptick rule would define the term ''down-bid price'' to mean a price that is less than the current national best bid or, if the last differently priced national best bid was greater than the current national best bid, a price that is less than or equal to the current national best bid. Should this definition be altered? If the last differently priced national best bid was greater than the current national best bid, should short selling be restricted to a cent above the current national best bid, or a higher or lower increment? If so, why? If a specific increment is suggested, please describe what impact such increment would have on short selling. What increment, if any, would be tantamount to a ban on short selling? Please provide empirical data in support of any arguments and/or analyses.

2. The proposed modified uptick rule would allow short selling at the current national best bid in an advancing market. Should the proposed modified uptick rule instead require a trading center to have policies and procedures reasonably designed to permit short selling only at a price above the current national best bid such that short selling would occur only at a higher price than the current national best bid, and only on a passive basis? Would such an approach be more effective at preventing short selling, including potentially manipulative or abusive short selling, from being used as a tool to drive down the market or from being used to accelerate a declining market than the approach set forth in the proposed modified uptick rule or proposed uptick rule? If so, how? If not, why not? What effect would an approach that allows short selling only at a price above the current national best bid have on the benefits of short selling, such as providing price efficiency and liquidity? Would this approach be easier to program into trading and surveillance systems than the approach in the proposed modified uptick rule or proposed uptick rule? If so, why? If not, why not? Should an approach that allows short selling only at a price above the current national best bid be combined with a policies and procedures approach similar to that discussed under the proposed modified uptick rule or a prohibition approach similar to that discussed under the proposed uptick rule? What would be the advantages and disadvantages, including costs and benefits of each of these approaches as combined with a short sale price test that permits short selling only at a price above the current national best bid?

3. The proposed modified uptick rule would apply to a ''covered security'' which is defined to mean an NMS stock as that term is defined in Regulation NMS. Is it appropriate for the proposed modified uptick rule to apply only to NMS stocks? Should the definition of a ''covered security'' instead be a security that is registered on, or admitted to unlisted trading privileges on, a national securities exchange? If so, why? If not, why not? Should the definition of ''covered security'' be expanded to include all NMS securities, including options? If so, why? If not, why not?

4. Should the proposed modified uptick rule be extended to Non-NMS stocks, such as stocks quoted on the OTC Bulletin Board and Pink Sheets? How would a national best bid be determined for sales of such securities?

5. The proposed modified uptick rule has as its reference point for a permissible short sale the current national best bid in relation to the last differently priced national best bid. To what extent would the sequence of bids play a role in determining when short sales can be executed or displayed by trading centers, or submitted by broker-dealers relying on the exception to the proposed modified uptick rule in proposed Rule 201(c)? Are there any regulatory or operational reasons to allow markets to use their own bid information in regulating short sales under the proposed modified uptick rule? Would allowing markets to use their own bid information affect the operation or effectiveness of the proposed modified uptick rule? If so, how? If trading centers and broker-dealers marking orders ''short exempt'' pursuant to proposed Rule 201(c) take snapshots of the market at the time of execution, display, or submission of the short sale order, as applicable, would such snapshots address any concerns regarding the sequence of bids? If not, what other policies and procedures could trading centers and broker-dealers put in place to address these concerns?

6. The proposed modified uptick rule would require trading centers to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display by the trading center of impermissibly priced short sale orders. Are the proposed modified uptick rule's requirements for what trading centers' policies and procedures would be required to include appropriate? Please explain. Pursuant to proposed Rule 201(b)(1)(ii) a trading center's policies and procedures must be reasonably designed to permit the execution or display of a short sale order of a covered security marked ''short exempt'' without regard to whether the order is at a down-bid price. Thus, a trading center's policies and procedures must be able to recognize an order marked ''short exempt.'' Is the inclusion of this requirement in a trading center's policies and procedures appropriate? Please explain.

7. Proposed Rule 201(b)(2) would require that trading centers regularly surveil to ascertain the effectiveness of the policies and procedures required by proposed Rule 201(b)(1) and promptly take action to remedy deficiencies in such policies and procedures. Would all trading centers readily be able to monitor on a real-time basis the national best bid and the last differently priced national best bid? Are there other ways to surveil that would not be on a real-time basis that would be equally or more effective? Please explain. What systems and surveillance changes by trading centers would be necessary to meet the requirements of the proposed modified uptick rule? Should additional requirements be placed on trading centers that execute or display short sale orders in covered securities? If so, what should such requirements be? Is a policies and procedures approach preferable to a prohibition (as was the case under former Rule 10a–1) on any person executing a short sale on a down-bid price? What would be the costs and benefits of a policies and procedures approach as compared to such a prohibition? Should the Commission consider instead a prohibition with regard to some or all of the entities regulated by the Commission, rather than one on ''any person,'' as was the case under former Rule 10a–1? What about an approach that imposed a policies and procedures requirement on some or all of the entities regulated by the Commission *and* a prohibition on ''any person''?

[282] *See* Brown Letter *supra* note 55.

[283] *See id.*

What would be the costs and benefits of an approach that used both a prohibition and a policies and procedures requirement on some or all of the entities regulated by the Commission? What would be the costs and benefits of each of these approaches?

8. Under the proposed modified uptick rule, a trading center or broker-dealer, as applicable, would need to take such steps as would be necessary to enable it to enforce its policies and procedures effectively. For example, trading centers and broker-dealers, as applicable, could establish policies and procedures that could include regular exception reports to evaluate their trading practices. Should the proposed modified uptick rule require trading centers and broker-dealers subject to the policies and procedures requirements of the rule to have exception reports? Please explain. What would be the costs and benefits of such a requirement? Would such costs and benefits differ depending on the size of the trading center or broker-dealer?

9. Under the proposed modified uptick rule, if an order is impermissibly priced, the trading center could re-price the order at the lowest permissible price and hold it for later execution at its new price or better. As quoted prices change, the proposed modified uptick rule would allow a trading center to repeatedly re-price and display an order at the lowest permissible price down to the order's original limit order price (or, if a market order, until the order is filled). In effect, what would be the consequences of the proposed modified uptick rule? What would be the impact of the proposed modified uptick rule on speed of executions, transaction costs, and order flow? In addition, if a trading center were not to re-price an order, what would be the impact on speed of executions, transaction costs, and order flow?

10. Proposed Rule 201(b)(1)(i) provides that a trading center's policies and procedures must be reasonably designed to permit the execution of a displayed short sale order of a covered security if, at the time of display of the short sale order, the order was not at a down-bid price. Is it appropriate that the proposed modified uptick rule would not preclude execution of a short sale order that was not priced in accordance with proposed Rule 201(b)(1) provided that the short sale order complied with the requirements of proposed Rule 201(b)(1) at the time it was displayed? If so, why? If not, why not? Please explain.

11. Proposed Rule 201(c) provides that a broker-dealer may mark an order ''short exempt'' provided the broker-dealer complies with the requirements of that paragraph of the proposed rule. Would it be appropriate to permit a broker-dealer to mark a short sale order ''short exempt'' if it complies with the requirements of paragraph (c) of the proposed rule? Should this provision apply to entities other than, or in addition to, broker-dealers? Would the determination of the down-bid price for certain orders at the time of submission and others at the time of execution or display cause unnecessary confusion in the market? What systems and surveillance changes by broker-dealers would be necessary to meet the requirements of this provision?

12. The proposed modified uptick rule would not apply at times the national best bid is not collected, processed, and disseminated. Is this appropriate? Would this result in a substantial portion of short selling moving to times when the national best bid is not collected, processed, and disseminated? Would this undermine the effectiveness of the proposed modified uptick rule at helping to prevent short selling, including potentially abusive or manipulative short selling, from being used as a tool to drive down markets or to accelerate a price decline? Should the proposed modified uptick rule apply even at times the national best bid is not collected, processed, and disseminated? If so, why? If not, why not? If it were to apply during trading sessions when the national best bid is not collected, processed, and disseminated, how should it apply (*e.g.,* using the national best bid at the end of the trading session)? What would be the costs and benefits of applying the proposed modified uptick rule at times the national best bid is not collected, processed, and disseminated, including the impact on liquidity and price efficiency? What would be the costs and benefits of applying the proposed modified uptick rule at times the national best bid is collected, processed, and disseminated, including the impact on liquidity and price efficiency?

13. The proposed modified uptick rule includes a number of provisions that would permit a broker-dealer to mark a short sale order ''short exempt.'' Pursuant to proposed Rule 201(b)(1)(ii) a trading center's policies and procedures must be reasonably designed to permit the execution or display of a short sale order marked ''short exempt'' without regard to whether the order is at a down-bid price. In addition to the provisions under paragraphs (c) and (d) of the proposed modified uptick rule regarding when a broker-dealer may mark an order ''short exempt,'' are there other provisions that the proposed modified uptick rule should include? Should the proposed modified uptick rule permit a broker-dealer to make a short sale order ''short exempt'' in connection with short selling activity and electronic trading systems that match and execute customer orders at random times within specific time intervals, and at independently derived prices? If so, please explain. If such a provision would be appropriate or necessary, what conditions should apply? Should such a provision include conditions similar to the conditions set forth in Rule 201(c)(8) of the proposed uptick rule? Should the proposed modified uptick rule permit a broker-dealer to mark a short sale order ''short exempt'' in connection with locked or crossed markets? If so, please explain how a conflict could arise in connection with the proposed modified uptick rule and locked or crossed markets and what should be the conditions of any such provision. Should the proposed modified uptick rule permit a broker-dealer to make a short sale order ''short exempt'' when the broker-dealer is fulfilling specific obligations? If so, please explain.

14. Would any of the provisions under paragraph (c) or (d) under the proposed modified uptick rule be susceptible to abuse? If so, how? Are there conditions that would address this concern?

15. Proposed Rule 201(d)(1) would permit a broker-dealer to mark a short sale order of a covered security ''short exempt'' if the seller owns the security sold and intends to deliver the security as soon as all restrictions on delivery have been removed. Would this provision be necessary or appropriate? Should any conditions or limitations apply? If so, why? If not, why not?

16. Proposed Rule 201(d)(2) would permit a broker-dealer to mark a short sale order of a covered security ''short exempt'' in connection with certain odd lot transactions. Is this provision necessary or appropriate? Should proposed Rule 201(d)(2) apply to all market makers in odd-lots or should it be more limited? If so, why and how?

17. Proposed Rule 201(d)(3) would permit a broker-dealer to mark a short sale order of a covered security ''short exempt'' in connection with certain bona fide domestic arbitrage transactions. Would this provision be necessary or appropriate? Should the provision be narrowed or broadened? If so, state specifically why, and how it should be restructured in relation to the purposes of the proposed modified uptick rule. Proposed Rule 201(d)(3)

parallels the exception in former Rule 10a–1(e)(7) which, consistent with Regulation T at the time, referred to a ''special arbitrage account.'' Because Regulation T no longer refers to a ''special arbitrage account'' but instead refers to a ''good faith account'', proposed Rule 201(d)(3) would also refer to a ''good faith account.'' Should proposed Rule 201(d)(3) refer to a ''special arbitrage account'' or a ''good faith account''? Please explain. Is a separate account, whether a ''special arbitrage account'' or ''good faith account,'' necessary or appropriate for this provision? If so, why? If not, why not?

18. Proposed Rule 201(d)(4) would permit a broker-dealer to mark a short sale order of a covered security ''short exempt'' in connection with certain international arbitrage transactions. Would this provision be necessary or appropriate? Should the provision be narrowed or broadened? If so, state specifically why, and how it should be restructured in relation to the purposes of the proposed modified uptick rule. Proposed Rule 201(d)(4) parallels the exception in former Rule 10a–1(e)(8) which, consistent with Regulation T at the time, referred to a ''special international arbitrage account.'' Because Regulation T no longer refers to a ''special international arbitrage account'' but instead refers to a ''good faith account,'' proposed Rule 201(d)(4) would also refer to a ''good faith account.'' Should proposed Rule 201(d)(4) refer to a ''special international arbitrage account'' or a ''good faith account''? Please explain. Is a separate account, whether a ''special arbitrage account'' or ''good faith account,'' necessary or appropriate for this provision? If so, why? If not, why not? Should proposed Rule 201(d)(4) be combined with proposed Rule 201(d)(3)? If so, why? If not, why not? Should depository receipts of a security be deemed the same security as the security represented by such depository receipt? Why or why not?

19. Proposed Rule 201(d)(5) would permit a broker-dealer to mark a short sale order of a covered security ''short exempt'' in connection with sales by underwriters or syndicate members participating in a distribution in connection with over-allotments, and lay-off sales by such persons in connection with a distribution of securities. Would this provision be necessary or appropriate for both and/or either over-allotments and lay-off sales? Under what circumstances would an underwriter or syndicate member price an offering below the national best bid? What market impact, if any, would there be if the provision were extended to short sales below the national best bid?

20. Proposed Rule 201(d)(6) would permit a broker-dealer to mark a short sale order of a covered security ''short exempt'' where a broker-dealer is facilitating customer buy or long sale orders on a riskless principal basis. Would this provision be appropriate or necessary? Are the conditions set forth in proposed Rule 201(d)(6) appropriate? Should the conditions be narrowed or broadened in any way? Please explain.

21. Proposed Rule 201(d)(7) would permit a broker-dealer to mark a short sale order of a covered security ''short exempt'' in connection with certain VWAP transactions. Would this provision be necessary or appropriate? Should the proposed provision be modified in any way? If so, please explain. Are all of the proposed conditions appropriate, or should any be eliminated or modified? Should any other conditions be added? In place of a provision limited to VWAP transactions, would it be more appropriate to permit a broker-dealer to mark a short sale order of a covered security ''short exempt'' in connection with ''any short sale at a price that is not based, directly or indirectly, on the quoted price of the covered security at the time of execution and for which the material terms were not reasonably determinable at the time the commitment to execute the order was made''? [284] If this provision would be more appropriate, please explain why. What types of benchmark orders would such a provision capture? If we were to use this alternative language, how should we determine the ''material terms'' of the short sale? Should there be any conditions on the use of this alternative proposed provision?

22. Should the proposed modified uptick rule include a ''short exempt'' marking provision specific to the daily opening of trading at each trading center, particularly given that there are multiple trading centers with non-synchronous opening auctions? Please explain. Should there be a ''short exempt'' marking provision specific to the opening of trading after a trading halt? Please explain. Should there be a ''short exempt'' marking provision specific to short selling at the closing of trading at each trading center? Please explain.

23. Should the proposed modified uptick rule include a ''short exempt'' marking provision for transactions in exchange traded funds and similar products? If so, what should be the qualifications and/or conditions related to such provision? We note the Commission previously exempted ETFs from Rule 10a–1, subject to various conditions.[285]

24. Should the proposed modified uptick rule include a ''short exempt'' marking provision for short sale orders that are not pursuant to a ''regular way'' contract?

25. The proposed modified uptick rule does not contain a ''short exempt'' marking provision in connection with market makers engaged in bona fide market making activity. Should there be such a provision to facilitate market making activity by broker-dealers? If so, why? What consequences would there be, if any, to the markets if broker-dealers are not permitted to mark such orders ''short exempt''? Please describe. If the proposed modified uptick rule were to permit broker-dealers to mark short sale orders pursuant to bona fide market making activity as ''short exempt'' what qualifications and/or conditions should apply?

26. When the Commission repealed short sale price tests in 2007, it also provided that no SRO could have or adopt its own short sale price test. One reason for removing short sale price tests was the existence of different types of prices tests (*e.g.,* the tick test of Rule 10a–1 and the NASD bid test). Should the proposed modified uptick rule be an SRO rule?

27. Under a straight prohibition, any person is liable for an impermissible short sale, even if the sale is the product of an error. Should we include an exception for inadvertent errors, if the person can demonstrate that the error was inadvertent? When would an inadvertent error occur? How could a person demonstrate that the non-compliant short sale was an inadvertent error?

28. The short sales that qualify for the ''broker-dealer'' provision in proposed Rule 201(c) are still subject to the provisions of the proposed modified uptick rule and would be required to be marked as ''short exempt.'' Should these short sales be marked as ''short exempt'' or is another mark more appropriate? What effect, if any, would marking these short sales as ''short exempt'' have on compliance or surveillance relative to another mark? What would be the costs associated with implementing a mark especially for these short sales?

Questions Regarding Proposed Uptick Rule

1. Should the proposed uptick rule have a policies and procedures approach for some or all of the entities

[284] *See also* 17 CFR 242.611(7).

[285] *See, e.g.,* 2003 Proposing Release at 62988.

regulated by the Commission similar to the approach under the proposed modified uptick rule? If so, why? If not, why not? Or, should the Commission *also* adopt a prohibition on ''any person'' for the proposed uptick rule, in addition to a policies and procedures requirement on some or all of the entities regulated by the Commission? What would be the costs and benefits of a policies and procedures requirement, as compared to the proposed prohibition? What would be the costs and benefits of an approach that used both a prohibition and a policies and procedures requirement on some or all of the entities regulated by the Commission?

2. The proposed uptick rule would apply to a ''covered security'' which is defined as an NMS security, other than an option, in which trades in such securities are reported pursuant to an effective transaction reporting plan and for which information as to such trades is made available in accordance with such plan on a real-time basis to vendors of market transaction information. Should the definition of a ''covered security'' be changed to apply to a security registered on, or admitted to unlisted trading privileges on, a national securities exchange, if trades in such securities are reported pursuant to an effective transaction reporting plan and information as to such trades is made available in accordance with such plan on a real-time basis to vendors of market transaction information? If so, why? Would such a definition result in securities other than NMS stocks being subject to the proposed uptick rule? If so, please describe those types of securities and the costs and benefits of applying the proposed uptick rule to such securities. Should the definition of ''covered security'' be expanded to include all NMS securities, including options? If so, why? If not, why not?

3. The proposed uptick rule would apply to NMS stocks quoted in the OTC market, but not to non-NMS stocks quoted in the OTC market. What form of price test, if any, should apply to non-NMS stocks quoted in the OTC market, and why? If a price test should apply to non-NMS stocks, to what types of non-NMS stocks should it apply? Please explain. How should such a price test be implemented? In addition, we seek comment regarding whether the market is structured in a manner that would make regulation of non-NMS stocks practical.

4. Could any operational concerns regarding implementation of the proposed uptick rule be remedied by market participants taking snapshots of the market at the time of effecting a short sale? Such snapshots could provide a record of the last sale price and the direction of the market for a particular security at the time of effecting the short sale. Would any additional exceptions be necessary to address time lags in the receipt of last sale price information from data feeds? If so, please explain, including providing any suggested language for such an exception.

5. The proposed uptick rule would not apply to short sales in covered securities while last sale price information is not collected, calculated and disseminated on a real-time basis. Would this result in a substantial portion of short selling moving to times when last price information is not collected, calculated, and disseminated on a real-time basis? Would this undermine the effectiveness of the proposed modified uptick rule at helping to prevent short selling, including potentially abusive or manipulative short selling, from being used as a tool to drive down markets or to accelerate a price decline? Would it be appropriate to apply the proposed uptick rule while last sale price information is not collected, calculated and disseminated on a real-time basis? Please explain. What would be the costs and benefits of applying the proposed uptick rule during after-hours trading sessions, including the impact on liquidity and price efficiency? Please explain. What would be the costs and benefits of not applying the proposed uptick rule during after-hours trading sessions, including the impact on liquidity and price efficiency? Please explain.

6. Former Rule 10a–1 included a provision that permitted markets to use the last sale prices on their own markets as the reference point for measuring the permissibility of short sales. Specifically, former Rule 10a–1(a)(2) provided: ''* * * any exchange, by rule, may require that no person shall, for his own account or the account of any other person, effect a short sale of any such security on that exchange (i) below the price at which the last sale thereof, regular way, was effected on such exchange, or (ii) at such price unless such price is above the next preceding different price at which a sale of such securities, regular way, was effected on such exchange, if that exchange determines that such action is necessary or appropriate in its market in the public interest or for the protection of investors; and, if an exchange adopts such a rule, no person shall, for his own account or for the account of any other person, effect a short sale of any such security on such exchange otherwise than in accordance with such rule * * *.'' This provision was added to former Rule 10a–1 in response to certain SROs asserting that the last trade price on the consolidated system should not be the reference point for the tick test of former Rule 10a–1 because last trade price data was not available in a timely manner and because the principal exchanges did not have adequate information retrieval systems on their floors to ensure adherence with former Rule 10a–1.[286] Should the proposed uptick rule include a similar provision? With the spread of fully automated markets and the advances in the dissemination of market information, is such a provision necessary or desirable in today's markets? Please explain the costs and benefits of permitting each market to use the last sale price in its market as the reference point under the proposed uptick rule.

7. Former Rule 10a–1(a)(3) included a provision that allowed for an adjustment to the sale price of a security after the security went ex-dividend, ex-right, or ex any other distribution when determining the price at which a short sale may be effected. Specifically, former Rule 10a–1(a)(3) provided: ''In determining the price at which a short sale may be effected after a security goes ex-dividend, ex-right, or ex-any other distribution, all sale prices prior to the ''ex'' date may be reduced by the value of such distribution.'' Would this provision be necessary under the proposed uptick rule? Please explain.

8. Former Rule 10a–1(e)(6) contained an ''equalizing exception'' that applied to securities registered on, or admitted to unlisted trading privileges on, a national securities exchange, for which trades in such securities were not reported to an effective transaction reporting plan and for which information as to such trades was not made available in accordance with such plan on a real-time basis to vendors of market transaction information. For such securities, it allowed short sales to be effected on a national securities exchange (provided the exchange approved the sale), if such sale was necessary to equal the price of the security on that exchange with the price of the security on the principal exchange for the security. The Commission stated that this exception

[286] *See* Securities Exchange Act Release No. 11276 (Mar. 5, 1975), 54 FR 12522 (Mar. 19, 1975) (release proposing subparagraph (a)(2) in response to stated operational and other difficulties associated with complying with Rule 10a–1); *see also* Securities Exchange Act Release No. 11468 (June 12, 1975), 40 FR 25442 (June 16, 1975) (adoption of proposed changes adding subparagraph (a)(2)).

was afforded to persons on regional exchanges to enhance the liquidity on those exchanges with respect to orders naturally flowing to those exchanges.[287] The Commission also noted, however, that the exception may have resulted in providing an incentive to divert orders from the principal exchange market to avoid the impact of former Rule 10a–1, because it allowed short sales to be effected on regional exchanges at prices below the last sale price on the principal exchange.[288] We have determined not to include this exception in the proposed uptick rule because we believe it would not make sense in light of the proposed reference point (the last sale reference point in the consolidated system). The exception in former Rule 10a–1(e)(6) was originally adopted in 1938 when the permissibility of short sales under former Rule 10a–1 was determined for each particular exchange by comparing the price of the proposed short sale to the immediately preceding price of the security to be sold short on that exchange. The exception was modified, but retained, following amendments to former Rule 10a–1 to reference the last trade price reported to the consolidated system or in a particular exchange market. The proposed uptick rule uses as the reference price the last sale price reported pursuant to an effective transaction reporting plan only. Thus, we believe a similar exception to the exception contained in former Rule 10a–1(e)(6) would not be necessary. Are there any reasons to include in the proposed uptick rule a similar exception to that contained in former Rule 10a–1(e)(6)? Please explain.

9. As discussed in detail above under Section III.B.2.c. we have incorporated into proposed Rule 201(c)(10) and (c)(11), proposed exceptions to address any potential conflict between the proposed uptick rule and the Quote Rule arising from a trade-through. These exceptions are substantially in the form in which they were included in subsections (e)(5)(ii) and (e)(11) of former Rule 10a–1. Are these exceptions appropriate or necessary? Should these exceptions be revised in any way? If so, please provide suggested language. Proposed Rule 201(c)(10) would allow an SRO, by rule, to prohibit its registered specialists and registered exchange market makers from availing themselves of the exemption afforded by paragraph (c)(10) if that SRO determines that such action is necessary or appropriate in its market in the public interest or for the protection of investors. Is this provision appropriate or necessary? Would any SRO avail itself of this provision? If not, why not? If so, why and how?

10. Former Rule 10a–1 contained an exception in paragraph (e)(5)(i) that permitted market makers to effect short sales at the same price as the last sale price even if the last sale price was on a zero-minus tick. Specifically, former Rule 10a–1(e)(5)(i) provided an exception for: ''Any sale of a security * * * (except a sale to a stabilizing bid complying within Rule 104 of Regulation M) by a registered specialist or registered exchange market maker for its own account on any exchange with which it is registered for such security, or by a third market maker for its own account over-the-counter, i. Effected at a price equal to or above the last sale, regular way, reported for such security pursuant to an effective transaction reporting plan * * * *Provided, however,* That any exchange, by rule, may prohibit its registered specialist and registered exchange market makers from availing themselves of the exemption afforded by this paragraph (e)(5) if that exchange determines that such action is necessary or appropriate in its market in the public interest or for the protection of investors.'' Unless prohibited by exchange rule, this exception was intended to permit registered specialists or market makers to protect customer orders against transactions in other markets in the consolidated system by allowing them to sell short at a price equal to the last trade price reported to the consolidated system, even if that sale was on a minus or zero-minus tick.[289] Although former Rule 10a–1 included this exception for market makers, exchanges adopted rules that prohibited their registered specialists and market makers from availing themselves of this exception.[290] Thus, we have determined not to include a similar exception in the proposed uptick rule.[291] Would a similar exception under the proposed uptick rule for registered market makers be appropriate or necessary? If the proposed uptick rule were to include a similar exception, should the exception be substantially in the form in which it was included in former Rule 10a–1(e)(5)(i)? If so, why? If not, why not? Please explain any recommended changes.

11. The proposed uptick rule would include a number of exceptions. In addition to the exceptions contained in the proposed uptick rule, are there other exceptions that should be included? For example, should the Commission provide an exception from the proposed uptick rule for transactions in exchange traded funds? If so, what should be the qualifications and/or conditions for relief? If not, please explain why not. In addition, we note that under former Rule 10a–1 the Commission granted conditional relief to allow requesting exchanges[292] and broker-dealers[293] to execute short sales in after-hours crossing sessions at a price equal to the closing price of the security.[294] Absent relief, such short sales could have violated former Rule 10a–1 in that the matching price (the closing price) of a security could have been on a minus or zero-minus tick with respect to the last sale in the consolidated transaction reporting system. In granting this conditional relief, the Commission noted that short sale transactions executed at the closing price generally do not represent the type of abusive practices that former Rule 10a–1 was designed to prevent. In particular, the Commission stated that short sale orders entered in the after-hours crossing sessions cannot influence the matching price, but rather are priced by unrelated order flow and transactions occurring during the primary trading session, which are subject to former Rule 10a–1. Should we codify the exemptive

[287] *See* Securities Exchange Act Release No. 11468 (June 12, 1975), 40 FR 25442 (June 16, 1975) (adopting amendments to Rule 10a–1 and discussing the operation of Rule 10a–1(e)(6) as in effect prior to and after amendment).

[288] *See id.*

[289] *See supra* note 188. Former Rule 10a–1(a)(1)(i) referenced the last sale price reported to an effective transaction reporting plan, but former Rule 10a–1(a)(2) also permitted an exchange to make an election to use the last sale price reported in that exchange market. Certain exchanges, such as the NYSE, implemented short sale price test rules consistent with former Rule 10a–1(a)(2). *See, e.g.,* former NYSE Rule 440B.

[290] *See* former NYSE Rule 440B.

[291] *See supra* Section III.A.2.i. (discussing our decision not to propose that a broker dealer may mark an order ''short exempt'' in connection with bona fide market making activity).

[292] *See, e.g.,* letter re: Off-Hours Trading by the Amex, [1991] Fed. Sec. L. Rep. (CCH) ¶ 79,802 (Aug. 5, 1991); letter re: Operation of Off-Hours Trading by the NYSE, [1991] Fed. Sec. L. Rep. (CCH) ¶ 79,736 (June 13, 1991).

[293] *See, e.g.,* letter re: Burlington Capital Markets (July 1, 2003); letter re: Bear, Stearns & Co., Inc. (Jan. 19, 1996); Letter re: AZX, Inc. (Nov. 15, 1995); letter re: Instinet Corporation Crossing Network, [1992] Fed. Sec. L. Rep. (CCH) ¶ 76,290 (July 1, 1992); letter re: Portfolio System for Institutional Trading, [1991–1992] Fed. Sec. L. Rep. (CCH) ¶ 76,097 (Dec. 31, 1991).

[294] The relief was generally subject to the conditions that: (1) Short sales of a security in the after-hours matching session shall not be effected at prices lower than the closing price of the security on its primary exchange; (2) persons relying on these exemptions shall not directly or indirectly effect any transactions designed to affect the closing price on the primary exchange for any security traded in the after-hours matching session; and (3) transactions effected in the after-hours matching session shall not be made for the purpose of creating actual, or apparent, active trading in or otherwise affecting the price of any security.

relief granted under former Rule 10a–1 as an exception from the proposed uptick rule? Under current market conditions, do closing price transactions create potentially manipulative incentives for broker-dealers, such that they should not be granted an exception?

12. Proposed Rule 201(c)(1) would provide an exception to allow short sales to be submitted without regard to the proposed uptick rule if the seller owns the security sold and the seller intends to deliver the security as soon as all restrictions on delivery have been removed. Would this exception be necessary or appropriate? Should any conditions or limitations apply to the exception? If so, why? If not, why not?

13. Proposed Rule 201(c)(2) would provide an exception for any sale by a broker-dealer of a covered security for an account in which it has no interest pursuant to an order marked ''long.'' Would this exception be appropriate or necessary? Should any conditions or limitations apply to the exception? If so, why? If not, why not?

14. Proposed Rule 201(c)(3) would provide a limited exception for odd lot transactions. Would this exception be appropriate or necessary? Should the proposed exception apply to all market makers in odd-lots or should the exception be more limited? Would this exception be susceptible to abuse? If so, how? Should all odd-lot transactions have an exception from the proposed uptick rule? Would providing an exception for all odd-lot transactions result in a risk of increased short sale manipulation, *e.g.,* would traders break up trades into 99 share odd-lots in order to avoid the proposed uptick rule?

15. Proposed Rule 201(c)(4) would provide an exception from the proposed uptick rule for certain bona fide domestic arbitrage transactions. Should the exception be narrowed or broadened? If so, state specifically why, and how it should be restructured in relation to the purposes of the proposed uptick rule. Proposed Rule 201(c)(4) parallels the exception in former Rule 10a–1(e)(7) which, consistent with Regulation T at the time, referred to a ''special arbitrage account.'' Because Regulation T no longer refers to a ''special arbitrage account'' but instead refers to a ''good faith account'', proposed Rule 201(c)(4) would also refer to a ''good faith account.'' Should proposed Rule 201(c)(4) refer to a ''special arbitrage account'' or a ''good faith account''? Please explain.

16. Proposed Rule 201(c)(5) would provide an exception from the proposed uptick rule for certain international arbitrage transactions. Should the proposed exception be narrowed or broadened? If so, state specifically why, and how it should be restructured in relation to the purposes of the proposed uptick rule. Proposed Rule 201(c)(5) parallels the exception in former Rule 10a–1(e)(8) which, consistent with Regulation T at the time, referred to a ''special international arbitrage account.'' Because Regulation T no longer refers to a ''special international arbitrage account'' but instead refers to a ''good faith account'', proposed Rule 201(c)(5) would also refer to a ''good faith account.'' Should proposed Rule 201(c)(5) refer to a ''special international arbitrage account'' or a ''good faith account''? Please explain. Should proposed Rule 201(c)(4) be combined with proposed Rule 201(c)(5)? If so, why? If not, why not? Should depository receipts of a security be deemed the same security as the security represented by such depository receipt? Why or why not?

17. Proposed Rule 201(c)(6) would provide an exception from the proposed uptick rule for sales by underwriters or syndicate members participating in a distribution in connection with over-allotments and lay-off sales by such persons in connection with a distribution of securities. Under what circumstances would an underwriter or syndicate member price an offering below the last sale? What market impact, if any, would there be if the exception were extended to short sales below the last sale?

18. Would the exception for VWAP transactions contained in proposed Rule 201(c)(7) be appropriate or necessary? Are all of the proposed conditions appropriate, or should any be eliminated or modified? Should any other conditions be added? Should the proposed exception be modified in any way? If so, please explain. Would the following exception be more appropriate for excepting transactions such as short sale orders on a VWAP basis: The provisions of the proposed uptick rule shall not apply to ''any short sale at a price that was not based, directly or indirectly, on the quoted price of the covered security at the time of execution and for which the material terms were not reasonably determinable at the time the commitment to execute the order was made''? [295] If this exception would be more appropriate, please explain why. What types of benchmark orders would such an exception capture? If we were to use this alternative language, how should we determine the ''material terms'' of the short sale? Should there be any conditions on the use of this alternative proposed exception?

19. Would the exception for transactions pursuant to certain electronic trading systems that match buying and selling interest in proposed Rule 201(c)(8) be appropriate? Should the proposed exception be modified in any way? If so, please explain.

20. Proposed Rule 201(c)(9) would provide an exception from the proposed uptick rule for broker-dealers facilitating customer buy or long sale orders on a riskless principal basis. Are the conditions set forth in proposed Rule 201(c)(9) in connection with the ''riskless principal'' exception appropriate? Should the conditions be narrowed or broadened in any way? Please explain.

21. Proposed Rule 201(c)(12) would provide for an exception from the proposed uptick rule for short sales by registered market makers or specialists publishing two-sided quotes to sell short to facilitate customer market and marketable limit orders regardless of the last sale price. Would this proposed exception be appropriate? Should additional qualifications and/or conditions be placed on such a proposed exception? If so, please describe any such qualifications and/or conditions including the purpose of such qualifications and/or conditions. Is this proposed exception necessary in highly liquid securities where there is likely to be sufficient selling interest without the specialist's or market maker's quote? Should this proposed exception be limited in some way? Please explain.

22. Should there be an exception specific to the daily opening of trading at each trading center, particularly given that there are multiple trading centers with non-synchronous opening auctions? Please explain. Should there be an exception specific to the opening of trading after a trading halt? Please explain. Should there be an exception specific to short selling at the closing of trading at each trading center? Please explain.

23. Under the proposed uptick rule, short sales could not be executed at a price below the last sale price of a security. In addition, short sale orders could be executed at the last sale price only if it is higher than the last different price for the security. Is a one-cent trading increment appropriate for the proposed uptick rule? Why or why not? If a higher increment is suggested, please describe what impact such increment would have on short selling. What increment, if any, would be tantamount to a ban on short selling?

[295] *See also* 17 CFR 242.611(a)(7).

Please provide empirical data in support of any arguments and/or analyses.

24. When the Commission repealed short sale price tests in 2007, it also provided that no SRO could have or adopt its own short sale price test. One reason for removing short sale price tests was the existence of different types of prices tests (*e.g.*, the tick test of Rule 10a–1 and the NASD bid test). Should the proposed uptick rule be an SRO rule?

Questions Regarding Circuit Breakers Generally

1. The Commission believes that the erosion of investor confidence and questions concerning the volatility in the securities markets necessitate review of various alternatives with respect to short selling restrictions. Would a short selling circuit breaker be more appropriate than a market-wide short sale price test restriction in current market conditions? If so, why? If not, why not? Would a short selling circuit breaker provide more potential benefit to the market than a market-wide short sale price test restriction? Please explain. For example, would a short selling circuit breaker be a more appropriate means for the Commission to achieve the objective of helping to prevent short selling from being used as a tool to drive down the market? Please explain. Would a short selling circuit breaker rule help to address the Commission's concerns regarding investor confidence? If so, why and how? If not, why not?

2. Would implementation of a circuit breaker be less or more costly than the implementation of a market-wide short sale price test restriction? The proposed circuit breaker rules would, when triggered, impose short selling restrictions for the trading day on which the circuit breaker is triggered. Should the circuit breaker rules instead impose short sale price tests for multiple days? How many days? Would there be any additional costs associated with a circuit breaker that persisted for multiple trading days? Would a circuit breaker that when triggered imposed a temporary halt on short selling be more or less costly than one that resulted in a short sale price test restriction? Please explain. Would a short selling circuit breaker be generally easier to implement in a Regulation NMS environment than a market-wide short sale price test restriction such as the proposed modified uptick rule, or the proposed uptick rule.

3. To which securities should a short selling circuit breaker apply? Should a short selling circuit breaker apply to all NMS stocks? If so, why? If not, why not and to which securities should a short selling circuit breaker apply? Should a short selling circuit breaker also apply to securities traded over-the-counter?

4. The Commission is seeking comment on the potential impacts of a short selling circuit breaker on market function and efficiency. What would be the impact of a short selling circuit breaker when triggered on the liquidity of individual securities? What would be the impact of a short selling circuit breaker on capital formation? What would be the impact of a short selling circuit breaker on price discovery? Would different circuit breaker alternatives have different impacts on liquidity, capital formation and price discovery? Would a multiple day circuit breaker pose any unique costs? Please explain.

5. Would circuit breakers pose any unique issues related to the daily opening of trading, the opening of trading after a trading halt, or the closing of trading? Please explain.

6. Should a short selling circuit breaker be limited in its application to specific industry sectors that are historically susceptible to extreme volatility or disproportionately high levels of short selling? If so, why? If not, why not? If a circuit breaker should be limited to apply only to certain sectors, what sectors should be included? Please explain. For example, should a circuit breaker apply only to the financial sector? If so, how should the financial sector be defined for purposes of determining which issuers' securities are subject to the circuit breaker thresholds? Please explain.

7. Currently, the marketwide circuit breaker rules are SRO rules. Should a short selling circuit breaker be a SRO rule or a Commission rule? Who should be responsible for implementing a short selling circuit breaker? Should trading centers be responsible for implementing a short selling circuit breaker when triggered? Should any person effecting a short sale be responsible for implementing a short selling circuit breaker? Should market participants be responsible for programming their own systems to prevent submission of a short sale order in violation of the circuit breaker? Please explain.

8. Who should be responsible for monitoring the price declines of individual securities that may trigger the short selling circuit breaker (*e.g.*, broker-dealers, SROs)? Please explain. How should information about the triggering of a circuit breaker in an individual security be disseminated to the market? Who should be responsible for disseminating that information? For example, the CMS is the primary means of dissemination for the current SRO Circuit Breakers and regulatory halts. Should the CMS be the primary means by which participants are made aware that a short selling circuit breaker has been triggered with respect to an individual security? Please explain. Should the exchanges be responsible for publishing daily lists of the individual securities subject to the restrictions of a short selling circuit breaker? What cost would be associated with dissemination of circuit breaker notifications and what entities would bear expense in upgrading systems to ensure compliance with a short selling circuit breaker? Please explain.

9. What would be the advantages and disadvantages of a short selling circuit breaker combined with a short selling halt versus those of a short selling circuit breaker combined with short sale price test restrictions? Please explain.

10. What would be the advantages and disadvantages of short selling circuit breakers in general? Please explain.

11. To what extent would market participants' ability to create short positions through the use of derivatives or other instruments undermine the effectiveness of a short selling circuit breaker? If this would occur, would it be more or less significant in the context of a short selling circuit breaker as compared to a short sale price test restriction? What effects would any increase in ''synthetic short sales'' after a circuit breaker is reached during a rapid market decline have on market volatility, liquidity, and price efficiency? Would a short selling circuit breaker create an unlinking of equity markets from derivatives market prices?

12. Would a short selling circuit breaker result in exacerbated downward pressure as the trigger was approached, creating a ''magnet effect''? Would any such ''magnet effect'' differ between a circuit breaker that when triggered imposed a short selling halt, and a circuit breaker that when triggered imposed a short sale price test restriction? Please explain and provide empirical data and analysis where appropriate to support the explanation.

13. Before determining whether to adopt a short selling circuit breaker on a permanent basis, should we adopt a rule that would apply, on a pilot basis, the operation of a short selling circuit breaker on individual securities? If so, what variation of a short selling circuit breaker should be applied on a pilot basis? Should the pilot circuit breaker when triggered result in short selling halts in individual securities, or rather should such a pilot circuit breaker impose short sale price test restrictions

on individual securities? Please explain. Such an approach would allow us to study the effects on, among other things, market volatility, price efficiency, and liquidity during the recent changes in market conditions. What would be other benefits of taking this approach? What would be the costs of taking this approach? Would the costs associated with programming systems to apply a short selling circuit breaker on specified individual securities outweigh any benefits of having a pilot? If we were to take this approach, how long would it take to program systems to apply a short selling circuit breaker in specified individual securities? Would it take longer or be more difficult to implement a short selling circuit breaker that when triggered imposed short selling halts? Would it take longer or be more difficult to implement a short selling circuit breaker that when triggered imposed short sale price test restrictions? Please explain. Similar to the Pilot conducted immediately prior to the elimination of former Rule 10a–1, the securities that could be subject to the pilot could be comprised of a subset of the Russell 3000 index, or such other securities as necessary or appropriate in the public interest and consistent with the protection of investors after giving due consideration to the security's liquidity, volatility, market depth and trading market. Would it be appropriate for such a pilot to be comprised of a subset of the Russell 3000 index? How should the securities that would comprise a pilot be selected? Please explain the reasons for any suggested selection method. Such a pilot could remain in effect for one or two years. Would a one or two year pilot be an appropriate period of time? If so, why? If not, why not? Please provide specific reasons to support any views in favor of establishing another time period.

14. In connection with the Pilot conducted immediately prior to our elimination of former Rule 10a–1, SROs publicly released transactional short selling data so that data would be available to the public to encourage independent researchers to study the Pilot. If we were to adopt a rule that would apply, on a pilot basis, a short selling circuit breaker on individual securities, we would expect to make information obtained during any such pilot publicly available. In addition, we would expect SROs to again make data available to the public during any such pilot. Would there be any costs associated with making short selling data available to the public during the period of a pilot? What would be the benefits of making such data available to the public?

15. The proposed circuit breaker rules would not be triggered if there is a severe decline in the price of any NMS security within 30 minutes of the end of regular trading hours on any trading day. As noted above, former NYSE Rule 80A provided that a circuit breaker would not trigger program trading restrictions after 3:25 p.m., or approximately 35 minutes before the close. Is 30 minutes an appropriate time to limit the proposed circuit breaker rules? Is 35 minutes more appropriate? At what point during the trading day would it be too disruptive to implement a circuit breaker rule? Is a 30 minute period sufficient to avoid major disruptions to the markets? Do thinly traded NMS securities raise additional concerns? If a circuit breaker would otherwise be triggered toward the end of the trading day, what alternative short sale restriction would be helpful in addressing a severe market decline in the price of a particular NMS security? Please provide any data if available.

16. Should a circuit breaker be based on an intra-day decline from that day's opening price? For instance, should the circuit breaker be triggered by a 10% decline from the opening price during regular trading hours?

17. As proposed, the proposed circuit breaker rules, once triggered, would impose a short selling halt or a short sale price test restriction in the individual security until the close of the consolidated system.[296] Should the short selling halt or short sale price test restriction conclude at the end of regular trading hours (which are from 9:30 a.m. until 4 p.m. EST)?[297] Should we consider extending the short selling halt or short sale price test, when triggered, for a longer period of time? Should the halt be extended until the opening of regular trading hours on the next trading day? Please explain.

Questions Regarding Proposed Circuit Breaker Halt Rule

1. If a short selling circuit breaker was to be imposed, should short selling in individual securities be halted entirely during a period of severe decline in the price of the security? If so, why? If not, why not? Please explain.

2. If short selling should be halted during periods of severe decline in the price of an individual security, how should the decline be measured? Should the decline be tied to a market index or the price of an individual security? Should illiquidity in the market for an individual security be a factor in measuring a decline in the price of a security for purposes of determining whether to halt short selling in a particular security? Please explain.

3. If short selling should be halted during periods of severe decline in the price of an individual security, on what price should the decline be based? Should the decline be based on the previous day's closing price? If the decline is measured by the prior day's closing price at the end of regular trading hours, should it be based on the closing price reported in the consolidated system, or some other widely disseminated price? Please explain.

4. The proposed circuit breaker rules would impose a short sale halt on any security that declines in price 10% or more relative to the prior day's closing price for that security. We note that a low trigger level may result in more securities becoming subject to a halt or some securities becoming subject to a halt more frequently, resulting in potential increases in costs, decreases in liquidity, and decreases in market quality for the affected security. Also, the impact of a lower trigger level may be greater for thinly traded securities and higher volatility securities than for other securities. However, if a high level is established, more securities may face severe price declines for longer periods before a halt is imposed. This also may affect thinly traded securities more than other securities. Is 10% an appropriate trigger for a circuit breaker rule that results in short sale halt? If not, at what level should a halt take place? Should the trigger be different for thinly traded or higher volatility securities? Should the halt take place after a 10% decline, or a higher/lower level? Should the initial halt take place after a 5% decline, or a 15% decline, or a 20% decline, or some other decline? Please explain. Should the decline be measured as a percentage of the individual security's price or should another value be used? Please explain. For example, should the decline measurement for the circuit breaker threshold be based on the dollar amount of the decline, i.e., $5? If so, how should the thresholds be determined in relation to the price level of the individual stock? Should the percentage decline be linked to the stock's price level such that stocks with lower prices must experience a greater percentage decline before the circuit breaker is triggered? If so, what thresholds are appropriate? Please explain. If the percentage decline is linked to price level, what additional

[296] *See* Sections III.A.3 and III.B.3. discussing the after-hours trading with regard to the proposed modified uptick rule and the proposed uptick rule, respectively.

[297] *See supra* note 274.

operational burdens would be experienced if stock values were required to be continuously monitored due to frequent fluctuation? Please explain. What costs and benefits may accrue from having the decline based on a dollar amount rather than a value derived from a percentage of the share value? What potential problems or benefits may arise from pegging a short selling circuit breaker threshold to a decline in a stock's dollar amount? Please explain.

5. The proposed circuit breaker halt rule would impose a short selling halt for the trading day following the triggering of the circuit breaker. Is this an appropriate length of time? If so, why? If not, why not, and how long should the halt persist? Should the length of the halt vary depending on the time during the day that the circuit breaker is triggered? [298] We note that increasing the length of a halt to an additional day or multiple additional days may increase costs, reduce market quality, and reduce liquidity in that security. This may affect thinly traded securities and higher volatility securities more than other securities. However, decreasing the period of time to less than a trading day, such as limiting the halt to an hour or a few hours following the trigger, may reduce the effectiveness of the halt. Would it be more beneficial for a 10% intraday decline to trigger a periodic halt in short selling rather than a halt for the trading day? Should it result in a multiple day halt in short selling? Please explain. How disruptive to normal trading would a multiple day halt be compared to a halt for one trading day? If short selling is halted after the circuit breaker is triggered in the wake of a 10% intraday decline, and the value of the stock continues to decline throughout the day to the point where it is down 20% at closing, should short selling be allowed to resume the following trading day? If so, why? If not, why not? Please explain. Should a 20% or greater intraday decline result in a halt on short selling for multiple trading days? For example, would it be appropriate for a 20% intraday decline on the day the circuit breaker is triggered to result in a 3-day halt in short selling, a 5-day halt in short selling, or a 10-day halt in short selling? Specifically, what length of a short selling halt would be appropriate for the various levels of decline in excess of 10%? Should volatility of the individual security be considered? Please explain.

6. Should different stocks be subject to different levels of decline before the circuit breaker is triggered? For example, should a higher trigger level apply to more liquid stocks than to less liquid stocks? Should different trigger levels be based on market capitalization or volatility of individual securities? If so, what parameters should apply and what criteria should be used to determine those parameters? Please explain.

7. Would a circuit breaker that when triggered halts short selling in a particular security result in increased selling pressure by short sellers in anticipation of the halt for securities experiencing large price declines? Please explain and provide data and analysis to support the explanation. What provisions, if any, would facilitate an orderly re-entry of a security after a halt on short selling? Please explain.

8. What benefits would be associated with a short selling circuit breaker that when triggered imposes short selling halts? Could such a short selling halt help stabilize the market for the individual security? If so, why? If not, why not? Could the short selling halt benefit investors by allowing the market to ''cool off'' with respect to that individual security? Please explain. Could a temporary short selling halt imposed by a circuit breaker result in an increase in investor confidence? Please explain.

9. What costs would be associated with implementing a short selling circuit breaker for individual securities that when triggered imposed a halt on short selling? Please explain. What would it cost to update systems in a manner necessary to ensure compliance with such a circuit breaker? Would the expenditure necessary to ensure compliance be primarily an ''up-front'' cost? Would the expenditure necessary to ensure compliance require long-term investment? Please explain. What technological challenges would be encountered in updating systems to ensure compliance with a short selling circuit breaker that applied to individual securities and when triggered imposed halts on short selling? Please explain. How long would it take to update systems in a manner that ensured compliance with such a short selling circuit breaker? Please explain.

10. Should a short selling circuit breaker that when triggered imposed a halt on short selling contain exceptions? If so, why? If not, why not? Please explain. Should the circuit breaker contain an exception for bona fide market making? If so, why? If not, why not? Should such an exception apply to: Registered market makers, block positioners, other market makers obligated to quote in the over-the-counter market, in each case that are selling short the individual securities subject to the short selling halt? If so, why? If not, why not, and what entities should be excepted under a bona fide market making exception? Should the circuit breaker provide an exception that would allow short sales that occur as a result of automatic exercise or assignment of an equity option held prior to the effectiveness of the short selling halt due to expiration of the option? If so, why? If not, why not? Please explain. Should the circuit breaker contain an exception for options market makers selling short as part of bona fide market making and hedging activities related directly to bona fide market making in derivatives on the individual security subject to the halt? If so, why? If not, why not? Please explain. The circuit breaker halt rule as proposed includes an exception for hedging activity by market makers engaged in bona fide market making, but it does not provide an exception for hedging of convertible securities or for convertible arbitrage activities by persons who are not market makers engaged in bona fide market making activities at the time of the short sale. Should we consider exceptions for convertible arbitrage and/or the hedging of convertible securities by persons who are not market makers engaged in bona fide market making? Would such exceptions reduce the effectiveness of the rule? How often would this exception be used? Please explain and provide empirical data to support explanations/analyses.

11. What other exceptions should be considered or included in such a circuit breaker? Please explain.

12. What would be an appropriate implementation period for the circuit breaker? Would a three-month implementation period be appropriate for a circuit breaker that when triggered imposed short selling halts on individual securities? Is more or less time necessary? Please explain.

13. Should the exception for owned securities be limited to Rule 144 securities, similar to the Short Sale Ban, or expanded to include other securities that a seller is deemed to own but are not included under Rule 200(b) of Regulation SHO?

14. We are proposing to include an exception for marker makers, including over-the-counter market makers, that sell short as part of bona fide market making and hedging activity directly related to bona fide market making in

[298] *See* 1998 Release *supra* note 230 and accompanying text (discussing that SRO Circuit Breaker rules vary the length of the trading halt depending on the time of day the halt is triggered and the amount of the decline triggering the halt).

derivative securities based on covered securities or exchange traded funds and exchange traded notes of which covered securities are a component. Similar to the Short Sale Ban, should we also provide that this exception would not apply to any market maker that knows that the customer's or counterparty's transaction would result in the customer or counterparty establishing or increasing an economic net short position (*i.e.,* through actual positions, derivatives, or otherwise) in a covered security? Do the same concerns apply for a short sale halt that would only be in place for one trading day? What if the proposed circuit breaker halt rule prohibits short selling in a particular security for longer than one trading day when triggered? How long of a period would necessitate including such a provision?

15. Should the proposed circuit breaker halt rule be adopted in addition to a permanent, marketwide short sale price test restriction rule? Thus, while a short sale price test restriction rule would be in place as a permanent, marketwide rule, a circuit breaker would also trigger a short selling halt in any security that suffers a severe price decline.

16. Should the proposed circuit breaker halt rule apply to non-NMS securities? Would a 10% trigger level cause some non-NMS securities to be halted too frequently? Should we consider a different trigger for non-NMS securities?

17. As an alternative to a circuit breaker rule that prohibits short selling at any price after the trigger price is reached, should we consider instead a price limit rule that would prohibit short selling in a particular NMS security at a price lower than 10% below the prior day's close? Unlike a circuit breaker rule, a price limit rule would continue to allow short selling at prices above the limit price after the limit has been reached. Would 10% be the appropriate limit? Should it be higher or lower? Please explain.

18. We propose including an exception for sales of securities that the seller is deemed to own pursuant to Rule 200(b) of Regulation SHO because these are sales of owned securities. Are broker-dealers able to identify short sales as sales of Rule 200(b) owned securities on an intra-day basis so that the exception would be useful when a circuit breaker is triggered?

Questions Regarding Circuit Breaker Price Test Rule

1. Should a short selling circuit breaker impose a short sale price test restriction on individual equity securities, rather than halt short selling for individual securities when triggered? For example, following a 10% decline in a security's price, as measured from the prior day's closing price, should a circuit breaker result in a temporary short sale price test restriction in the form of the proposed modified uptick rule or the proposed uptick rule? Please explain.

2. Should we consider a circuit breaker rule that, when triggered, would prohibit short selling in a particular NMS security on a downbid unless the short sale is effected at a price that is more than 10% greater than the prior day's closing price? Would 10% be an appropriate requirement? Should it be higher or lower? Should we have different percentages for different types of securities (*e.g.,* based on volatility, market capitalization, volume traded)? Please explain.

3. The proposed circuit breaker rules would impose a short sale price test on any security that suffers a decline in price of 10% or more relative to the prior day's closing price for that security. We note that a low trigger level may result in more securities becoming subject to a short sale price test or some securities becoming subject to a short sale price test more frequently, resulting in potential increases in costs, decreases in liquidity, and decreases in market quality for the affected security. Also, the impact of a lower trigger level may be greater for thinly traded securities or higher volatility securities than for other securities. However, if a high level is established, more securities may face severe price declines for longer periods before the short sale price test is imposed. This also may affect thinly traded securities more than other securities. Unlike a circuit breaker that results in a halt, however, a circuit breaker that results in a short sale price test would not prohibit short selling but would restrict short selling to a rising market. Also, the short sale price test would be limited to a trading unit increment, which may result in fewer costs and reduced loss of liquidity than a short sale halt. Is 10% an appropriate trigger for a circuit breaker rule that results in short sale price test? If not, at what percentage trigger level should short sale price test restrictions be imposed? Would a 10% trigger level be appropriate? Would a higher or lower trigger level be appropriate? Should the trigger be different for thinly traded or higher volatility stocks? Should we consider market capitalization in determining different trigger levels?

4. What short sale price test restrictions would be most appropriate in combination with a short selling circuit breaker? Should the circuit breaker when triggered result in a short sale price test based on the national best bid, similar to the proposed modified uptick rule? Please explain. Should the circuit breaker when triggered result in a short sale price test based on the last sale price, similar to the proposed uptick rule? Please explain. Should the circuit breaker when triggered result in a short sale price test that requires short sale orders to be initiated only at a price above the highest prevailing national best bid by posting a quote for a short sale order above the national bid? If so, why? If not, why not? If the circuit breaker when triggered results in a short sale price test restriction based on the national best bid (the proposed modified uptick rule), should short selling be restricted to a specific increment above the current national best bid, such as one cent above the national best bid? Or should a higher or lower increment apply? Please explain. If a specific increment is suggested, what impact would such an increment have on short selling in the individual security? Please explain. What increment, if any, would be tantamount to a halt on short selling during the period in which the circuit breaker is in effect? Please explain and provide empirical data and analysis in support of any arguments and/or analyses.

5. The proposed circuit breaker halt rule would impose a short sale price test for the trading day following the triggering of the circuit breaker. Is this an appropriate length of time? If so, why? If not, why not, and how long should the short sale price test persist? We note that increasing the length of a halt to an additional days or multiple additional days may increase costs, reduce market quality, and reduce liquidity in that security. This may affect thinly traded securities or higher volatility securities more than other securities. However, decreasing the period of time to less than the trading day, such as limiting the short sale price test to an hour or a few hours following the trigger, may reduce the effectiveness of the short sale price test. Would it be more beneficial for a 10% intraday decline to trigger a short sale price test in short selling for a few hours rather than for the trading day? Should it result in a multiple day short sale price test? Please explain. How disruptive to normal trading would a multiple day short sale price test be compared to a halt for one trading day? If short selling is restricted by a price test after the circuit breaker is triggered in the wake of a 10% intraday decline, and the value of the stock continues to decline

throughout the day to the point where it is down 20% at closing, should short selling be allowed to resume the following trading day? If so, why? If not, why not? Please explain. Should a 20% or greater intraday decline result in a short sale price test for multiple trading days? For example, would it be appropriate for a 20% intraday decline on the day the circuit breaker is triggered to result in a 3-day price test restriction in short selling, a 5-day restriction on short selling, or a 10-day restriction on short selling? Specifically, what length of a restriction would be appropriate for the various levels of decline in excess of 10%? Should we consider a different period for higher volatility stocks? Should we consider market capitalization in determining different trigger levels? Please explain.

6. What benefits would be associated with a short selling circuit breaker that when triggered imposed short sale price test restrictions? Could the short sale price test restrictions help stabilize the market for the individual security? If so, why? If not, why not? Could the short sale price test restrictions benefit investors by allowing the market to ''cool off'' with respect to that individual security? Please explain. Could a circuit breaker that when triggered imposes short sale price test restrictions result in an increase in investor confidence? Please explain.

7. What are the benefits, if any, of a circuit breaker that when triggered imposes short sale price test restrictions, versus a permanent, market-wide short sale price test such as the modified uptick rule or the proposed uptick rule? Please explain and support explanations with data and analysis where appropriate.

8. What costs would be associated with implementing a short selling circuit breaker that when triggered imposed short sale price test restrictions? Please explain. What would be the degree of financial expenditure involved in updating systems in a manner necessary to ensure compliance with such a circuit breaker? Would the expenditure necessary to ensure compliance be primarily an ''up-front'' cost? Would the expenditure necessary to ensure compliance require long-term investment? Please explain. How would the costs of a circuit breaker that when triggered imposes short sale price test restrictions compare with the costs of a permanent short sale price test such as the proposed modified uptick rule or the proposed uptick rule? Please explain.

9. What technological challenges would be encountered in updating systems to ensure compliance with a short selling circuit breaker that when triggered imposed short sale price test restrictions on individual securities? Please explain. How long would it take to update systems in a manner that ensured compliance? Please explain. Would a short selling circuit breaker that when triggered imposed short sale price test restrictions impede the efficient functioning of the equity markets? If so, why? If not, why not? Please explain. Are there any other operational challenges that may arise from implementing a short selling circuit breaker that when triggered imposed short sale price test restrictions? Please explain. Would the operational challenges presented impede the effectiveness of such a short selling circuit breaker? Please explain.

10. Are there other short sale price test restrictions that should be considered in combination with a short selling circuit breaker? Please explain.

11. Should a circuit breaker that when triggered imposed short sale price test restrictions include exceptions? Please explain. If such a circuit breaker is based on the proposed modified uptick rule, should it contain the same exceptions as those contemplated in the proposed modified uptick rule? If so, why? If not, why not? If other or different exceptions are warranted for such a circuit breaker, what should they be? Please explain. If a circuit breaker is based on the proposed uptick rule, should it contain the same exceptions as those contemplated in the proposed uptick rule? If so, why? If not, why not? If other or different exceptions are warranted for such a circuit breaker, what should they be? Please explain.

12. Should a circuit breaker that when triggered imposed short sale price test restrictions contain a general market maker exception? If so, why? If not, why not? If so, should the market maker exemption be limited to registered market makers, exchange-based market makers, or apply to over-the-counter market makers as well? Should upstairs customer facilitation be exempted from a short selling circuit breaker? Should parties involved in delta neutral hedging be excepted from a short selling circuit breaker? Should parties involved with index arbitrage be excepted from a short selling circuit breaker that when triggered imposed short sale price test restrictions? What other exceptions may be appropriate? Please explain.

13. What implementation period would be necessary for the circuit breaker? Would a three month implementation period be appropriate for a circuit breaker that when triggered imposed short sale price test restrictions on individual securities? Is more or less time necessary? Please explain.

14. One commenter suggested a circuit breaker that, when triggered, would prohibit any person from selling short except at an upbid.[299] Should a circuit breaker that triggers a bid-based price restriction for a particular security be expanded to prohibit short sales both on a downbid and at the bid? Thus, once triggered, short sales in the particular security could only be executed or displayed, or effected, at an upbid. We note that such a rule would be stricter than the proposed circuit breaker modified uptick rule, which would permit short sales at the bid unless the bid is on a downbid. As a result, this proposal may result in additional costs, reduce liquidity, and reduce market quality. However, this proposed rule may also establish a longer ''break'' before short selling resumes. Would it be appropriate to change the proposed circuit breaker modified uptick rule to require that, following the trigger of the circuit breaker, short sales could only be effected at an upbid? Please explain why this may be more appropriate.

15. Would it be more appropriate for the resulting price test to be based on a policies and procedures rule or a straight prohibition? For instance, a circuit breaker that triggers a policies and procedures rule would require trading centers to incur immediate upfront costs to establish policies and procedures that would be implemented and enforced once a circuit breaker is triggered for a particular security. Would a circuit breaker that triggers a straight prohibition incur fewer costs? Please explain.

V. Marking

Rule 200(g) of Regulation SHO provides that a broker-dealer must mark all sell orders of any security as ''long'' or ''short.''[300] As initially adopted, Regulation SHO included an additional marking requirement of ''short exempt'' applicable to short sale orders if the seller was ''relying on an exception from the tick test of 17 CFR 240.10a–1, or any short sale price test of any exchange or national securities association.''[301] We adopted amendments to Rule 200(g) of Regulation SHO to remove the ''short exempt'' marking requirement in conjunction with our elimination of former Rule 10a–1.[302]

[299] *See* National Exchanges Letter, *supra* note 63.

[300] *See* 17 CFR 242.200(g).

[301] *See* 2004 Regulation SHO Adopting Release, 69 FR 48008.

[302] *See* 2007 Price Test Adopting Release, 72 FR 36348.

In conjunction with the proposed amendments to Rule 201 of Regulation SHO to add a short sale price test or a circuit breaker rule, we are proposing to amend Rule 200(g) of Regulation SHO to again impose a ''short exempt'' marking requirement. Specifically, proposed Rule 200(g) would provide that ''[a] broker or dealer must mark all sell orders of any equity security as ''long,'' ''short,'' or ''short exempt.'' [303]

In addition, proposed Rule 200(g)(2) of the proposed modified uptick rule would provide that a sale order shall be marked ''short exempt'' only if the provisions of paragraph (c) or (d) of proposed Rule 201 are met.[304] This ''short exempt'' marking requirement would provide a record that a broker-dealer is availing itself of the provisions of paragraph (c) or (d) of the proposed modified uptick rule.

Proposed Rule 200(g)(2) of the proposed uptick rule or the proposed circuit breaker rules would provide that a sale order shall be marked ''short exempt'' only if the seller is relying on an exception from the price test of § 242.201.[305] This ''short exempt'' marking requirement would provide a record that short sellers are availing themselves of the various exceptions to the application of the restrictions of the proposed uptick rule.[306]

The records provided pursuant to the ''short exempt'' marking requirements of proposed Rule 200(g) of the proposed short sale price test rules and the proposed circuit breaker rules would aid surveillance by SROs and the Commission for compliance with the provisions of either of those short sale price test restrictions. In addition, if the Commission were to adopt a policies and procedures approach, such as is proposed in conjunction with the proposed modified uptick rule, the proposed ''short exempt'' marking requirement would provide an indication to a trading center regarding whether it must execute or display a short sale order with regard to whether the short sale order is at a down-bid price.

If we were to adopt the proposed ''short exempt'' marking requirement of proposed Rule 200(g) of the proposed short sale price test rules or the proposed circuit breaker rules, we are proposing an implementation period under which market participants would have to comply with this requirement three months following the effective date of the proposed marking requirement. We believe that this proposed implementation period would provide market participants with sufficient time in which to modify their systems and procedures in order to comply with the proposed marking requirements. We realize, however, that a shorter or longer implementation period may be manageable or preferable. Thus, we seek specific comment as to what length of implementation period would be necessary or appropriate, and why, such that market participants would be able to meet the proposed marking requirements, if adopted.

Request for Comment

We seek comment generally on all aspects of the proposed amendment to Rule 200(g) of Regulation SHO. In addition, we seek comment on the following:

1. What type of costs, if any, would be associated with requiring sell orders to be marked ''short exempt'' when relying on an exception under proposed Rule 201? What types of costs, if any, would be associated with not requiring sell orders to be marked ''short exempt'' when relying on an exception under proposed Rule 201?

2. Should the proposed rule require a broker-dealer marking a sell order ''short exempt'' to identify the specific provision on which the broker-dealer is relying in marking the order ''short exempt''? If not, why not?

3. What would be a sufficient implementation period for making any systems changes necessary to allow sell orders to be marked ''short exempt''?

4. Please describe any anticipated difficulties in complying with a ''short exempt'' marking requirement.

5. The ''short exempt'' marking has historically been used only for short sales that are excepted from a short sale price test. For instance, the ''short exempt'' marking was not available for short sales that were excepted from the Regulation SHO locate requirement of Rule 203(b). We are, however, proposing to require short sales that are excepted from the proposed circuit breaker halt rule, when triggered, to be marked ''short exempt.'' Would a ''short exempt'' marking be needed for the proposed circuit break rules if circuit breakers operate in place of short sale price test restrictions?

VI. Overseas Transactions

In connection with former Rule 10a–1, the Commission consistently took the position that the rule applied to trades in securities subject to that rule where the trade was ''agreed to'' in the U.S., but booked overseas.[307] In addition, in the 2004 Regulation SHO Adopting Release we stated that any broker-dealer using the United States jurisdictional means to effect short sales in securities traded in the United States would be subject to Regulation SHO, regardless of whether the broker-dealer is registered with the Commission or relying on an exemption from registration.[308] For example, a U.S. money manager decides to sell a block of 500,000 shares in an NMS stock. The money manager negotiates a price with a U.S. broker-dealer, who sends the order ticket to its foreign trading desk for execution. In our view, this trade occurred in the United States as much as if the trade had been executed by the broker-dealer

[303] *See* proposed Rule 200(g) of the proposed modified uptick rule and of the proposed uptick rule.

[304] *See* proposed Rule 200(g)(2) of the proposed modified uptick rule.

[305] *See* Proposed Rule 200(g)(2).

[306] The improper marking of a short sale order as ''short exempt'' by the broker-dealer would be a violation of proposed Rule 200(g)(2) and Exchange Act Section 10(a). In addition, the improper marking of a short sale order as ''short exempt'' could, in some circumstances, result in liability under the antifraud provisions of the federal securities laws; the liability of the broker-dealer that marked the order, and of the trading center that displayed or executed the order, would turn on whether those entities acted with the mental state required under the applicable antifraud provisions.

[307] *See* Securities Exchange Act Release No. 27938 (Apr. 23, 1990), 55 FR 17949 (Apr. 30, 1990) (stating that the no-action position exempting certain index arbitrage sales from former Rule 10a–1 would not apply to an index arbitrage position that was established in an offshore transaction unless the holder acquired the securities from a seller that acted in compliance with former Rule 10a–1 or other comparable provision of foreign law). *See also* Securities Exchange Act Release No. 21958 (Apr. 18, 1985), 50 FR 16302 (Apr. 25, 1985) at n. 48 (stating that, ''Rule 10a–1 does not contain any exemption for short sales effected in international markets.''). The question of whether a particular transaction negotiated in the U.S. but nominally executed abroad by a foreign affiliate is a domestic trade for U.S. regulatory purposes was also addressed in the Commission's Order concerning Wunsch Auction Systems, Inc. (WASI). The Commission stated its belief that ''trades negotiated in the U.S. on a U.S. exchange are domestic, not foreign trades. The fact that the trade may be time-stamped in London for purposes of avoiding an SRO rule does not in our view affect the obligation of WASI and BT Brokerage to maintain a complete record of such trades and report them as U.S. trades to U.S. regulatory and self-regulatory authorities and, where applicable, to U.S. reporting systems.'' *See* Securities Exchange Act Release No. 28899 (Feb. 20, 1991), 56 FR 8377 (Feb. 28, 1991). In what is commonly referred to as the ''fax market,'' a U.S. broker-dealer acting as principal for its customer negotiates and agrees to the terms of a trade in the U.S., but transmits or faxes the terms overseas to be ''printed'' on the books of a foreign office. This practice of ''booking'' trades overseas was analyzed in depth in the Division of Market Regulation's Market 2000 Report. In the Report, the Division estimated that at that time approximately 7 million shares a day in NYSE stocks were faxed overseas, and many of these trades were nominally ''executed'' in the London over-the-counter market. *See* Division of Market Regulation, SEC, Market 2000: An Examination of Current Equity Market Developments (Jan. 1994), Study VII, p. 2.

[308] *See* 2004 Regulation SHO Adopting Release, 69 FR at 48104, n. 54.

at a U.S. trading desk. Under either the proposed short sale price test rules or the proposed circuit breaker rules, if the short sale is agreed to in the U.S., it must be effected in accordance with the requirements of those proposed rules, unless otherwise excepted.

Request for Comment

1. Would the proposed modified uptick rule, proposed uptick rule, or circuit breaker rules, if adopted, result in sellers transacting short sales in foreign markets where they would not be subject to a short sale price test rather than in U.S. markets? If so, please explain.

2. For short sales agreed to in the United States and executed overseas, would the time the short sale is agreed to in the U.S. be the appropriate time to be used to establish the price against which the proposed uptick rule, proposed modified uptick rule, or circuit breaker rule, would be determined?

3. Please identify any challenges or difficulties that could arise in applying the proposed modified uptick rule or proposed uptick rule to short sales agreed to in the United States and executed overseas?

4. Would the proposed modified uptick rule, proposed uptick rule, circuit breaker proposals, or any other restriction on short sales, be easier to implement and enforce for short sales agreed to in the United States but executed overseas? Please explain.

5. What would be the costs and benefits of applying the proposed modified uptick rule, proposed uptick rule, the alternative circuit breaker rules, or any other restriction on short sales to short sales agreed to in the United States and executed overseas?

VII. Exemptive Procedures

The proposed alternative short sale price test rules and the alternative circuit breaker rules would establish procedures for the Commission, upon written request or its own motion, to grant an exemption from the rules' provisions, either unconditionally or on specified terms and conditions, if the Commission determines that such exemption is necessary or appropriate in the public interest and is consistent with the protection of investors.[309] Pursuant to this provision, we would consider and act upon appropriate requests for relief from the proposed short sale price tests' provisions and the proposed short sale circuit breakers' provisions, if adopted, and would consider the particular facts and circumstances relevant to each such request and any appropriate conditions to be imposed as part of the exemption. We solicit comment regarding including a provision for exemptive procedures in the proposed short sale price test rules and the proposed circuit breaker rules.

VIII. Paperwork Reduction Act

A. Background

Certain provisions of the proposed amendments to Regulation SHO would impose new ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[310] We have submitted the collection of information to OMB for review and approval in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has not yet assigned a control number to the new collection of information.

We are proposing amendments to Rules 201 and 200(g) of Regulation SHO under the Exchange Act. The proposed amendments to Rule 201 include two alternative price tests that would impose restrictions on the prices at which certain securities would be able to be sold short.[311] The first alternative short sale price test would be a proposed modified uptick rule. The second alternative short sale price test would be a proposed uptick rule. We are also proposing alternative circuit breaker rules that would establish limitations on short selling in a particular security during severe market declines in the price of that security.[312] The first alternative circuit breaker rule would be the proposed circuit breaker halt rule. The second alternative circuit breaker rule would be the proposed circuit breaker modified uptick rule. The third alternative circuit breaker rule would be the proposed circuit breaker uptick rule. In addition, we are proposing to amend Rule 200(g) of Regulation SHO to impose a ''short exempt'' marking requirement and to also require that a broker-dealer mark a sell order ''short exempt'' only if the provisions in proposed Rule 201(c) or (d) of the proposed modified uptick rule (or the proposed circuit breaker modified uptick rule) are met, or if a seller is relying on an exception in proposed Rule 201(c) of the proposed uptick rule (or the proposed circuit breaker uptick rule), or if a seller is relying on an exception in proposed Rule 201(c) of the proposed circuit breaker halt rule.[313]

B. Summary

As detailed below, several provisions under the proposed amendments to Regulation SHO would impose a new ''collection of information'' within the meaning of the PRA.

1. Policies and Procedures Requirement Under Proposed Modified Uptick Rule

The proposed modified uptick rule would impose a new ''collection of information'' within the meaning of the PRA.[314] Under the proposed modified uptick rule, a trading center would be required to have written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security at a down-bid price.[315] In addition, a trading center would be required to have policies and procedures reasonably designed to permit the execution or display of a short sale order of a covered security marked ''short exempt'' without regard to whether the order is at a down-bid price.[316] Thus, upon acceptance of a short sale order, a trading center's policies and procedures would have to be reasonably designed to permit the trading center to be able to determine whether or not the short sale order is priced in accordance with the provisions of proposed Rule 201(b)(1) and to recognize when an order is marked ''short exempt'' such that the trading center's policies and procedures do not prevent the execution or display of such orders on a down-bid price.[317]

At a minimum, a trading center's policies and procedures would need to enable a trading center to monitor, on a real-time basis, the national best bid,

[309] *See* proposed Rule 201(e) of the proposed uptick rule; proposed Rule 201(f) of the proposed modified uptick rule; proposed Rule 201(g) of the proposed circuit breaker halt rule and proposed circuit breaker uptick rule; and proposed Rule 201(h) of the proposed circuit breaker modified uptick rule.

[310] 44 U.S.C. 3501 *et seq.*

[311] *See* proposed Rule 201.

[312] *See* proposed Rule 201.

[313] *See* proposed Rules 200(g) and 200(g)(2).

[314] The discussion of the PRA as it applies to the proposed modified uptick rule applies equally to the proposed circuit breaker modified uptick rule.

[315] Proposed Rule 201(b)(1). A ''down bid'' is defined as ''a price that is less than the current national best bid or, if the last differently priced national best bid was greater than the current national best bid, a price that is less than or equal to the current national best bid.'' Proposed Rule 201(a)(2).

[316] *See* proposed Rule 201(b)(1)(ii). *See also* Section V, above, regarding the proposed ''short exempt'' marking requirement.

[317] *See* proposed Rule 200(g)(2). The broker-dealer marking the order ''short exempt'' would have responsibility for being able to identify on which provision to the proposed modified uptick rule it was relying in marking the order ''short exempt.''

and whether the current national best bid is an up- or down-bid from the last differently priced national best bid, so as to determine the price at which the trading center may execute or display a short sale order. As mentioned above, a trading center would need to have policies and procedures governing how to recognize and handle orders that a trading center receives as marked ''short exempt'' pursuant to proposed Rule 200(g)(2).[318] A trading center's policies and procedures also would be required to address latencies in obtaining data regarding the national best bid. In addition, to the extent such latencies occur, a trading center would be required to implement reasonable steps in its policies and procedures to monitor such latencies on a continuing basis and take appropriate steps to address a problem should one develop.

A trading center would also need to take such steps as would be necessary to enable it to enforce its policies and procedures effectively. As part of its written policies and procedures, a trading center also would be required to regularly surveil to ascertain the effectiveness of its policies and procedures and take prompt remedial steps.[319] The nature and extent of the policies and procedures that a trading center would be required to establish to comply with these requirements would depend upon the type, size, and nature of the trading center.

2. Identification of Short Sale Orders and Policies and Procedures Requirement Under the Proposed ''Broker-Dealer'' and ''Riskless Principal'' Provisions

The proposed modified uptick rule contains a ''broker-dealer'' provision that would require a new ''collection of information'' under the PRA. Proposed Rule 201(c)(1) provides that a broker dealer may mark a short sale order of a covered security ''short exempt'' if a broker-dealer that submits a short sale order to a trading center has identified that the short sale order is not on a down-bid price at the time of submission of the order to the trading center.[320] This provision would require a new ''collection of information'' in that a broker-dealer marking an order ''short exempt'' under proposed Rule 201(c)(1) must identify both a short sale order as priced in accordance with the requirements of proposed Rule 201(c)(1) and establish, maintain, and enforce written policies and procedures reasonably designed to prevent the incorrect identification of orders as being priced in accordance with the requirements of proposed Rule 201(c)(1).[321]

While the proposed uptick rule itself does not contain a ''collection of information'' requirement within the meaning of the PRA, the proposed uptick rule does contain a ''riskless principal'' exception that would require a new ''collection of information'' under the PRA.[322] The proposed modified uptick rule also contains a ''riskless principal'' provision that would require a new ''collection of information'' under the PRA. Specifically, proposed Rule 201(d)(6) of the proposed modified uptick rule and Rule 201(c)(9) of the proposed uptick rule would allow a broker-dealer to mark short sale orders of a covered security ''short exempt'' where a broker-dealer is facilitating customer buy orders or sell orders where the customer is net long, and the broker-dealer is net short but is effecting the sale as riskless principal, provided certain conditions are satisfied.[323]

Proposed Rules 201(d)(6) of the proposed modified uptick rule and 201(c)(9) of the proposed uptick rule would require a new ''collection of information'' in that each would require a broker-dealer marking an order ''short exempt'' under these provisions to have written policies and procedures in place to assure that, at a minimum, the customer order was received prior to the offsetting transaction; the offsetting transaction is allocated to a riskless principal account within 60 seconds of execution; and that it has supervisory systems in place to produce records that enable the broker-dealer to accurately and readily reconstruct, in a time-sequenced manner, all orders on which the broker-dealer relies pursuant to this provision.[324]

3. Proposed Marking Requirements

While the current marking requirements in Rule 200(g) of Regulation SHO, which require broker-dealers to mark all sell orders of any equity security as either ''long'' or ''short,''[325] would remain in effect, proposed Rule 200(g) would add a new marking requirement of ''short exempt.''[326] In addition, the proposed amendments to Rule 200(g)(2) would require that a broker-dealer mark a sell order ''short exempt'' only if the provisions in paragraph (c) or (d) of the proposed modified uptick rule (or paragraph (c) or (d) of the proposed circuit breaker modified uptick rule) are met, or if the seller is relying on an exception in paragraph (c) of the proposed uptick rule (or paragraph (c) of the proposed circuit breaker uptick rule), or if the seller is relying on an exception in paragraph (c) of the proposed circuit breaker halt rule.[327] The proposed ''short exempt'' marking requirements would impose a new ''collection of information.''

C. Proposed Use of Information

1. Policies and Procedures Requirement Under Proposed Modified Uptick Rule

The information that would be collected under the proposed modified uptick rule's written policies and procedures requirement would help ensure that the trading center does not execute or display any impermissibly priced short sale orders, unless an order is marked ''short exempt'' in accordance with the rule's requirements. This written policies and procedures requirement would also provide trading centers with flexibility in determining how to comply with the requirements of the proposed modified uptick rule. The information collected also would aid the Commission and SROs that regulate trading centers in monitoring compliance with the price test's requirements. It also would aid trading centers and broker-dealers in complying with the rule's requirements.

[318] *Id.*

[319] This provision would reinforce the ongoing maintenance and enforcement requirements of proposed Rule 201(b)(1) by explicitly assigning an affirmative responsibility to trading centers to surveil to ascertain the effectiveness of their policies and procedures. *See* proposed Rule 201(b)(2). We note that Rule 611(a)(2) of Regulation NMS contains a similar provision for trading centers. *See* 17 CFR 242.611(a)(2).

[320] *See* proposed Rule 201(c)(1).

[321] *See* proposed Rule 201(c)(1). As part of its written policies and procedures, a broker-dealer also would be required to regularly surveil to ascertain the effectiveness of its policies and procedures and take prompt remedial steps. *See* proposed Rule 201(c)(2). This provision is intended to reinforce the ongoing maintenance and enforcement requirements of the provision contained in proposed Rule 201(c)(1) by explicitly assigning an affirmative responsibility to broker-dealers to surveil to ascertain the effectiveness of their policies and procedures. *See id.*

[322] The discussion of the PRA as it applies to the proposed uptick rule applies equally to the proposed circuit breaker uptick rule.

[323] *See* proposed Rule 201(d)(6). As a result, a trading center's policies and procedures would need to be reasonably designed to permit the execution or display of such orders without regard to whether the order is at a down-bid price. *See* proposed Rule 201(b)(1)(ii).

[324] *See* proposed Rule 201(c)(9) of the proposed uptick rule and Rule 201(d)(6) of the proposed modified uptick rule.

[325] 17 CFR 242.200(g).

[326] *See* proposed Rule 200(g). *See also* Section V above discussing proposed Rule 200(g).

[327] *See* proposed Rule 200(g)(2).

2. Identification of Short Sale Orders and Policies and Procedures Requirement Under the Proposed ''Broker-Dealer'' and ''Riskless Principal'' Provisions

Proposed Rule 201(c)(1) of the proposed modified uptick rule would include a ''broker-dealer'' provision that would permit a broker-dealer to mark a short sale order in a covered security ''short exempt'' if the broker-dealer has identified the order as not being at a down-bid price at the time of submission of the order to the trading center. This provision would include a policies and procedures requirement that would be designed to help prevent incorrect identification of orders for purposes of the proposed modified uptick rule's broker-dealer provision.

Moreover, the information collection under the written policies and procedures requirement in the ''riskless principal'' exception in proposed Rule 201(c)(9) of the proposed uptick rule and the ''riskless principal'' provision in proposed Rule 201(d)(6) of the proposed modified uptick rule would help assure that broker-dealers comply with the requirements of these proposed provisions. The information collected would also enable the Commission and SROs to examine for compliance with the requirements of these proposed provisions.

3. Proposed Marking Requirements

Proposed Rule 200(g) would impose a ''short exempt'' marking requirement.[328] In addition, proposed Rule 200(g)(2) would require that a sale order be marked ''short exempt'' only if the provisions in paragraph (c) or (d) of the proposed modified uptick rule (or paragraph (c) or (d) of the proposed circuit breaker modified uptick rule) are met,[329] or if the seller is relying on an exception in paragraph (c) of the proposed uptick rule (or paragraph (c) of the proposed circuit breaker uptick rule),[330] or if the seller is relying on an exception in paragraph (c) of the proposed circuit breaker halt rule.[331] The purpose of the information collected would be to enable the Commission and SROs to monitor whether a person entering a sell order covered by the proposed amendments to Rule 201 is acting in accordance with one of the provisions contained in paragraph (c) or (d) of the proposed modified uptick rule (or paragraph (c) or (d) of the proposed circuit breaker modified uptick rule), or if the seller is relying on an exception in paragraph (c) of the proposed uptick rule (or paragraph (c) of the proposed circuit breaker uptick rule), or if the seller is relying on an exception in paragraph (c) of the proposed circuit breaker halt rule. In particular, the ''short exempt'' marking requirement would provide a record that would aid in surveillance for compliance with the provisions of proposed Rule 201. It also would provide an indication to a trading center regarding whether or not it must execute or display a short sale order in accordance with the price test restrictions of the proposed modified uptick rule (or the proposed circuit breaker modified uptick rule). It also would help a trading center determine whether its policies and procedures were reasonable and whether its surveillance was effective.

D. Respondents

As discussed below, the Commission has considered each of the following respondents for the purposes of calculating the reporting burdens under the proposed amendments to Rules 200(g) and 201 of Regulation SHO. The Commission requests comment on the accuracy of these figures.

1. Policies and Procedures Requirement Under Proposed Modified Uptick Rule

The proposed modified uptick rule would require each trading center to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order at a down-bid price.[332] A ''trading center'' is defined as ''a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker-dealer that executes orders internally by trading as principal or crossing orders as agent.''[333] Because the proposed modified uptick rule would apply to any trading center that executes or displays a short sale order in a covered security, the proposed modified uptick rule would apply to 10 registered national securities exchanges that trade NMS stocks and one national securities association (or ''SRO trading centers''),[334] and approximately 372 broker-dealers (including ATSs) registered with the Commission (or ''non-SRO trading centers'').[335]

2. Identification of Short Sale Orders and Policies and Procedures Requirements Under the Proposed ''Broker-Dealer'' and ''Riskless Principal'' Provisions

The collection of information that would be required in the proposed ''broker-dealer'' provision in proposed Rule 201(c)(1) of the proposed modified uptick rule, the ''riskless principal'' provision in proposed Rule 201(d)(6) of the proposed modified uptick rule, and the ''riskless principal'' exception in proposed Rule 201(c)(9) of the proposed uptick rule would apply to all the 5,561[336] registered brokers-dealers submitting short sale orders in reliance on these proposed provisions.

3. Proposed Marking Requirements

The collection of information that would be required pursuant to the proposed ''short exempt'' marking requirements would apply to all the 5,561[337] registered brokers-dealers submitting short sale orders marked ''short exempt'' in accordance with the provisions contained in paragraph (c) or (d) of the proposed modified uptick rule (or paragraph (c) or (d) of the proposed

[328] *See* proposed Rule 200(g).

[329] *See* proposed Rule 200(g)(2) of the proposed modified uptick rule (and the proposed circuit breaker modified uptick rule). Paragraphs (c) and (d) of the proposed modified uptick rule (and the proposed circuit breaker modified uptick rule) set forth when a broker-dealer may mark a short sale order ''short exempt.'' *See* proposed Rules 201(c) and (d).

[330] *See* proposed Rule 200(g)(2) of the proposed uptick rule (and the proposed circuit breaker uptick rule). Paragraph (c) of the proposed uptick rule (and paragraph (c) of the proposed circuit breaker uptick rule) sets forth when a broker-dealer may mark a short sale order ''short exempt'' in accordance with the proposed uptick rule (or the proposed circuit breaker uptick rule). *See* proposed Rule 201(c).

[331] *See* proposed Rule 200(g)(2) of the proposed circuit breaker halt rule. Paragraph (c) of the proposed circuit breaker halt rule sets forth when a broker-dealer may mark a short sale order ''short exempt'' in accordance with the proposed circuit breaker halt rule. *See* proposed Rule 201(c).

[332] *See* proposed Rule 201(b)(1).

[333] *See* 17 CFR 242.600(b)(78).

[334] There are 10 national securities exchanges (BX, BATS, CBOE, CHX, ISE, NASDAQ, NSX, NYSE, NYSE Amex, and NYSE Arca) and one national securities association (FINRA) that operate an SRO trading facility for NMS stocks and thus would be subject to the Rule.

[335] This number includes the approximately 325 firms that were registered equity market makers or specialists at year-end 2007 (this number was derived from annual FOCUS reports and discussion with SRO staff), as well as the 47 ATSs that operate trading systems that trade NMS stocks. The Commission believes it is reasonable to estimate that in general, firms that are block positioners—*i.e.,* firms that are in the business of executing orders internally—are the same firms that are registered market makers (for instance, they may be registered as a market maker in one or more Nasdaq stocks and carry on a block positioner business in exchange-listed stocks), especially given the amount of capital necessary to carry on such a business.

[336] This number is based on OEA's review of 2007 FOCUS Report filings reflecting registered broker-dealers, including introducing broker-dealers. This number does not include broker-dealers that are delinquent on FOCUS Report filings.

[337] *See id.*

circuit breaker modified uptick rule), or in reliance on an exception contained in paragraph (c) of the proposed uptick rule (or paragraph (c) of the proposed circuit breaker uptick rule), or in reliance on an exception contained in paragraph (c) of the proposed circuit breaker halt rule.

E. Total Annual Reporting and Recordkeeping Burdens

1. Policies and Procedures Requirement under Proposed Modified Uptick Rule

The proposed modified uptick rule would require each trading center to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security at a down-bid price.[338] In addition, a trading center would need to have policies and procedures reasonably designed to permit the execution or display of a short sale order of a covered security marked ''short exempt'' without regard to whether the order is at a down-bid price.[339] Thus, trading centers would be required to develop written policies and procedures reasonably designed to permit the trading center to be able to determine whether or not the short sale order is priced in accordance with the provisions of proposed Rule 201(b)(1) and to recognize when an order is marked ''short exempt'' such that the trading center's policies and procedures do not prevent the execution or display of such orders on a down-bid price in accordance with proposed Rule 201(b)(1)(ii).[340] A trading center's policies and procedures would not, however, have to include mechanisms to determine on which provision a broker-dealer is relying in marking an order ''short exempt'' in accordance with paragraph (c) or (d) of the proposed modified uptick rule.

Although the exact nature and extent of the policies and procedures that a trading center would be required to establish likely would vary depending upon the nature of the trading center (*e.g.,* SRO vs. non-SRO, full service broker-dealer vs. market maker), we preliminarily estimate that it initially would take an SRO trading center approximately 220 hours[341] of legal, compliance, information technology and business operations personnel time,[342] and a non-SRO trading center approximately 160 hours of legal, compliance, information technology and business operations personnel time,[343] to develop the required policies and procedures.

In addition to this estimate (of 220 hours for SRO respondents and 160 hours for non-SRO respondents), we expect that SRO and non-SRO respondents may incur one-time external costs for outsourced legal services. While we recognize that the amount of legal outsourcing utilized to help establish written policies and procedures may vary widely from entity to entity, we preliminarily estimate that on average, each trading center would outsource 50 hours of legal time in order to establish policies and procedures in accordance with the proposed amendments.[344]

We estimate that there would be an initial one-time burden of 220 (not including the outsourced 50 hours of legal time) burden hours per SRO trading center or 2,420 hours,[345] and 160 (not including the outsourced 50 hours of legal time) burden hours per non-SRO trading center[346] or 59,520 hours, for a total of 61,940 burden hours to establish the required written policies and procedures.[347] We estimate a cost of approximately $7,660,000 for both SRO and non-SRO trading centers resulting from outsourced legal work.[348]

Once a trading center has established the required written policies and procedures, we preliminarily estimate that it would take the average SRO and non-SRO trading center each approximately two hours per month of ongoing internal legal time and three hours of ongoing internal compliance time to ensure that its written policies and procedures are up-to-date and remain in compliance with the proposed amendments to Rule 201, or a total of 60 hours annually per respondent.[349] In addition, we preliminarily estimate that it would take the average SRO and non-SRO trading center each approximately 16 hours per month of ongoing compliance time, 8 hours per month of ongoing information technology time, and 4 hours per month of ongoing legal time associated with ongoing monitoring and surveillance for and enforcement of trading in compliance with the proposed modified uptick rule, or a total of 336 hours annually per respondent.[350]

As mentioned above, we realize that the exact nature and extent of the policies and procedures that a trading

[338] *See* proposed Rule 201(b)(1). This would include a trading center taking such steps as would be necessary to enable it to enforce its policies and procedures effectively, including the proposed requirement to regularly surveil to ascertain the effectiveness of its policies and procedures and taking prompt remedial steps. *See* proposed Rule 201(b)(2).

[339] *See* proposed Rule 201(b)(1)(ii). *See also* Sections III.A. and V, above, discussing short sale orders marked ''short exempt.''

[340] *See* proposed Rule 201(b)(1)(ii).

[341] For purposes of this Release, we are basing our estimates on the burden hour estimates provided in connection with the adoption of Regulation NMS because the policies and procedures developed in connection with that Regulation's order protection rule are in many ways similar to what a trading center would need to do to comply with the proposed modified uptick rule. *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005). We note, however, that these estimates may be on the high end because trading centers have already had to establish similar policies and procedures to comply with Regulation NMS.

[342] Based on experience and estimates provided in connection with Regulation NMS, we anticipate that of the 220 hours we preliminarily estimate would be spent to establish the required policies and procedures, 70 hours would be spent by legal personnel, 105 hours would be spent by compliance personnel, 20 hours would be spent by information technology personnel and 25 hours would be spent by business operations personnel of the SRO trading center.

[343] Based on experience and the estimates provided in connection with Regulation NMS, we anticipate that of the 160 hours we preliminarily estimate would be spent to establish policies and procedures, 37 hours would be spent by legal personnel, 77 hours would be spent by compliance personnel, 23 hours would be spent by information technology personnel and 23 hours would be spent by business operations personnel of the non-SRO trading center.

[344] As discussed above, we base our burden estimate of 50 hours of outsourced legal time on the burden estimate used for Regulation NMS because the policies and procedures developed in connection with that Regulation's order protection rule are in many ways similar to what a trading center would need to do to comply with the proposed modified uptick rule.

[345] The estimated 2,420 burden hours necessary for SRO trading centers to establish policies and procedures are calculated by multiplying 11 times 220 hours (11 × 220 hours = 2,420 hours).

[346] The estimated 59,520 burden hours necessary for non-SRO trading centers to establish policies and procedures are calculated by multiplying 372 times 160 hours (372 × 160 hours = 59,520 hours).

[347] Proposed Rule 201(b)(1). Proposed Rule 201(b)(1) requires that ''A trading center shall establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order at a down-bid price.''

[348] This figure was calculated as follows: (50 legal hours × $400 × 11 SRO trading centers) + (50 legal hours × $400 × 372 non-SRO trading centers) = $7,660,000. Based on industry sources, OEA estimates that the average hourly rate for outsourced legal services in the securities industry is $400.

[349] This figure was calculated as follows: (2 legal hours × 12 months) + (3 compliance hours × 12 months) = 60 hours annually per respondent. As discussed above, this burden estimate of 60 hours is based on experience and what was estimated for Regulation NMS to ensure that written policies and procedures were up-to-date and remained in compliance.

[350] This figure was calculated as follows: (16 compliance hours × 12 months) + (8 information technology hours × 12 months) + (4 legal hours × 12 months) = 336 hours annually per respondent. As discussed above, this preliminary burden estimate of 336 hours is based on experience and what was estimated for Regulation NMS regarding similarly required ongoing monitoring and surveillance for and enforcement of trading in compliance with that regulation's policies and procedures requirement.

center would be required to establish likely would vary depending upon the type, size, and nature of the trading center. Thus, while we have based our burden estimates, in part, on the burden estimates provided in connection with the adoption of Regulation NMS, we note that these estimates may be on the high end because trading centers have already had to establish policies and procedures in connection with that Regulation's order protection rule, which could help form the basis for the policies and procedures for the proposed modified uptick rule. We realize, however, that these estimates may be on the low end for smaller trading centers with less familiarity with having had to establish policies and procedures in connection with Regulation NMS's order protection rule. Thus, we seek specific comment as to whether the proposed burden estimates are appropriate or whether such estimates should be increased or reduced, and for which entities. If they should be increased or decreased, please address by how much, in order to be able to comply with the proposed modified uptick rule's required policies and procedures, if adopted.

2. Identification of Short Sale Orders and Policies and Procedures Requirements Under the Proposed ''Broker-Dealer'' and ''Riskless Principal'' Provisions

To rely on the proposed modified uptick rule's Rule 201(c)(1) ''broker-dealer'' provision, a broker-dealer marking a short sale order in a covered security ''short exempt'' under proposed Rule 201(c)(1) must identify the order as not being a down-bid price at the time the order is submitted to the trading center and must establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent the incorrect identification of orders as not being submitted to the trading center at a down-bid price.[351] At a minimum, the broker-dealer's policies and procedures would need to be reasonably designed to enable a broker-dealer to monitor, on a real-time basis, the national best bid, and whether the current national best bid is an up- or down-bid from the last differently priced national best bid, so as to determine the price at which the broker-dealer may submit a short sale order to a trading center in compliance with the requirements of proposed Rule 201(c)(1). In addition, a broker-dealer would also need to take such steps as would be necessary to enable it to enforce its policies and procedures effectively.[352]

To rely on proposed Rule 201(d)(6)'s ''riskless principal'' provision under the proposed modified uptick rule or Rule 201(c)(9)'s ''riskless principal'' exception to the proposed uptick rule, a broker-dealer would be required to have written policies and procedures in place to assure that, at a minimum, the customer order was received prior to the offsetting transaction and that it has supervisory systems in place to produce records that enable the broker-dealer to accurately and readily reconstruct, in a time-sequenced manner, all orders on which a broker-dealer relies pursuant to these provisions.

Although the exact nature and extent of the required policies and procedures that a broker-dealer would be required to establish under the ''broker-dealer'' or the ''riskless principal'' provisions likely would vary depending upon the nature of the broker-dealer (*e.g.,* full service broker-dealer vs. market maker), we preliminarily estimate that it initially would take a broker-dealer approximately 160 hours[353] of legal, compliance, information technology and business operations personnel time,[354] to develop the required policies and procedures. In addition to this estimate of 160 hours, we expect that broker-dealers may incur one-time external costs for outsourced legal services. While we recognize that the amount of legal outsourcing utilized to help establish written policies and procedures may vary widely from entity to entity, we preliminarily estimate that on average, each broker-dealer would outsource 50 hours[355] of legal time in order to establish policies and procedures in accordance with the ''broker-dealer'' provision in proposed Rule 201(c)(1) of the proposed modified uptick rule, the ''riskless principal'' exception in 201(c)(9) of the proposed uptick rule, and the ''riskless principal'' provision in 201(d)(6) of the proposed modified uptick rule.

We preliminarily estimate that there would be an initial one-time burden of 160 burden hours per broker-dealer or 889,760 hours[356] to establish policies and procedures that would be required to rely on the proposed modified uptick rule's ''broker-dealer'' provision in proposed Rule 201(c)(1), the ''riskless principal'' exception in Rule 201(c)(9) of the proposed uptick rule, or the ''riskless principal'' provision in 201(d)(6) of the proposed modified uptick rule. We preliminarily estimate a cost of approximately $111,220,000 for broker-dealers resulting from outsourced legal work.[357]

Once a broker-dealer has established written policies and procedures that would be required so that it could rely on proposed 201(c)(1) of the proposed modified uptick rule, 201(c)(9) of the proposed uptick rule, or 201(d)(6) of the proposed modified uptick rule, we preliminarily estimate that it would take the average broker-dealer approximately two hours per month of internal legal time and three hours of internal compliance time to ensure that its written policies and procedures are up-to-date and remain in compliance with proposed 201(c)(1) of the proposed modified uptick rule, 201(c)(9) of the proposed uptick rule, or 201(d)(6) of the proposed modified uptick rule, or a total of 60 hours annually per respondent.[358]

[351] *See* proposed Rule 201(c)(1).

[352] This would include the proposed requirement that broker-dealer regularly surveil to ascertain the effectiveness of its policies and procedures and taking prompt remedial steps. *See* proposed Rule 201(c)(2).

[353] We base this estimate of 160 hours on the estimated burden hours we preliminarily believe it would take a non-SRO trading center (which would include broker-dealers) to develop similarly required policies and procedures, since the policies and procedures required under the proposed broker-dealer provisions would be similar to those required for non-SRO trading centers in complying with paragraph (b) of the proposed modified uptick rule.

[354] Based on experience and the estimates provided in connection with Regulation NMS, we anticipate that of the 160 hours we estimate would be spent to establish policies and procedures; 37 hours would be spent by legal personnel, 77 hours would be spent by compliance personnel, 23 hours would be spent by information technology personnel and 23 hours would be spent by business operations personnel of the broker-dealer.

[355] As discussed above, we base our burden estimate of 50 hours of outsourced legal time on the burden estimate used for Regulation NMS because the policies and procedures developed in connection with that Regulation's order protection rule are in many ways similar to what a broker-dealer would need to do to comply with the policies and procedures required under the proposed broker-dealer provision of the proposed modified uptick rule.

[356] As discussed above, we base this estimate of 160 hours on the estimated burden hours we preliminarily believe it would take a non-SRO trading center (which would include broker-dealers) to develop similarly required policies and procedures since the policies and procedures required under the proposed broker-dealer provisions would be similar to those required for non-SRO trading centers in complying with paragraph (b) of the proposed modified uptick rule.

The estimated 889,760 burden hours necessary for a broker-dealer to establish policies and procedures are calculated by multiplying 5,561 times 160 hours (5,561 × 160 hours = 889,760 hours).

[357] This figure was calculated as follows: (50 legal hours × $400 × 5,561 broker-dealers) = $111,220,000. Based on industry sources, OEA estimates that the average hourly rate for outsourced legal services in the securities industry is $400.

[358] This figure was calculated as follows: (2 legal hours × 12 months) + (3 compliance hours × 12 months). As discussed above, this burden estimate of 60 hours is based on experience and what was

In addition, we preliminarily estimate that it would take the average broker-dealer each approximately 16 hours per month of ongoing compliance time, 8 hours per month of ongoing information technology time, and 4 hours per month of ongoing legal time associated with ongoing monitoring and surveillance for and enforcement of trading in compliance with the proposed modified uptick rule, or a total of 336 hours annually per respondent.[359]

As mentioned above, we realize that the exact nature and extent of the policies and procedures that a broker-dealer would be required to establish likely would vary depending upon the type, size, and nature of the broker-dealer. Thus, while we have based our burden estimates on the burden estimates provided in connection with the adoption of Regulation NMS with respect to non-SRO trading centers (which includes broker-dealers), we note that these estimates may be on the high end for those broker-dealers that have already had to establish policies and procedures in connection with that Regulation's order protection rule, which could help form the basis for the policies and procedures for the proposed broker-dealer provision of the modified uptick rule, or the riskless principal provisions under the proposed modified uptick rule and the proposed uptick rule. We realize, however, that these estimates may be on the low end for some broker-dealers with less familiarity with having had to establish policies and procedures in connection with Regulation NMS's order protection rule. Thus, we seek specific comment as to whether the proposed burden estimates are appropriate or whether such estimates should be increased or reduced, and for which broker-dealers. If they should be increased or decreased, please address by how much, in order to be able to comply with the proposed provisions' required policies and procedures, if adopted.

3. Proposed Marking Requirements

Proposed Rule 200(g) would impose a ''short exempt'' marking requirement.[360] In addition, proposed Rule 200(g)(2) would require a broker-dealer to mark all sell orders of a covered security ''short exempt'' only if the provisions contained in paragraph (c) or (d) of the proposed modified uptick rule (or paragraph (c) or (d) of the proposed circuit breaker modified uptick rule) are met, or if the seller is relying on one of the exceptions contained in paragraph (c) of the proposed uptick rule (or paragraph (c) of the proposed circuit breaker uptick rule), or if the seller is relying on one of the exceptions contained in paragraph (c) of the proposed circuit breaker halt rule.[361] While not all broker-dealers likely would enter sell orders in securities covered by the proposed amendments to Rules 200(g) and 201 in a manner that would subject them to this collection of information, we estimate, for purposes of the PRA, that all of the approximately 5,561 registered broker-dealers would do so.[362] For purposes of the PRA, the Commission staff has estimated that a total of approximately 12.9 billion ''short exempt'' orders would be entered annually.[363]

This would be an average of approximately 2,319,727 annual responses by each respondent.[364] Each response of marking sell orders ''short exempt'' would take approximately .000139 hours (.5 seconds) to complete.[365] We base this estimate on the fact that, in accordance with the current marking requirements of Rule 200(g) of Regulation SHO, broker-dealers are already required to mark a sell order either ''long'' or short''; the fact that most broker-dealers already have the necessary mechanisms and procedures in place and are already familiar with processes and procedures to comply with the marking requirements of Rule 200(g) of Regulation SHO; and the fact that broker-dealers would be able to continue to use the same mechanisms, processes and procedures to comply with proposed Rules 200(g) and 200(g)(2).

Thus, the total approximate estimated annual hour burden per year would be 1,793,100 burden hours (12,900,000,000 orders marked ''short exempt'' @ 0.000139 hours/order marked ''short exempt''). Our estimate for the paperwork compliance for the proposed amendments order marking requirement for each broker-dealer would be approximately 322 burden hours (2,319,727 responses @ 0.000139 hours/responses) or (a total of 1,793,100 burden hours/5,561 respondents).

F. Collection of Information Is Mandatory

1. Proposed Policies and Procedures Requirements

The collection of information that would be required under the proposed modified uptick rule's (and proposed circuit breaker modified uptick rule's) policies and procedures requirement in proposed Rule 201(b)(1) would be mandatory for trading centers executing and displaying short sale orders in covered securities. The collection of information that would be required under the proposed modified uptick rule's (and proposed circuit breaker modified uptick rule's) policies and procedures requirements in connection with the proposed broker-dealer provision in proposed Rule 201(c)(1) and the ''riskless principal'' provision in proposed Rule 201(d)(6), and the collection of information that would be required under the proposed uptick rule's (and proposed circuit breaker uptick rule's) policies and procedure requirement in connection with the proposed ''riskless principal'' exception in proposed Rule 201(c)(9) would be mandatory for broker-dealers relying on these provisions.

2. Proposed Marking Requirements

The collection of information would be mandatory for all broker-dealers submitting sell orders marked ''short exempt'' in reliance on one of the proposed provisions contained in paragraph (c) or (d) of the proposed modified uptick rule (or paragraph (c) or

estimated for a Regulation NMS respondent to ensure that its written policies and procedures were up-to-date and remained in compliance.

[359] This figure was calculated as follows: (16 compliance hours × 12 months) + (8 information technology hours × 12 months) + (4 legal hours × 12 months) = 336 hours annually per respondent. As discussed above, this preliminary burden estimate of 336 hours is based on experience and what was estimated for Regulation NMS for similarly required ongoing monitoring and surveillance for and enforcement of trading in compliance with that regulation's policies and procedures requirement.

[360] *See* proposed Rule 200(g).

[361] *See* proposed Rule 200(g)(2).

[362] We also note that, because the proposed circuit breaker halt rule, if adopted, would not be in place at all times or for all securities and because there would be fewer exceptions that would be available and they would apply only when the restrictions of the proposed circuit breaker halt rule are triggered, the frequency and, therefore, the estimate burden of marking ''short exempt'' would be expected to be lower under the proposed circuit breaker halt rule.

[363] There are approximately 45.4 billion short sale orders entered annually. OEA calculates that there were about 263 million short sale trades during August 2008 for Amex, FINRA, Nasdaq, NYSEArca, and NYSE market centers. We gross up 263 million by 14.4 which is the ratio of orders to trades. The ratio is derived from Rule 605 reports from the three largest market centers during August 2008. This yields 3.8 billion short sale orders during August 2008 or an annualized figure of 45.4 billion. OEA believes that August 2008 data is representative of a normal month of trading. We estimate that approximately 28.5% of short sale orders are short exempt using Nasdaq short sale data from January to April 2005. We multiply 45.4 billion times 0.285 to obtain our estimate of 12.9 billion short exempt orders.

[364] This figure was calculated as follows: 12.9 billion ''short exempt'' orders divided by 5,561 broker-dealers.

[365] This estimate is based on the same time estimate for marking sell orders ''long'' or ''short'' under current Rule 200(g) under Regulation SHO. *See* 2004 Regulation SHO Adopting Release, 69 FR at 48023; *see also* 2003 Regulation SHO Proposing Release, 68 FR at 63000 n. 232.

(d) of the proposed circuit breaker modified uptick rule), or in reliance on an exception in paragraph (c) of the proposed uptick rule (or paragraph (c) of the proposed circuit breaker uptick rule), or in reliance on an exception in paragraph (c) of the proposed circuit breaker halt rule.

G. Confidentiality

1. Proposed Policies and Procedures Requirements

We expect that the information collected pursuant to the proposed modified uptick rule's (and the proposed circuit breaker modified uptick rule's) required policies and procedures would be communicated to the members, subscribers, and employees (as applicable) of all trading centers. To the extent this information is made available to the Commission, it would not be kept confidential. The information collected pursuant to the proposed modified uptick rule's (or proposed circuit breaker modified uptick rule's) ''broker-dealer'' provision and the ''riskless principal'' provisions under the proposed short sale price tests (or under the proposed circuit breaker price tests) would be retained and would be available to the Commission and SRO examiners upon request, but not subject to public availability.

2. Proposed Marking Requirements

The information collected pursuant to the ''short exempt'' marking requirements in proposed Rules 200(g) and 200(g)(2) would be submitted to trading centers and would be available to the Commission and SRO examiners upon request.

H. Record Retention Period

1. Proposed Policies and Procedures Requirements

Any records generated in connection with the proposed short sale price tests' requirements to establish written policies and procedures and the proposed circuit breaker rules would be required to be preserved in accordance with, and for the periods specified in, Exchange Act Rules 17a–1 for SRO trading centers and 17a–4(e)(7) for non-SRO trading centers.

2. Proposed Marking Requirements

The proposed amendments to Rule 200(g) and 200(g)(2) do not contain any new record retention requirements. All registered broker-dealers that would be subject to the proposed amendments are currently required to retain records in accordance with Rule 17a–4(e)(7) of the Exchange Act.[366]

I. Request for Comment

We invite comment on these estimates. Pursuant to 44 U.S.C. 3506(c)(2)(B), we request comment in order to: (a) Evaluate whether the collection of information is necessary for the proper performance of our functions, including whether the information will have practical utility; (b) evaluate the accuracy of our estimate of the burden of the collection of information; (c) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected; and (d) evaluate whether there are ways to minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090, with reference to File No. [S7–08–09]. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, with reference to File No. [S7–08–09], and be submitted to the Securities and Exchange Commission, Records Management, 100 F Street, NE., Washington, DC 20549. As OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

IX. Cost-Benefit Analysis

We are sensitive to the costs and benefits of our rules. We request comment on the costs and benefits associated with the proposed amendments. In particular, we request comment on the potential costs for any modification to both computer systems and surveillance mechanisms and for information gathering, management, and recordkeeping systems or procedures, as well as any potential benefits resulting from the proposed amendments for registrants, issuers, investors, brokers or dealers, other securities industry professionals, regulators, and others. We also request comment as to the extent to which placing price restrictions on short selling could impact or lessen some of the benefits of legitimate short selling or could lead to a decrease in market efficiency, price discovery, or liquidity. Commenters should provide analysis and data to support their views on the costs and benefits associated with the proposed amendments to Rules 200(g) and 201.

A. Benefits

As discussed above, we believe it is appropriate at this time to examine and seek comment on whether to restore short sale price test restrictions or adopt circuit breaker rules in light of the extreme market conditions that we are currently facing and the resulting deterioration in investor confidence.

The proposed amendments to Rule 201 include two alternative price tests that would place restrictions on the prices at which certain securities would be able to be sold short.[367] The first test would be the proposed modified uptick rule that would be based on the national best bid and would require trading centers to have policies and procedures reasonably designed to prevent the execution or display of short sales at impermissible prices. The second test would be the proposed uptick rule that would be based on the last sale price, similar to the tick test under former Rule 10a–1, and would prohibit any person from effecting short sales at impermissible prices.

We are also proposing circuit breaker rules that would establish limitations on short selling in a particular security during severe market declines in the price of that security.[368] The proposed circuit breaker halt rule, when triggered by a severe price decline in a particular security, would temporarily prohibit any person from selling short that security during the effectiveness of the circuit breaker.[369] The proposed circuit breaker modified uptick rule, when triggered by a severe market decline in a particular security, would temporarily impose the proposed modified uptick rule, as described in detail above, for that security. The proposed circuit breaker uptick rule, when triggered by a severe market decline in a particular security, would temporarily impose the

[366] 17 CFR 240.17a–4.

[367] *See* proposed Rule 201.

[368] *See* proposed Rule 201.

[369] The proposed circuit breaker halt rule could be imposed in place of, or in addition to, a short sale price rule.

proposed uptick rule, as described in detail above, for that security.[370]

In addition, we are proposing amendments to Rule 200(g) of Regulation SHO to impose a ''short exempt'' marking requirement and to Rule 200(g)(2) of Regulation SHO to require broker-dealers to mark a sell order ''short exempt'' only if the provisions in paragraph (c) or (d) of the proposed modified uptick rule (or paragraph (c) or (d) of the proposed circuit breaker modified uptick rule) are met, or if the seller is relying on an exception in paragraph (c) of the proposed uptick rule (or paragraph (c) of the proposed circuit breaker uptick rule), or if the seller is relying on an exception in paragraph (c) of the proposed circuit breaker halt rule.

1. Proposed Short Sale Price Tests

The two alternative short sale price tests proposed would be designed to allow relatively unrestricted short selling in an advancing market. In addition, the proposed short sale price tests would be designed to restrict short selling at successively lower prices and, thereby, help prevent short selling, including potentially abusive or manipulative short selling, from being used as a tool for driving the market down or from being used to accelerate a declining market by exhausting all remaining bids at one price level, causing successively lower prices to be established by long sellers. Further, the two alternative short sale price tests would be designed to help restore investor confidence in the securities markets.[371]

In particular, by requiring trading centers to have policies and procedures reasonably designed to prevent the execution or display of short sale orders at a down-bid price, unless the order is marked ''short exempt,'' and by requiring them to regularly surveil to ascertain the effectiveness of the policies and procedures and to take prompt remedial action to remedy deficiencies in such policies and procedures, the proposed modified uptick rule might help to prevent short selling, including potentially abusive or manipulative short selling, from driving the market down and from being used as a tool to accelerate a declining market. Similarly, for the proposed uptick rule, by prohibiting the execution of short sale orders below the last sale price, unless an exception applies, the alternative proposed uptick rule might also help to prevent short selling, including potentially abusive or manipulative short selling, from being used as a tool to drive the market down and accelerate a declining market.

At the same time, the proposed short sale price tests might help to preserve instant execution and liquidity, by allowing relatively unrestricted short selling in an advancing market. As discussed above, one of the benefits of legitimate short selling is that it may provide market liquidity by, for example, adding to the selling interest of stock available to purchasers, and, when sellers are covering their short sales, adding to the buying interest of stock available to sellers.

In seeking to advance these goals, the proposed short sale price tests might help address the erosion of investor confidence in our markets. Bolstering investor confidence in the markets should help to encourage investors to be more willing to invest in the market, thus adding depth and liquidity to the markets. Moreover, as discussed above, prior research on the uptick rule indicates that price test restrictions might help improve market depth, especially at the offer, and could also dampen intraday volatility.[372] For example, as discussed above, OEA found that price test restrictions resulted in an increase in the quote depths.[373]

2. Proposed Circuit Breaker Halt Rule

The proposed circuit breaker halt rule, when triggered by a severe price decline in a particular security, would temporarily prohibit any person from selling short a particular NMS stock during a severe decline in the price of that security.[374] By targeting only those securities that experience severe intraday declines, the proposed circuit breaker halt rule would be designed to help prevent short selling, including potentially abusive or manipulative short selling, from being used to drive the price of a security down, or to accelerate the decline in the price of those securities when needed most. By applying only to those individual securities that are facing a severe intraday decline in share price, the proposed circuit breaker halt rule might benefit the market as a narrowly tailored response to extraordinary circumstances.[375] It also might benefit the market by allowing participants an opportunity to reevaluate circumstances and respond to volatility.[376]

We believe that the proposed circuit breaker halt rule also would be narrowly tailored to help restore investor confidence and stabilize the market for individual securities during times of substantial uncertainty.[377] By halting short selling for the remainder of the trading day following a significant decline in a security's price, we believe the proposed circuit breaker halt rule might provide sufficient time to re-establish equilibrium between buying and selling interests in the individual security in an orderly fashion. It might also help to ensure that market participants have a reasonable opportunity to become aware of, and respond to, a significant decline in a security's price. By providing a pause in short selling resulting from a significant decline in the price of an individual equity security, we believe the proposed circuit breaker halt rule might provide a measure of stability to the markets. We believe that the proposed circuit breaker halt rule might help to restore investor confidence during times of substantial uncertainty.

Moreover, unlike the proposed short sale price test restrictions, the proposed circuit breaker halt rule would halt all short selling for an individual security only for a specified period of time. Thus, the proposed circuit breaker halt rule would also be narrowly tailored to help address the issue of ''bear raids'' while limiting the potential negative market quality impact that may arise from the proposed short sale price test restrictions.[378]

3. Proposed Circuit Breaker Price Test Rules

The alternative proposed circuit breaker price test rules, when triggered by a severe market decline in a particular security, would temporarily impose either the proposed circuit breaker modified uptick rule or the proposed circuit breaker uptick rule, as each rule is described above, for a particular NMS stock during a severe market decline in that security, and would remain in place for the remainder of the trading day.[379]

[370] A circuit breaker that triggers a short sale price test rule would be adopted in place of a short sale price test rule.

[371] *See, e.g., supra* note 56 (citing comment letters suggesting that reinstatement of short price test restrictions in some format would help restore investor confidence in the market).

[372] *See supra* note 35 (referencing OEA Staff's Summary Pilot Report, at 55 n. 61–63 and supporting text).

[373] *See supra* note 37 (referencing OEA Staff's Summary Pilot Report, at 55 n. 61–63 and supporting text).

[374] *See* proposed Rule 201.

[375] *See* 1998 Release, 63 FR 18477 (April 15, 1998) *supra* note 230.

[376] *See id.*

[377] *See id.*

[378] *See* 1998 Release, 63 FR 18477.

[379] For instance, a circuit breaker resulting in the proposed modified uptick rule would require that trading centers implement and enforce policies and procedures reasonably designed to prevent short

Continued

We believe that the proposed circuit breaker price test rules would be narrowly tailored to help restore investor confidence and stabilize the market for individual securities. The proposed circuit breaker price test rules might also help prevent short selling, including potentially abusive or manipulative short selling, from being used as a tool for driving the market down or from being used to accelerate a declining market by exhausting all remaining bids at one price level, causing successively lower prices to be established by long sellers. Further, we also believe that allowing short selling to continue with price test restrictions once a circuit breaker is triggered might also have less impact on legitimate short selling and normal market activity including price discovery and the provision of liquidity than a circuit breaker that halts short selling. To that end, we believe that the proposed circuit breaker price test rules might also alleviate some concerns over the possibility of artificial downward pressure that might arise from a ''magnet effect'' prior to reaching the trigger threshold.[380]

4. Proposed Marking Requirements

In addition, the ''short exempt'' marking requirements under Rule 200(g)(2) would provide a record that a broker-dealer is availing itself of the provisions of paragraph (c) or (d) of the proposed modified uptick rule (or paragraphs (c) or (d) of the proposed circuit breaker modified uptick rule), or that short sellers are availing themselves of the various exceptions to the application of the restrictions of the proposed uptick rule (or the proposed circuit breaker uptick rule), or that short sellers are availing themselves of the various exceptions to the application of the proposed circuit breaker halt rule. Thus, the records created pursuant to the ''short exempt'' marking requirements of proposed Rule 200(g) of the proposed short sale price test rules or the proposed circuit breaker rules would aid surveillance by SROs and the Commission for compliance with the provisions of those short sale price tests or circuit breaker rules. In addition, if the Commission were to adopt a policies and procedures approach, such as is proposed in conjunction with the proposed modified uptick rule (or proposed circuit breaker modified uptick rule), the proposed ''short exempt'' marking requirement would provide an indication to a trading center regarding whether it must execute or display a short sale order with regard to whether the short sale order is at a down-bid price.

B. Costs

1. Proposed Short Sale Price Test Restrictions

We recognize that the proposed amendments, if adopted, would impose costs on market participants to implement and assure compliance with the proposed short sale price test requirements. These costs could, in sum, increase the costs of legitimate short selling. We believe, however, that such costs might be justified by the design of the proposed short sale price tests to restrict short selling at successively lower prices and, thereby, help prevent short selling, including potentially abusive or manipulative short selling, from being used as a tool for driving the market down or from being used to accelerate a declining market by exhausting all remaining bids at one price level, causing successively lower prices to be established by long sellers. Further, by seeking to advance these goals, the proposed price test restrictions might help restore investor confidence in the securities markets.

We recognize that, to the extent that the proposed short sale price test restrictions could result in increased costs of short selling in NMS stocks, it might lessen some of the benefits of legitimate short selling and, thereby, could result in a reduction in short selling generally. Such a reduction might lead to a decrease in market efficiency and price discovery, less protection against upward stock price manipulations, a less efficient allocation of capital, an increase in trading costs, and a decrease in liquidity. Restricting short selling may also reduce ''long'' activity where it is part of the same strategy, thus adversely affecting liquidity. Thus, we believe there might be potential costs associated with the proposed short sale price tests in terms of potential impact of such price tests on quote depths, spread widths, and market liquidity.

We also believe costs might be incurred in terms of execution and pricing inefficiencies. For example, allowing all short sales to be executed or displayed at or above the best bid (or last sale price) in an advancing market, and above the best bid (or last sale price) in a declining market might slow the speed of executions and impose additional costs on market participants, including buyers.[381]

In addition, we recognize that imposing short sale price restrictions when, currently, there is an absence of any short sale price test restrictions may result in costs in terms of modifications to systems and surveillance mechanisms, as well as changes to processes and procedures. We anticipate that these changes would likely result in immediate implementation costs for trading centers and SROs and other market participants associated with reprogramming trading and surveillance systems to now account for price test restrictions based on either last sale or best bid information, as discussed in more detail below. We also believe the proposed amendments may impose costs to trading centers and SROs and other market participants related to systems changes to computer hardware and software, reprogramming costs, and surveillance and compliance costs, as well as staff time and technology resources, associated with monitoring compliance with the proposed short sale price test restrictions, as discussed below.

Moreover, imposing price test restrictions when there are currently no short sale price restrictions in place also could mean that staff (compliance personnel, associated persons, etc.) might need to be trained or re-trained regarding rules related to price test restrictions. Also, trading centers and SROs and other market participants could be required to hire additional staff (and train or re-train them) to comply with the proposed rules related to short sale price test restrictions. As such, we believe the proposed amendments, if adopted, might impose training and compliance costs for trading centers, SROs, and other market participants.

a. Proposed Modified Uptick Rule

The proposed modified uptick rule, in particular, would require each trading center to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order at a down-bid price.[382] In addition, a trading center would be required to have policies and procedures reasonably designed to

selling at a down-bid price in a particular security, when triggered by a decline in the price of that security. Broker-dealer could mark certain short sale orders ''short-exempt'' under the conditions set forth above. A circuit breaker resulting in the proposed uptick rule would, once triggered by a decline in the price of a particular security, prohibit any person from selling short on a downtick.

[380] *See, e.g.,* letter from Credit Suisse (discussing ''magnet effect'').

[381] As discussed above, on the day the Pilot went into effect, listed Pilot securities underperformed listed control group securities by approximately 24 basis points. The Pilot and control group securities, however, had similar returns over the first six months of the Pilot. *See supra* note 36 (referencing OEA Staff's Summary Pilot Report at 8).

[382] *See* proposed Rule 201(b)(1).

permit the execution or display of a short sale order of a covered security marked ''short exempt'' without regard to whether the order is at a down-bid price.[383] A trading center's policies and procedures would not, however, have to include mechanisms to determine on which provision a broker-dealer is relying in marking an order ''short exempt'' in accordance with paragraph (c) or (d) of the proposed modified uptick rule. In addition, trading centers also would be required to surveil the effectiveness of their written policies and procedures and take prompt action to remedy any deficiencies in their policies and procedures.

As detailed in the PRA section, VIII, above, although the exact nature and extent of the required policies and procedures that a trading center would be required to establish likely would vary depending upon the nature of the trading center (*e.g.,* SRO vs. non-SRO, full service broker-dealer vs. market maker), we preliminarily estimate a total one-time initial cost of $26,393,412 [384] for all trading centers subject to the proposed modified uptick rule to establish the written policies and procedures reasonably designed to help prevent the execution or display of short sale orders not priced in accordance with the provisions of proposed Rule 201(b)(1).

Once a trading center has established written policies and procedures reasonably designed to help prevent the execution or display of a short sale order at a down-bid price, we preliminarily estimate a total annual ongoing cost of $7,119,204 [385] for all trading centers subject to the proposed modified uptick rule to ensure that their written policies and procedures are up-to-date and remain in compliance with the proposed amendments to Rule 201. In addition, with regard to ongoing monitoring for and enforcement of trading in compliance with the proposed modified uptick rule, as detailed in the PRA section, VIII, above, we preliminary believe that, once the tools necessary to carry out on-going monitoring have been put in place, a trading center would be able to incorporate ongoing monitoring and enforcement within the scope of its existing surveillance and enforcement policies and procedures without a substantial additional burden. We recognize, however, that this ongoing compliance would not be cost-free, and that trading centers would incur some additional annual costs associated with ongoing compliance, including compliance costs of reviewing transactions. We preliminarily estimate that each trading center would incur an average annual ongoing compliance cost of $102,768, for a total annual cost of $39,360,144 for all trading centers.[386]

As detailed in the PRA section, VIII, above, we realize that the exact nature and extent of the policies and procedures that a trading center would be required to establish would likely vary depending upon the type, size, and nature of the trading center. Thus, while we have based our estimates on the burden estimates provided in connection with the adoption of Regulation NMS, we note that these estimates may be on the high end because trading centers have already had to establish policies and procedures in connection with that Regulation's order protection rule, which could help form the basis for the policies and procedures for the proposed modified uptick rule. We realize, however, that these estimates may be on the low end for some trading centers. Thus, we seek specific comment as to whether these estimates are appropriate or whether such estimates should be increased or reduced and for which entities. If they should be increased or decreased, please address by how much, in order to be able to comply with the proposed modified uptick rule's required policies and procedures, if adopted.

As detailed in the PRA section, VIII, above, although the exact nature and extent of the required policies and procedures that a broker-dealer would be required to establish under the ''broker-dealer'' provision in proposed Rule 201(c)(1) of the proposed modified uptick rule, as well as under the ''riskless principal'' provision in proposed Rule 201(d)(6) of the proposed modified uptick rule and the ''riskless principal'' exception in proposed Rule 201(c)(9) of the proposed uptick rule, likely would vary depending upon the nature of the broker-dealer (*e.g.,* full service broker-dealer vs. market maker), we preliminarily estimate a total one-time initial cost of $380,266,741 for all broker-dealers relying on the broker-dealer provision in proposed Rule 201(c)(1) of the proposed modified uptick rule; the ''riskless principal'' provisions in proposed Rules 201(d)(6) of the proposed modified uptick rule; or 201(c)(9) of the proposed uptick rule, to establish the written policies and procedures reasonably designed to prevent the incorrect identification of orders as being priced in accordance with the broker-dealer provision or, in the case of the ''riskless principal'' provisions, to assure that, at a minimum, the customer order was received prior to the offsetting transaction and to assure the broker-dealer has supervisory systems in place

[383] *See* proposed Rule 201(b)(1)(ii). *See also* Sections III.A.2. and V, above, discussing short sale orders marked ''short exempt.''

[384] This figure was calculated by adding $18,733,412 and $7,660,000 (for outsourced legal work). The $18,733,412 figure was calculated as follows: (70 legal hours × $305) + (105 compliance hours × $313) + (20 information technology hours × $292) + (25 business operation hours × $273) = $66,880 per SRO × 11 SROs = $735,680 total cost for SROs; (37 legal hours × $305) + (77 compliance hours × $313) + (23 information technology hours × $292) + (23 business operation hours × $273) = $48,381 per broker-dealer × 372 broker-dealers = $17,997,732 total cost for broker-dealers; $735,680 + $17,997,732 = $18,733,412. The $7,660,000 figure for outsourced legal work was calculated as follows: (50 legal hours × $400 × 11 SROs) + (50 legal hours × $400 × 372 broker-dealers) = $7,660,000.

Based on industry sources, OEA estimates that the average hourly rate for outsourced legal services in the securities industry is $400. For in-house legal services, we estimate that the average hourly rate for an attorney in the securities industry is approximately $305 per hour. The $305/hour figure for an attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2008,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. In addition, OEA estimates that the average hourly rate for an assistant compliance director, a senior computer programmer, a senior operations manager, in the securities industry is approximately $313, $292, and $273 per hour, respectively. These figures are from SIFMA's *Management & Professional Earnings in the Securities Industry 2008,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[385] This figure was calculated as follows: (2 legal hours × 12 months × $305) × (11 + 372) + (3 compliance hours × 12 months × $313) × (11 + 372) = $7,119,204.

[386] We preliminarily estimate that each trading center would incur an average annual ongoing compliance cost of $102,768 for a total annual cost of $39,360,144 for all trading centers. This figure was calculated as follows: (16 compliance hours × $313) + (8 information technology hours × $292) + (4 legal hours × $305) × 12 months = $102,768 per trading center × 383 trading centers = $39,360,144. As discussed above, we base our burden hour estimates on the estimates used for Regulation NMS because it requires similar ongoing monitoring and surveillance for and enforcement of trading in compliance with that regulation's policies and procedures requirement.

For in-house legal services, we estimate that the average hourly rate for an attorney in the securities industry is approximately $305 per hour. The $305/hour figure for an attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2008,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. In addition, OEA estimates that the average hourly rate for an assistant compliance director, a senior computer programmer, a senior operations manager, in the securities industry is approximately $313, $292, $273 per hour, respectively. These figures are from SIFMA's *Management & Professional Earnings in the Securities Industry 2008,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

to produce records that enable the broker-dealer to accurately and readily reconstruct, in a time-sequenced manner, all orders on which a broker-dealer relies pursuant to these provisions of the proposed price tests.[387]

Once a broker-dealer has established written policies and procedures that would be required so that it could rely on the proposed modified uptick rule's ''broker-dealer provision'' in proposed Rule 201(c)(1); the ''riskless principal'' exception in proposed Rule 201(c)(9) of the proposed uptick rule; or the ''riskless principal'' provision in proposed Rule 201(d)(6) of the proposed uptick rule, we estimate a total annual on-going cost of $103,367,868 for all broker-dealers relying on any of these three provisions to ensure that its written policies and procedures are up-to-date and remain in compliance with the proposed amendments to Rule 201.[388] In addition, with regard to ongoing monitoring for and enforcement of trading in compliance with the proposed modified uptick rule's ''broker-dealer'' provision in proposed Rule 201(c)(1), as detailed in the PRA section, VIII, above, we preliminary believe that, once the tools necessary to carry out on-going monitoring would have been put in place, a broker-dealer would be able to incorporate ongoing monitoring and enforcement within the scope of its existing surveillance and enforcement policies and procedures without a substantial additional burden. We recognize, however, that this ongoing compliance would not be cost-free, and that broker-dealers would incur some additional annual costs associated with ongoing compliance, including compliance costs of reviewing transactions. We estimate that each broker-dealer would incur an average annual ongoing compliance cost of $102,768, for a total annual cost of $571,492,848 for all broker-dealers.[389]

As discussed above in connection with the PRA, we realize that the exact nature and extent of the policies and procedures that a broker-dealer would be required to establish likely would vary depending upon the type, size, and nature of the broker-dealer. Thus, while we have based our estimates on the burden estimates provided in connection with the adoption of Regulation NMS, we note that these estimates may be on the high end because broker-dealers have already had to establish policies and procedures in connection with that Regulation's order protection rule, which could help form the basis for the policies and procedures for the proposed modified uptick rule's ''broker-dealer'' provision's policies and procedures requirement in proposed Rule 201(c)(1). We realize, however, that these estimates may be on the low end for some broker-dealers that may have less familiarity with a policies and procedures approach. Thus, we seek specific comment as to whether these estimates are appropriate or whether such estimates should be increased or reduced. If they should be increased or decreased, please address by how much, in order to be able to comply with the proposed modified uptick rule's required policies and procedures, if adopted.

In addition, we anticipate that each trading center would incur initial up-front costs associated with taking action necessary to implement the written policies and procedures it has developed, which would include surveillance and reprogramming costs for enforcing, monitoring, and updating their trading, execution management, and surveillance systems under the proposed modified uptick rule, systems changes to computer hardware and software, as well as staff time and technology resources.[390] However, we note that the policies and procedures that would be required to be implemented are similar to those that are required under Regulation NMS.[391] In accordance with Regulation NMS, trading centers must have in place written policies and procedures in connection with that Regulation's order protection rule, which could help form the basis for the policies and procedures

[387] This figure was calculated by adding $269,046,741 and $111,220,000 (for outsourced legal work). The $269,046,741 figure was calculated as follows: (37 legal hours × $305) + (77 compliance hours × $313) + (23 information technology hours × $292) + (23 business operation hours × $273) = $48,381 per broker-dealer × 5,561 broker-dealers = $ 269,046,741 total cost for broker-dealers. The $111,220,000 figure was calculated as follows: (50 legal hours × $400 × 5,561) = $111,220,000.

Based on industry sources, OEA estimates that the average hourly rate for outsourced legal services in the securities industry is $400. For in-house legal services, we estimate that the average hourly rate for an attorney in the securities industry is approximately $305 per hour.

The $305/hour figure for an attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2008,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. In addition, OEA estimates that the average hourly rate for an assistant compliance director, a senior computer programmer, a senior operations manager, in the securities industry is approximately $313, $292, $273 per hour, respectively. These figures are from SIFMA's *Management & Professional Earnings in the Securities Industry 2008,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[388] This figure was calculated as follows: (2 legal hours × 12 months × $305) × 5,561 + (3 compliance hours × 12 months × $313) × 5,561 = $103,367,868.

[389] We estimate that each broker-dealer would incur an average annual ongoing compliance cost of $102,768 for a total annual cost of $571,492,848 for all broker-dealers. This figure was calculated as follows: (16 compliance hours × $313) + (8 information technology hours × $292) + (4 legal hours × $305) × 12 months = $102,768 per broker-dealer × 5,561 broker-dealers = $571,492,848. As discussed above, we base our estimate of burden hours on the estimates used for Regulation NMS because it requires similar ongoing monitoring and surveillance for and enforcement of trading in compliance with that regulation's policies and procedures requirement.

For in-house legal services, we estimate that the average hourly rate for an attorney in the securities industry is approximately $305 per hour. The $305/hour figure for an attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2008,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. In addition, OEA estimates that the average hourly rate for an assistant compliance director, a senior computer programmer, a senior operations manager, in the securities industry is approximately $313, $292, $273 per hour, respectively. These figures are from SIFMA's *Management & Professional Earnings in the Securities Industry 2008,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[390] For instance, to implement the proposed modified uptick rule would require that each ATS reprogram their trading engine, as would any broker-dealer who executes trades as an OTC market maker. Moreover, one commenter indicated that programming costs across sell-side firms could range from $200,000 to $2 million. *See, e.g.,* 2007 Price Test Adopting Release, 72 FR at 36350 n. 113 (citing comment letter from SIFMA stating that cost estimates for firms to program for the changes that were necessary to meet the policies and procedures requirements of Regulation NMS varied, from as low as approximately $200,000 for some firms to as high as $2 million for others. *See also supra* note 46 (citing to 2007 SIFMA letter) and text accompanying note 208. Additionally, because they might require trading centers and other market participants a significant amount of time in which to reprogram and test their systems to comply with the proposed amendments, these systems and programming costs might be higher without a sufficient implementation period. For example, this same commenter indicated that it would take six to nine months to implement a new version of the bid test. *See id.*

See letter from Credit Suisse (discussing need for a longer implementation period, particularly for smaller broker-dealers, in terms of having to build systems to be able to track upticks or upbids in their smart order routers in accordance with any new rules and then preserve this history so that regulators can audit it). According to this commenter, ''[b]uilding such systems would likely be as expensive and challenging as Reg NMS implementation was from 2005–2007, and would likely take more than a year to implement * * * It is also likely that the compliance costs would disproportionately burden smaller BDs, who would likely be forced to route their order flow through a handful of larger brokers, impeding competition and adding to systemic risk as flow is consolidated among fewer players''. *Id.*

We also recognize that the proposed amendments, if adopted, would require the commitment of resources associated with compliance oversight, market surveillance, and enforcement, with attendant opportunity costs.

[391] *See* Regulation NMS Adopting Release, 70 FR 37496. *See also* 17 CFR 242.611.

for the proposed modified uptick rule.[392] Thus, we believe trading centers may already be familiar with establishing, maintaining, and enforcing trading-related policies and procedures, including programming their trading systems in accordance with such policies and procedures.

We believe this familiarity may reduce the implementation costs of the proposed modified uptick rule on trading centers and may make the proposed modified uptick rule less burdensome to implement. Moreover, because trading centers have already developed or modified their surveillance mechanisms in order to comply with Regulation NMS's policies and procedures requirement, trading centers may already have retained and trained the necessary personnel to ensure compliance with that Regulation's policies and procedures requirements and, therefore, may already have in place most of the infrastructure and potential policies and procedures necessary to comply with the proposed modified uptick rule.[393]

Thus, while we believe there would be costs associated with systems modifications and training staff that would be affected by these systems modifications, because most trading centers would already have in place systems, written policies and procedures in order to comply with Regulation NMS's order protection rule, we believe trading centers would already be familiar with establishing, maintaining, and enforcing trading-related policies and procedures, including programming their trading and surveillance systems in accordance with such policies and procedures.

Moreover, the proposed modified uptick rule's written policies and procedures requirement are designed to provide trading centers with significant flexibility in determining how to comply with the requirements of the proposed modified uptick rule. For example, the proposed modified uptick rule is designed to provide trading centers and their customers with flexibility in determining how to handle orders that are not immediately executable or displayable by the trading center because the order is impermissibly priced. Thus, if an order were impermissibly priced, the trading center could, in accordance with policies and procedures reasonably designed to prevent the execution or display of a short sale at a down-bid price, re-price the order at the lowest permissible price and hold it for later execution at its new price or better.[394] As quoted prices change, the proposed modified uptick rule would allow a trading center to repeatedly re-price and display an order at the lowest permissible price down to the order's original limit order price (or, if a market order, until the order is filled). Because a trading center could re-price and display a previously impermissibly priced short sale order, the proposed modified uptick rule may allow for the more efficient functioning of the markets because trading centers would not have to reject or cancel impermissibly priced orders unless instructed to do so by the trading center's customer submitting the short sale order.

Moreover, while latencies in obtaining data regarding the national best bid from consolidated market data feeds, as discussed in detail above, could impact implementation costs associated with the proposed modified uptick rule, a trading center could have policies and procedures that could provide a snapshot of the market to identify the current national best bid at the time of execution or display of a short sale order. Such snapshots may cause a reduction in costs for trading centers by helping to verify whether a short sale order was executed or displayed at a permissible price.

b. Proposed Uptick Rule

The alternative proposed uptick rule would be based on the last sale price, rather than the national best bid, as the reference point for short sale orders, similar to former Rule 10a–1. However, the proposed uptick rule would not include an explicit policies and procedures requirement. Instead, the proposed uptick rule would prohibit any person from effecting a short sale below the last sale price, unless an exception applies. Because the proposed uptick rule would be a modernized version of the former Rule 10a–1, it would also provide the public with an opportunity to comment on the utility of such a price test, especially in light of recent changes in market conditions.[395]

We recognize that due to the extensive systems changes that have occurred in the last couple of years in response to Regulation NMS, programming systems for the proposed uptick rule could be burdensome.[396] In particular, because the proposed uptick rule does not take a policies and procedures approach, market participants would not be able to rely to the same extent on the policies and procedures they already have in place under Regulation NMS. Instead, the proposed uptick rule would prohibit any person from effecting a short sale in contravention of the rule's limitations. However, because the proposed uptick rule would apply to *any person* effecting a short sale, rather than just to trading centers, the proposed uptick rule might impose costs on more market participants than the proposed modified uptick rule. However, the proposed uptick rule, which is similar to the price test of former Rule 10a–1, would be familiar to many market participants because it would be based on a rule which was in existence for almost 70 years, and was only recently eliminated. We believe this familiarity may help to reduce the implementation costs of the proposed uptick rule on market participants and, therefore, should decrease the costs of implementation of the proposed uptick. For example, we believe some market participants may have retained personnel familiar with former Rule 10a–1,[397] and may also have in place some of the systems and surveillance mechanisms used in connection with former Rule 10a–1 that could be used to comply with the proposed uptick rule. We believe, however, that most market participants would incur costs associated with having to implement or modify their trading systems and surveillance

[392] *See id.*

[393] We also believe some trading centers may have retained personnel familiar with the former SRO bid tests, which may make the proposed modified uptick rule less burdensome to implement. *See, e.g., supra* note 125 and accompanying text.

[394] For example, if a trading center received a short sale order priced at $47.00 when the current national best bid in the security is $47.00, but the immediately preceding national best bid was $47.01 (*i.e.,* the current bid is below the previous bid), the trading center could re-price the order at the permissible offer price of $47.01, and display the order for execution at this new limit price.

[395] *See supra* Section II discussing the history of short sale price test regulation in the United States and the changes in market conditions and resulting erosion of investor confidence.

[396] *See, e.g.,* 2007 Price Test Adopting Release, 72 FR at 36350 n. 113 (citing to comment letter from SIFMA stating that cost estimates for firms to program for the changes that were necessary to meet the policies and procedures requirements of Regulation NMS varied, from as low as approximately $200,000 for some firms to as high as $2 million for others. *See* SIFMA Letter. Additionally, because they might require trading centers, SROs, and other market participants a significant amount of time in which to reprogram and test their systems to comply with a price test restriction, these systems and programming costs might be higher without a sufficient implementation period. For example, one commenter indicated that it would take six to nine months to implement a new version of the price test. *See id.* (discussing SIFMA comment letter) and *see also supra* note 208.

[397] Likewise, we believe some market participants may have retained personnel familiar with former SRO bid tests. *See, e.g., supra* note 125 and accompanying text.

mechanisms in order to comply with the proposed uptick rule, including a period of time in which to make such changes.[398] However, we believe familiarity with a price test that would be based on a modernized version of former Rule 10a–1 might more readily help address investor confidence in our markets.

c. Additional Mitigating Price Test Costs Features

While we recognize that either proposed price test alternatives would create costs for trading centers that execute or display short sale orders in covered securities, as well as other market participants that engage in short selling, we believe there are several additional mitigating costs features that might help to reduce costs associated with a proposed price test if adopted.

First, we believe that the fact that either proposed price test alternative, if adopted, would apply a uniform price test [399] might help to reduce compliance costs for market participants. For example, by applying a uniform price test, the proposed short sale price test restrictions would be designed so as to not result in the type of disparate short sale regulation that existed under former Rule 10a–1, in which different price tests were applied in different markets, resulting in confusion, compliance difficulties, regulatory arbitrage, and an un-level playing field among market participants.[400] Moreover, subsection (e) of proposed Rule 201 of the proposed modified uptick rule and subsection (d) of proposed Rule 201 of the proposed uptick rule, if adopted, would include a requirement that no SRO may have any rule that is not in conformity with, or conflicts with, the proposed short sale price test requirements.[401] Thus, we believe a uniform rule might reduce compliance costs, and also could reduce regulatory arbitrage. Also, there might be a reduction in costs associated with systems and surveillance mechanisms that would have to be programmed to consider only a single test based on the national best bid (or on the last sale price if the proposed uptick rule is adopted) instead of different tests for different markets.

Second, the proposed three month implementation period would be designed to provide trading centers and market participants with a sufficient amount of time in which to modify their systems and procedures in order to comply with the requirements of a proposed short sale price test if adopted and, thus, might help reduce some of the costs and help to alleviate some of the potential disruptions that might be associated with implementing either proposed price test. We recognize, however, that a longer implementation period may be more manageable or preferable, particularly to smaller broker-dealers that might be disproportionately burdened by any implementation and compliance costs associated with the proposed short sale price test restrictions, as well as competitively disadvantaged in terms of reduced order flow as a result.[402] Thus, we seek comment as to what length of implementation period would be necessary or appropriate, and why, such that trading centers would be able to meet the proposed short sale price test restrictions, if adopted.

Third, as described below, we believe the ''broker-dealer'' provision in proposed Rule 201(c)(1) of the proposed modified uptick rule and the provisions contained in paragraph (d) of the proposed modified uptick rule, as well as the exceptions contained in paragraph (c) of the proposed uptick rule might also help to minimize any potential price distortions or costs associated with the proposed short sale price restrictions. These provisions also would be designed to help promote the workability of the proposed price tests, while at the same time furthering the Commission's stated goals of short sale price test regulation.

For example, as discussed above, proposed Rule 201(c)(1) of the proposed modified uptick rule would provide that a broker-dealer may mark a short sale order in a covered security ''short exempt'' and send it to a trading center if the broker-dealer has identified the order as not being at a down-bid price at the time of submission of the order to the trading center. This provision would provide broker-dealers with the option to manage their order flow, rather than having to always rely on their trading centers to manage their order flow on their behalf. In addition, we note that this provision would not undermine the Commission's goals for short sale regulation because any broker-dealer marking an order ''short exempt'' in accordance with this provision would have to ensure that its short sale order was not on a down-bid price at the time of submission of the order to a trading center. We believe that this provision also might help to preserve instant execution and liquidity by allowing relatively unrestricted short selling in an advancing market.

Proposed Rule 201(d)(1) of the proposed modified uptick rule would provide an exception if the seller owns a security and would provide that a short sale order of a covered security may be marked ''short exempt,'' thereby allowing it to be displayed or executed at a down-bid price, if the broker-dealer has a reasonable basis to believe that the seller owned the security being sold and that the seller intended to deliver the security as soon as all the restrictions on delivery have been removed. Similarly, proposed Rule 201(c)(1) of the proposed uptick rule would provide an exception for sales of owned securities. As a result, these provisions would allow for sales of securities that although owned, were subject to the provisions of Regulation SHO governing short sales due solely to the seller being unable to deliver the security to its broker-dealer prior to settlement due to circumstances outside the seller's control.

Proposed Rule 201(d)(2) of the proposed modified uptick rule would allow a broker-dealer to mark a short sale order ''short exempt'' if the broker-dealer has a reasonable basis to believe that the short sale order is by a market maker to off-set a customer odd-lot order or to liquidate an odd-lot position by a single round lot sell order that changed such broker-dealer's position by no more than a unit of trading and, thereby, may be permitted to be executed or displayed at a down-bid price. Similarly, in proposed Rule 201(c)(3) of the proposed uptick rule we would provide an exception for sales related to odd-lot orders. These provisions would allow market makers to facilitate customer orders that are not of a size that could facilitate a downward price movement in the market.

Proposed Rule 201(d)(3) of the proposed modified uptick would permit qualifying short sale orders associated with certain bona fide domestic arbitrage transactions to be marked ''short exempt,'' and thereby permit them to be executed or displayed at a down-bid price. This provision would allow broker-dealers to engage in transactions that tend to reduce pricing disparities between securities.

[398] *See, e.g., supra* note 346.

[399] As discussed above, unlike the former Rule 10a–1, the proposed short sale price test restrictions, if adopted, would apply a uniform rule to trades in the same securities that occur in multiple, dispersed, and diverse markets. Under the proposed short sale price test restrictions, all covered securities, wherever traded, would be subject to the same short sale price test.

[400] *See supra* note 27 (discussing the different tests under former Rule 10a–1).

[401] *See* proposed Rule 201(e) of the proposed modified uptick rule, and proposed Rule 201(d) of the proposed uptick rule.

[402] *See supra* note 390 and accompanying text (discussing letters from SIFMA and Credit Suisse, respectively, regarding cost estimates and the need for a longer implementation period, particularly for smaller broker-dealers).

Moreover, to facilitate arbitrage transactions in which a short position was taken in a security on the U.S. market, and which was to be immediately covered on a foreign market, Rule 201(d)(4) of the proposed modified uptick rule would permit short sale orders associated with certain international arbitrage transactions to be marked ''short exempt,'' and thereby permit such orders to be executed or displayed at a down-bid price. Similarly, proposed Rules 201(c)(4) and 201(c)(5) of the proposed uptick rule would provide exceptions related to domestic and international arbitrage transactions.

In addition, proposed Rule 201(d)(5) of the proposed modified uptick rule is intended to facilitate distributions of securities by providing an exception for any sales of covered securities by underwriters or members of a syndicate or group participating in the distribution of a security in connection with an over-allotment of securities, and any lay-off sales by such persons in connection with a distribution of securities through a rights or standby underwriting commitment. By permitting short sales in connection with an over-allotment or lay-off sales at or below the national best bid to be marked ''short exempt,'' and thereby permit them to be executed or displayed at a down-bid price, this provision would enable an underwriter to reduce its risk by pricing an offering at or below the current national best bid or last sale price, as applicable. Similarly, proposed Rule 201(c)(6) of the proposed uptick rule would provide an exception for sales in connection with over-allotments and lay-off sales.

As discussed above, proposed Rule 201(d)(6) of the proposed modified uptick rule would allow a broker-dealer to mark short sale orders of a covered security ''short exempt,'' and thereby allow for their execution or display at a down-bid price where a broker-dealer is facilitating customer buy orders or sell orders where the customer is net long and the broker-dealer is net short but is effecting the sale as riskless principal, provided certain conditions are met. Similarly, proposed Rule 201(c)(9) of the proposed uptick rule would provide an exception for certain transactions on a riskless principal basis. These provisions would provide broker-dealers with additional flexibility to facilitate customer orders.

Proposed Rule 201(d)(7) of the proposed modified uptick rule would permit certain short sale orders executed on a VWAP basis to be marked ''short exempt,'' and, as a result, to be executed or displayed at a down-bid price.[403] Similarly, proposed Rule 201(c)(7) of the proposed uptick rule would provide an exception for certain transactions on a VWAP basis. These provisions might help provide an additional source of liquidity for investors' VWAP orders and might help enable investors to achieve their objective of obtaining an execution at the VWAP.

In addition, the proposed uptick rule would include cost-mitigating provisions that would be unique to the proposed uptick rule, designed to allow its proper functioning in today's markets, while at the same time being designed to further the purposes of our proposing short sale price test restrictions at this time. For example, proposed Rule 201(c)(2) of the proposed uptick rule would provide an exception for errors in marking a short sale order, such as when a broker-dealer effected a sale marked ''long'' by another broker-dealer, but the sale was mis-marked such that it should have been marked as a ''short'' sale.[404] This exception might help promote liquidity by avoiding implicating the broker-dealer effecting the sale where the broker-dealer's participation in the violation was neither knowing nor reckless.[405]

Proposed Rule 201(c)(8) of the proposed uptick rule would provide an exception from the proposed uptick rule for any sale of a covered security in an electronic trading system that matches buying and selling interest at various times throughout the day as long as such sales meet certain criteria. This exception might help promote market efficiency and liquidity by accommodating the increased use of automated trading systems and alternative strategies used in today's marketplace. It might also help provide an additional source of liquidity for investors' passively priced orders and better enable investors to engage in alternative trading strategies to achieve their investment objectives.

Proposed Rule 201(c)(10) and (c)(11) of the proposed uptick rule might also help promote market efficiency and liquidity by providing exceptions to the requirements of the proposed uptick rule to help address conflicts between the proposed uptick rule and the Quote Rule under Rule 602 of Regulation NMS.[406]

Proposed Rule 201(c)(12) of the proposed uptick rule would provide an exception from the proposed uptick rule for any sale of a security at the offer by a registered market maker or specialist publishing two-sided quotes to sell short to facilitate customer market and marketable limit orders to buy regardless of the last sale price. This exception is intended to help provide relief in a decimals environment to registered market makers and specialists so that they could provide liquidity in response to customer buy orders.

2. Proposed Circuit Breaker Halt Rule

We recognize that the proposed circuit breaker halt rule, if adopted, would impose costs on market participants to implement and assure compliance with the proposed circuit breaker halt rule's requirements. These costs could, in sum, increase the costs of legitimate short selling. For example, the proposed circuit breaker halt rule, when triggered, would impose a short selling halt that might restrict otherwise legitimate short selling activity during periods of extreme volatility. As such, we recognize that the proposed circuit breaker halt rule might result in a reduction of the benefits of legitimate short selling and, thereby, could result in a subsequent reduction in short selling generally. Such a reduction might lead to a decrease in market efficiency and price discovery, less protection against upward stock price manipulations, a less efficient allocation of capital, an increase in trading costs, and a decrease in liquidity.[407] Thus, we believe there might be potential costs associated with the proposed circuit breaker halt rule in terms of potential impact of such a halt on quote depths, spread widths, and market liquidity.

In addition, we recognize that imposing a circuit breaker halt rule when, currently, there is an absence of a short selling halt may result in costs in terms of modifications to systems and surveillance mechanisms, as well as changes to processes and procedures. We anticipate that these changes would likely result in immediate implementation costs for market participants associated with reprogramming trading and surveillance systems to now account for the requirements of the proposed circuit breaker halt, if adopted. We also believe the proposed circuit breaker halt rule may impose costs to market participants related to systems changes to computer hardware and software, reprogramming costs, and surveillance and compliance costs, as well as staff time and technology resources, associated with

[403] *See supra* note 181 (citing to VWAP relief letters under former Rule 10a–1).

[404] *See* proposed Rule 201(d)(2).

[405] *Id.*

[406] *See* 17 CFR 242.602.

[407] *See* Section IX.B. (discussing costs of the proposed modified uptick rule and proposed uptick rule).

monitoring compliance with the proposed circuit breaker halt rule.[408]

Moreover, imposing a circuit breaker halt rule when there are currently no short sale halts in place also could mean that staff (compliance personnel, associated persons, etc.) might need to be trained or re-trained regarding rules related to the circuit breaker requirements. Also, market participants could be required to hire additional staff (and train or re-train them) to comply with the proposed circuit breaker halt rule. As such, we believe the proposed circuit breaker halt rule, if adopted, might impose training and compliance costs for market participants.

While we recognize that market participants would incur initial up-front costs associated with having to update their systems, including systems changes to computer hardware and software, as well as staff time and technology resources to update their systems and surveillance mechanisms in order to ensure compliance with the requirements of the proposed circuit breaker halt rule,[409] we believe that many of the systems changes that would be required to be implemented are similar to what was already required for implementation under Regulation NMS.[410] Thus, we believe market participants may already have developed or programmed their trading and surveillance systems in accordance with the requirements of Regulation NMS which may help to reduce any implementation costs associated with the proposed circuit breaker halt rule and, therefore, may make the proposed circuit breaker halt rule less burdensome to implement.

Thus, while we believe there would be costs associated with systems modifications and training staff that would be affected by these systems modifications, because most market participants would already have in place systems in order to comply with Regulation NMS, market participants may already have in place most of the infrastructure and processes necessary to comply with the proposed circuit breaker halt rule. Moreover, because the proposed circuit breaker halt rule might require less substantial modifications to existing systems, the implementation and compliance costs may not be significant.[411] As discussed above, currently, all stock exchanges and FINRA have rules or policies to implement coordinated circuit breaker halts.[412] Moreover, SROs have rules or policies in place to coordinate individual security trading halts corresponding to significant news events.[413] Information on the securities subject to SRO regulatory trading halts is disseminated to market participants through the CMS and other electronic media.[414] We, however, seek comment as to whether the time and implementation costs associated with the proposed circuit breaker halt rule may be lower than other alternatives proposed.

We, however, recognize that there may be concerns about a potential ''magnet effect'' that could arise as an unintended consequence of the proposed circuit breaker halt rule that could halt short selling and result in short sellers driving down the price of an equity security in a rush to execute short sales before the circuit breaker would be triggered. As discussed above, one commenter noted that a short sale circuit breaker could exacerbate downward pressure on stocks as their value reached the threshold level.[415] Another commenter, however, in discussing the issue of a ''magnet effect'' cited empirical studies that question whether a circuit breaker would result in artificial pressure on the price of individual securities.[416]

In addition, we note that the proposed circuit breaker halt rule would include exceptions substantially identical to exceptions in the Short Sale Ban that would be designed to allow its proper functioning in today's markets and allow broker-dealer to provide liquidity to the market, while at the same time being designed to further the purposes of our proposing the alternative circuit breaker halt rule at this time.[417]

We believe the proposed circuit breaker halt rule should include exceptions that mirror certain of the exceptions in the Short Sale Ban because the proposed rule shares the same goal of prohibiting short selling that might exacerbate a price decline during a period of sudden and excessive price declines. For example, the proposed circuit breaker halt would include a bona fide market maker exception, which would allow market makers to effect a short sale as part of bona fide market making and hedging activity related directly to bona fide market making in derivatives on the publicly traded securities of a covered security. This proposed exception would permit market makers to continue to provide liquidity to the markets, facilitate orders, and otherwise comply with their obligations as market makers. This proposed exception would also apply to options market makers that sell short equity securities to hedge options positions.

The proposed exception for short sales that occur as a result of automatic exercise or assignment of an equity option held before a circuit breaker on a particular security is triggered and a short selling halt is imposed in that security due to expiration of the option would allow short sales that occur as a result of the expiration of options contracts held before a circuit breaker is triggered in a particular security. This would allow persons that purchased or sold options prior to the effectiveness of a circuit breaker halt entered into such transactions with the expectation that they would be able to fulfill their contractual obligations and receive the benefits of their bargain in return. Providing this proposed exception to the circuit breaker halt rule would not raise the concerns that a circuit breaker rule is intended to address.

To allow for creation of long call options, the proposed exception would permit short sales that occur as a result of assignment to call writers upon exercise. When options are exercised, call writers may be required to sell short in order to satisfy their obligations. Because call writers do not have discretion, and because the short sales are effected in order to fill buying

[408] *See id.*

[409] *See, e.g.,* 2007 Price Test Adopting Release, 72 FR at 36350 n. 113 (citing comment letter from SIFMA stating that cost estimates for firms to program for the changes that were necessary to meet the requirements of Regulation NMS varied, from as low as approximately $200,000 for some firms to as high as $2 million for others. *See also* letter from Credit Suisse.

[410] *See* Regulation NMS Adopting Release, 70 FR 37496. *See also* 17 CFR 242.611.

[411] *See* letter from Credit Suisse (stating that ''[i]mplementation could be fast and costs would be modest'' and that ''listing exchanges already disseminate real-time status conditions as part of existing price feeds. By generalizing the existing ''Regulatory Halt'' flag to include a ''Do Not Short'' condition, both away trading venues and broker-dealers could react to the circuit breaker condition in real-time with very little coding and testing'').

[412] *See* Securities Exchange Act Release No. 39846 (Apr. 9, 1998), 63 FR 18477 (Apr. 15, 1998) (order approving proposals by Amex, BSE, CHX, NASD, NYSE, and Phlx) (''1998 Release''). *See also* NYSE Rule 80B. The circuit breaker procedures call for cross-market trading halts when the DJIA declines by 10 percent, 20 percent, and 30 percent from the previous day's closing value. *See e.g.,* BATS Exchange Rule 11.18.

[413] *See, e.g.,* FINRA Rule 6120.

[414] For example, in addition to disseminating news of trading halts through the CMS, Nasdaq publishes a daily list of securities subject to trading halts indicating the name of the issuer, the time the halt was initiated, and where applicable, the times at which quoting and trading may resume.

[415] *See* letter to Mary Schapiro, Chairman, from Direct Edge, dated March 30, 2009.

[416] *See* letter from Credit Suisse (discussing potential costs associated with short sale price test restrictions and circuit breaker rules).

[417] *See* Section III, above (discussing exceptions to proposed circuit breaker halt rule). *See also* Securities Exchange Act Release No. 58592 (Sept. 18, 2008), 73 FR 55169–02 (Sept. 24, 2008) (regarding exceptions to the Short Sale Ban).

demand, we believe that including this exception in the proposed circuit breaker halt rule would benefit the markets while not opening the door to the abuses that the proposed rule is intended to address.

The proposed exception for securities that a seller is deemed to own under Rule 200(b) (because Rule 144 securities are owned securities and do not raise the concerns that a short sale circuit breaker halt would be designed to address) would, during a halt triggered by a circuit breaker, allow sellers to sell securities that although owned, are subject to the provisions of Regulation SHO governing short sales due solely to the seller being unable to deliver the security to its broker-dealer prior to settlement based on circumstances outside the seller's control.

We seek comment regarding any benefits or costs associated with the above described exceptions to the proposed circuit breaker halt rule.

3. Proposed Circuit Breaker Price Test Rules

We also recognize that the proposed circuit breaker price test restrictions would result in costs on market participants responsible for implementing and assuring compliance with such requirements. We anticipate that there might be significant operational costs associated with reprogramming systems to comply with the proposed circuit breaker price test rules. We also anticipate that these costs might be greater than those required to comply with the proposed circuit breaker halt rule described above, which would, when triggered, impose a halt on short selling in individual NMS stocks rather than impose specific price test restrictions.[418] In addition, we believe there might also be costs incurred for additional staff and costs associated with personnel hiring and training related to maintaining and ensuring compliance with the proposed circuit breaker price test rules.[419]

Further, we recognize that short sale price test restrictions that would be imposed as a result of the proposed circuit breaker price test rules being triggered might result in many of the same costs discussed in detail in Section IX.B.1 pertaining to the implementation of market-wide short sale price test restrictions.[420] Those costs might include a reduction of the benefit of legitimate short selling and a subsequent reduction in the quantity of short selling, which we recognize might lead to a decrease in market efficiency and price discovery, less protection against upward stock price manipulations, a less efficient allocation of capital, an increase in trading costs, and a decrease in liquidity.[421]

Although under the proposed circuit breaker price test rules, a price test would not be in place full-time or for all securities, if the proposed circuit breaker modified uptick rule is adopted, trading centers would need to establish reasonable policies and procedures in advance to ensure compliance whenever a circuit breaker, and thus the proposed circuit breaker modified uptick rule, is triggered. We note that it would not be reasonable for a trading center to wait until the circuit breaker is triggered to begin establishing reasonable policies and procedures to prevent the execution or display of the particular NMS stock on a down-bid. Thus, we recognize that both of the proposed circuit breaker price tests would result in immediate upfront costs to trading centers.[422]

However, while we recognize that either proposed circuit breaker price test would create costs for trading centers that execute or display short sale orders in covered securities, as well as other market participants that engage in short selling, we note that the proposed circuit breaker price tests would include the same cost-mitigating provisions discussed in Section IX(B)(1)(c) pertaining to the market-wide short sale price test restrictions that might help to reduce costs associated with the proposed circuit breaker price tests, while at the same time being designed to further the purposes of our proposing the alternative circuit breaker price test restrictions at this time.[423] For example, we believe that the fact that either proposed circuit breaker price test, if adopted, would apply a uniform price test[424] might help to reduce compliance costs for market participants associated with systems and surveillance mechanisms that would have to be programmed to consider only a single circuit breaker price test instead of different tests for different markets.

Second, the proposed three month implementation period would be designed to provide trading centers and market participants with a sufficient amount of time in which to modify their systems and procedures in order to comply with the requirements of either proposed circuit breaker price test, if adopted, and, thus, might help reduce some of the costs and help to alleviate some of the potential disruptions that might be associated with implementing either proposed circuit breaker price test. We recognize, however, that a longer implementation period may be more manageable or preferable, particularly to smaller broker-dealers that might be disproportionately burdened by any implementation and compliance costs associated with the proposed circuit breaker price test restrictions, as well as competitively disadvantaged in terms of reduced order flow as a result.[425] Thus, we seek comment as to what length of implementation period would be necessary or appropriate, and why, such that trading centers would be able to meet the proposed circuit breaker price test restrictions, if adopted.

Third, as described below, we believe the ''broker-dealer'' provision in proposed Rule 201(c)(1) of the proposed circuit breaker modified uptick rule and the provisions contained in paragraph (d) of the proposed circuit breaker modified uptick rule, as well as the exceptions contained in paragraph (c) of the proposed circuit breaker uptick rule might also help to minimize any potential price distortions or costs associated with the proposed circuit breaker price restrictions. These provisions also would be designed to help promote the workability of the proposed circuit breaker price tests, while at the same time furthering the

[418] *See also* Sections IX.B.1. (discussing costs of the proposed modified uptick rule and proposed uptick rule).

[419] *See, e.g.*, letter from Credit Suisse (discussing potential costs associated with short sale price restrictions and circuit breaker rules). *See also* Section IX.B. (discussing costs associated with proposed modified uptick rule and proposed uptick rule).

[420] *See* Section IX.B.1. (discussing costs and benefits of the proposed modified uptick rule and the proposed uptick rule). *See also* Section IX.B.1.a. (discussing burden hour estimates, for purposes of the PRA, in connection with the proposed policies and procedure requirements under the modified uptick rule, the riskless principal exception to the proposed uptick rule, and the proposed marking requirements).

[421] *See* Section IX.B.1. (discussing costs of the proposed modified uptick rule and proposed uptick rule).

[422] *See id.*

[423] *See id.*

[424] As discussed above, unlike the former Rule 10a–1, the proposed short sale price test restrictions, if adopted, would apply a uniform rule to trades in the same securities that occur in multiple, dispersed, and diverse markets. Under the proposed short sale price test restrictions, all covered securities, wherever traded, would be subject to the same short sale price test.

[425] *See* letter from Credit Suisse *supra* note 122 (discussing need for a much longer implementation period, particularly for smaller broker-dealers). According to this commenter, compliance costs associated with a bid or tick test would disproportionately burden smaller broker-dealers, who would likely be forced to route their flow through a handful of larger broker-dealers, impeding competition and adding to systemic risk as flow is consolidated among fewer players).

Commission's stated goals of short sale price test regulation.[426]

4. Proposed Marking Requirements

We do not anticipate that the ''short exempt'' marking requirements would impose significant costs on broker-dealers. For example, such broker-dealers might incur a one-time cost associated with implementation and reprogramming. In connection with the order marking requirements of Rule 200(g) of Regulation SHO, which had originally included the category of ''short exempt,'' industry sources at that time estimated initial implementation costs for the former ''short exempt'' marking requirement to be approximately $100,000 to $125,000.[427]

In addition, we do not believe the proposed order marking requirements would impose significant ongoing monitoring and surveillance costs for broker-dealers. Broker-dealers already have established systems, processes, and procedures in place to comply with the current marking requirements of Rule 200(g) of Regulation SHO with respect to marking a sell order either ''long'' or ''short'' and, thus, would likely continue to use such systems, processes and procedures to comply with the proposed ''short exempt'' marking requirements in proposed Rules 200(g) and 200(g)(2).

We recognize that there would be an ongoing paperwork burden cost associated with adding the ''short exempt'' marking requirements. For example, as discussed in detail in Section VIII, above, for purposes of the PRA, we estimate that it would take each broker-dealer no more than approximately .000139 hours (.5 seconds) to mark a sell order ''short exempt.'' In addition, we estimate that the total annual hour burden per year for each broker-dealer subject to the proposed ''short exempt'' marking requirements would be 322 hours.

If we were to adopt the proposed ''short exempt'' marking requirements of proposed Rules 200(g) of the proposed modified uptick rule (or the proposed circuit breaker modified uptick rule) or the proposed uptick rule (or the proposed circuit breaker uptick rule), or the proposed circuit breaker halt rule, we are proposing an implementation period under which market participants would have to comply with these requirements three months following the effective date of the proposed marking requirements. We believe that this proposed implementation period would provide market participants with sufficient time in which to modify their systems and procedures in order to comply with the proposed ''short exempt'' marking requirements. We realize, however, that a shorter or longer implementation period may be manageable or preferable. Thus, we seek specific comment as to what length of implementation period would be necessary or appropriate, and why, such that market participants would be able to meet the proposed marking requirements, if adopted.

C. Request for Comment

We are sensitive to the costs and benefits of the proposed amendments, and encourage commenters to discuss any additional costs or benefits beyond those discussed herein, as well as any reduction in costs. Commenters should provide analysis and data to support their views of the costs and benefits associated with the proposed amendments.

Questions Regarding Proposed Short Sale Price Test Restrictions

1. The Commission believes that the erosion of investor confidence and questions concerning the volatility in the securities markets necessitate review of various alternatives with respect to short selling restrictions. Would the proposed market-wide short sale price test restrictions be more appropriate than the proposed circuit breaker rules in current market conditions? If so, why? If not, why not? Would the proposed market-wide short sale price test restrictions provide more potential benefit to the market than the proposed circuit breaker rules? Please explain. For example, would the proposed market-wide short sale price test restrictions be a more appropriate means for the Commission to achieve the objective helping to prevent short selling from being used as a tool to drive down the market? Please explain. Would the proposed market-wide short sale price test restrictions help to address the Commission's concerns regarding investor confidence? If so, why and how? If not, why not?

2. What would be the costs and benefits of the proposed modified uptick rule versus the proposed uptick rule? Is a policies and procedures approach preferable to a prohibition on executing a short sale on a down-bid price? Why or why not? What would be the costs and benefits of a policies and procedures approach as compared to such a prohibition? Should we consider other forms of short sale price tests? What would be the costs and benefits of any alternative forms of short sale price tests?

3. What would be the costs and benefits of short sales being subject to the proposed modified uptick rule? What would be the costs and benefits of short sales being subject to the proposed uptick rule? What would be the costs and benefits of having a uniform short sale price test in the covered securities across all markets? Please explain.

4. What, if any, additional benefits, beyond those discussed herein, would result from the proposed modified uptick rule? What, if any, additional benefits, beyond those discussed herein, would result from the proposed uptick rule? Should either proposed price test be modified in any way to increase the benefits of a short sale price test? If so, how?

5. What, if any, additional costs, beyond those discussed herein, would result from the proposed modified uptick rule? What, if any, additional costs, beyond those discussed herein, would result from the proposed uptick rule? What would be the types of costs, and what would be the amounts? Should the proposed short sale price tests be modified in any way to mitigate costs? If so, how?

6. How would trading systems and strategies used in today's marketplace be impacted by the proposed modified uptick rule? How might market participants alter their trading systems and strategies in response to the proposed modified uptick rule, if adopted?

7. Would the proposed modified uptick rule create any additional implementation or operational costs associated with systems (including computer hardware and software), surveillance, procedural, recordkeeping, or personnel modifications, beyond those discussed herein? Would the proposed uptick rule create any additional implementation or operational costs associated with systems (including computer hardware and software), surveillance, procedural, recordkeeping, or personnel modifications, beyond those discussed herein?

8. Would smaller trading centers and other market participants be disproportionately impacted by any additional implementation or operational costs associated with systems (including computer hardware and software), surveillance, procedural, recordkeeping, or personnel modification as a result of the proposed short sale price test restrictions? If so, in what way. Please explain.

9. To comply with the proposed modified uptick rule, broker-dealers

[426] *See* Section IX.B.1.c. (discussing cost-mitigating features of proposed modified uptick rule and proposed uptick rule in detail).

[427] *See* 2004 Regulation SHO Adopting Release, 69 FR at 48023.

might be required to purchase new systems or implement changes to existing systems. Would changes to existing systems be significant? What would be the costs and benefits associated with acquiring new systems or making changes to existing systems? What, if any, changes would need to be made to existing recordkeeping systems? What would be the costs and benefits associated with any changes? How might smaller broker-dealers be impacted by having to purchase new systems or implement changes to existing systems in order to comply with the proposed modified uptick rule, if adopted?

10. To comply with the proposed uptick rule, broker-dealers might be required to purchase new systems or implement changes to existing systems. Would changes to existing systems be significant? What would be the costs and benefits associated with acquiring new systems or making changes to existing systems? What, if any, changes would need to be made to existing records? What would be the costs and benefits associated with any changes?

11. What would be the costs and benefits of requiring trading centers to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display by the trading center of impermissibly priced short sale orders? What would be the costs and benefits of requiring trading centers to have policies and procedures reasonably designed to permit the execution or display of a short sale order of a covered security marked ''short exempt'' without regard to whether the order is at a down-bid price?

12. What would be the costs and benefits of requiring that trading centers regularly surveil to ascertain the effectiveness of the policies and procedures required by proposed Rule 201(b)(1) and promptly take action to remedy deficiencies in such policies and procedures? What systems and surveillance changes by trading centers would be necessary to meet the requirements of the proposed modified uptick rule?

13. Would the proposed modified uptick rule's compliance and surveillance requirements disproportionately burden smaller broker-dealers? If so, in what way? Please explain.

14. How much, if any, would the proposed price test restrictions affect compliance costs (*e.g.*, personnel or system changes) for each category of broker-dealers: small, medium, and large?

15. Would the proposed modified uptick rule affect different trading centers differently? If so, how? If not, why?

16. Would there be any increases in staffing and associated overhead costs for trading centers and broker-dealers? Would other resources need to be re-dedicated to comply with the proposed modified uptick rule or proposed uptick rule?

17. What, if any, impact on competition would the proposed price test restrictions have on smaller broker-dealers, *e.g.*, due to systems modifications and implementation costs. Please explain.

18. We solicit comment on whether any costs associated with the proposed modified uptick rule and proposed uptick rule would be incurred on a one-time or ongoing basis, as well as cost estimates. In addition, we seek comment as to whether the exceptions to the proposed modified uptick rule or proposed uptick rule would decrease or increase any costs for any market participants. We seek comment about any other costs and cost reductions associated with the proposed amendments.

19. Would the proposed short sale price tests increase the costs of legitimate short selling and lessen some of the benefits of legitimate short selling, which, in turn, could result in a reduction of short selling? To what extent, if any, would the proposed short sale price tests impact legitimate short selling and market efficiency?

20. We seek comment regarding types of entities that would be affected, and the manner in which they would be affected, by the proposed amendments.

21. We seek specific comments on the costs associated with systems changes for trading centers and broker-dealers, including the type of systems changes necessary and quantification of costs associated with changing the systems, including both start-up costs and maintenance. We request comments on the types of jobs and staff that would be affected by systems modifications and training with respect to the proposed modified uptick rule or proposed uptick rule, the number of labor hours that would be required to accomplish these matters, and the compensation rates of these staff members.

22. Would reinstating a short sale price test restriction such as the proposed modified uptick rule or proposed uptick rule help restore investor confidence? If so, why? If not, why not? We note that short selling provides the market with important benefits, including market liquidity and pricing efficiency.[428] What effect, if any, would the proposed modified uptick rule have on market liquidity? What effect, if any, would the proposed modified uptick rule have on pricing efficiency? Please provide empirical data in support of any arguments and/or analyses.

23. Should short sales be subject to a short sale price test restriction, or should we continue to rely on current short sale regulations, as well as anti-fraud and anti-manipulation provisions of the securities laws to address issues raised by potentially abusive short selling? What would be the costs and benefits of subjecting short sales to a short sale price test restriction versus the current short sale regulations, as well as anti-fraud and anti-manipulation provisions of the securities laws?

24. We request comments on whether the pricing of securities affected by any short sale price test would be more or less efficient.

25. We request comments on whether the pricing of securities affected by the proposed modified uptick rule would be more or less efficient.

26. We request comments on whether the pricing of securities affected by the proposed uptick rule would be more or less efficient.

27. If a short sale price test restriction were introduced, the rule would require some commitment of resources associated with compliance oversight, market surveillance, and enforcement. What would be the associated opportunity costs? What level of additional resources would be needed for that oversight, surveillance, and enforcement?

Questions Regarding Proposed Circuit Breaker Halt Rule

1. The Commission believes that the erosion of investor confidence and questions concerning the volatility in the securities markets necessitate review of various alternatives with respect to short selling restrictions. Would the proposed circuit breaker halt rule be more appropriate than a market-wide short sale price test restriction in current market conditions? If so, why? If not, why not? Would the proposed circuit breaker halt rule provide more potential benefit to the market than a market-wide short sale price test restriction? Please explain. For example, would the proposed circuit breaker halt rule be a more appropriate means for the Commission to achieve the objective, helping to prevent short selling from being used as a tool to drive down the market? Please explain. Would the

[428] *See* Section II.A.

proposed circuit breaker halt rule help to address the Commission's concerns regarding investor confidence? If so, why and how? If not, why not?

2. Would implementation of the proposed circuit breaker halt rule be less or more costly than the implementation of a market-wide short sale price test restriction? Would the proposed circuit breaker halt rule that, when triggered, would impose a temporary halt on short selling be more or less costly than one that resulted in a short sale price test restriction? Please explain. Would the proposed circuit breaker halt rule be generally easier to implement in a post-Regulation NMS environment than a market-wide short sale price test restriction such as the proposed modified uptick rule, or the proposed uptick rule? Are there any additional costs associated with multiple day circuit breakers when compared to same day circuit breakers?

3. Should the proposed circuit breaker halt rule be adopted in addition to a permanent, market-wide short sale price test restriction rule? Thus, while a short sale price test restriction rule would be in place as a permanent, market-wide rule, a circuit breaker would also trigger a short selling halt in any security that suffers a severe price decline. Please describe the advantages and disadvantages of such an approach.

4. What would be the relative advantages and disadvantages of a short sale price test combined with a circuit breaker halt rule versus those of a short selling circuit breaker with short sale price test restrictions? Please explain.

5. The Commission is seeking comment on the potential impact of the proposed circuit breaker halt rule on market function and efficiency. What would be the impact of the proposed circuit breaker halt rule, when triggered, on the liquidity of individual securities? What would be the impact of the proposed circuit breaker halt rule on capital formation? What would be the impact of the proposed circuit breaker halt rule on price discovery? Would different circuit breaker alternatives have different impacts on liquidity, capital formation and price discovery? Would a multiple circuit breaker impose any unique costs? Please explain.

6. Should the percentage decline be linked to the stock's price level such that stocks with lower prices must experience a greater percentage decline before the circuit breaker is triggered? If so, what thresholds are appropriate? Please explain. If the percentage decline is linked to price level, what additional operational burdens would be experienced if stock values were required to be continuously monitored due to frequent fluctuation? Please explain. What costs and benefits may accrue from having the decline based on a dollar amount rather than a value derived from a percentage of the share value? What potential problems or benefits may arise from pegging a short selling circuit breaker threshold to a decline in a stock's dollar amount? Please explain.

7. What other benefits, beyond those discussed herein, would be associated with the proposed circuit breaker halt rule? Would the proposed circuit breaker halt rule help stabilize the market for the individual security? If so, why? If not, why not? Would the proposed circuit breaker halt rule benefit investors by allowing the market to ''cool off'' with respect to that individual security? Please explain. Would the proposed circuit breaker halt rule result in an increase in investor confidence? Please explain.

8. What costs, beyond those discussed herein, would be incurred in terms of implementing the proposed circuit breaker halt rule? Please explain. What would it cost to update systems in a manner necessary to ensure compliance with the proposed circuit breaker halt rule? Would the expenditure necessary to ensure compliance be primarily an ''up-front'' cost? Would the expenditure necessary to ensure compliance require long-term investment? Please explain. What technological challenges would be encountered in updating systems to ensure compliance with the proposed circuit breaker halt rule? Please explain. How long would it take to update systems in a manner that ensured compliance with the proposed circuit breaker halt rule? Please explain.

9. What would be the costs and benefits associated with the proposed bona fide market making exception to the proposed circuit breaker halt rule? Please explain. What would be the costs and benefits associated with the proposed exception that would allow short sales that occur as a result of automatic exercise or assignment of an equity option held prior to the effectiveness of the short selling halt due to expiration of the option? Please explain. What would be the costs and benefits associated with the proposed exception for options market makers selling short as part of bona fide market making and hedging activities related directly to bona fide market making in derivatives on the individual security subject to the halt? Please explain.

Questions Regarding Proposed Circuit Breaker Price Test Rules

1. What benefits, beyond those discussed herein, would be associated with the proposed circuit breaker price test rules? Would the proposed circuit breaker price test rules help stabilize the market for the individual security? If so, why? If not, why not? Would the proposed circuit breaker price test rules benefit investors by allowing the market to ''cool off'' with respect to that individual security? Please explain. Would the proposed circuit breaker price test rules result in an increase in investor confidence? Please explain.

2. What would be the benefits of the proposed circuit breaker price test rules versus a permanent, market-wide short sale price test such as the modified uptick rule or the proposed uptick rule? Please explain and support explanations with data and analysis where appropriate.

3. What costs would be associated with implementing the proposed circuit breaker modified uptick rule? Please explain. What costs would be associated with implementing the proposed circuit breaker uptick rule? What would be the degree of financial expenditure involved in updating systems in a manner necessary to ensure compliance with each proposed circuit breaker price test rule? Would the expenditure necessary to ensure compliance be primarily an ''up-front'' cost? Would the expenditure necessary to ensure compliance require long-term investment? Please explain. How would the costs of each of the proposed circuit breaker price test rules compare with the costs of permanent short sale price tests such as the proposed modified uptick rule or the proposed uptick rule? Please explain.

4. What technological challenges would be encountered in updating systems to ensure compliance with each of the proposed circuit breaker price test rules on individual securities? Please explain. How long would it take to update systems in a manner that ensured compliance? Please explain. Would either of the proposed circuit breaker price test rules impede the efficient functioning of the equity markets? If so, why? If not, why not? Please explain. Are there any other operational challenges that may arise from implementing either of the proposed circuit breaker price test rules? Please explain. Would the operational challenges presented impede the effectiveness of the proposed circuit breaker modified uptick rule? Please explain. Would the operational challenges presented impede the effectiveness of the proposed circuit breaker uptick rule? Please explain.

5. Are there other short sale price test restrictions, beyond those discussed herein, that should be considered in

combination with proposed circuit breaker price test rules? Please explain.

6. What would be the benefits and costs associated with the proposed exceptions to the proposed circuit breaker modified uptick rule? Please explain. What would be the benefits and costs associated with the proposed exceptions to the proposed circuit breaker uptick rule? Please explain.

7. What would be the benefits and costs associated with a circuit breaker rule that, when triggered, would prohibit short selling in a particular NMS security on a down-bid unless the short sale is effected at a price that is more than 10% greater than the prior day's closing price? Please explain.

Questions Regarding Proposed Marking Requirements

1. What, if any, additional benefits or costs, beyond those discussed herein, would result from complying with the ''short exempt'' marking requirements under the proposed amendments to Rules 200(g) and 200(g)(2)? What would be the types of additional benefits, and what would be the amounts? What would be the types of additional costs, and what would be the amounts? Who would bear these costs? Should the proposed ''short exempt'' marking requirements be modified in any way to mitigate costs? If so, how?

2. Would there be any operational or compliance concerns associated with the proposed ''short exempt'' marking requirements?

3. What types of costs, if any, would be associated with requiring sell orders be marked ''short exempt'' only if the provisions of paragraph (c) or (d) of the proposed modified uptick rule (or paragraph (c) or (d) of the proposed circuit breaker modified uptick rule) are met? What type of costs, if any, would be associated with requiring sell orders to be marked ''short exempt'' when relying on an exception to the proposed uptick rule (or the proposed circuit breaker uptick rule)? What type of costs, if any, would be associated with requiring sell orders to be marked ''short exempt'' when relying on an exception to the proposed circuit breaker halt rule?

4. What would be a sufficient implementation period for making any systems changes necessary to allow sell orders to be marked ''short exempt''?

5. Please describe any anticipated difficulties in complying with ''short exempt'' marking requirements.

6. The short sales that qualify for the ''broker-dealer'' provision in proposed Rule 201(c) are still subject to the provisions of the proposed modified uptick rule and would be required to be marked as ''short exempt.'' Should these short sales be marked as ''short exempt'' or is another mark more appropriate? What effect, if any, would marking these short sales as ''short exempt'' have on compliance or surveillance relative to another mark? What would be the costs associated with implementing a mark especially for these short sales?

X. Consideration of Burden on Competition and Promotion of Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action would promote efficiency, competition, and capital formation.[429] In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition.[430] Exchange Act Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

We believe the proposed amendments might have minimal impact on the promotion of price efficiency and capital formation. The two alternative short sale price tests proposed are designed to allow relatively unrestricted short selling in an advancing market. In addition, the short sale price tests would restrict short selling at successively lower prices and, thereby, might help prevent short selling, including potentially abusive or manipulative short selling, from being used as a tool for driving the market down or from being used to accelerate a declining market by exhausting all remaining bids at one price level, causing successively lower prices to be established by long sellers. Further, by seeking to advance these goals, the two alternative short sale price tests might help restore investor confidence in the securities markets.[431]

If the proposed short sale price test restrictions help address the erosion of investor confidence in our markets, the proposed amendments might help to facilitate and maintain stability in the markets and help ensure that they function efficiently. Bolstering investor confidence in the markets could help to encourage investors to be more willing to invest in the market, thus adding depth and liquidity to the markets and promoting the ability of listed companies to raise capital.

In particular, by proposing to require trading centers to establish, maintain, and enforce written policies and procedures reasonably designed to help prevent the execution or display of a short sale order at a down-bid price, in the case of the proposed modified uptick rule, or prohibiting persons from effecting short sales below the last sale price, in the case of the proposed uptick rule, the proposed short sale price test restrictions might help prevent short selling, including potentially abusive or manipulative short selling, from being used as a tool for driving the market down or from being used to accelerate a declining market by exhausting all remaining bids at one price level, causing successively lower prices to be established by long sellers. By doing so, the proposed amendments might help to facilitate and maintain stability to the markets and help ensure that they function efficiently.

In addition, the proposed short sale price tests might help preserve instant execution and liquidity, by allowing relatively unrestricted short selling in an advancing market. As discussed above, one of the benefits of legitimate short selling is that it provides market liquidity by, for example, adding to the selling interest of stock available to purchasers, and, when sellers are covering their short sales, adding to the buying interest of stock available to sellers. Thus, the proposed short sale price tests are designed to help reduce the potential harm toward the useful market purposes served by short selling by allowing relatively unrestricted short selling in an advancing market.

Moreover, unlike the former short sale price tests (including former Rule 10a–1), the proposed short sale price test restrictions would apply a uniform rule to trades in the same securities that occur in multiple, dispersed, and diverse markets. Under the proposed short sale price test restrictions, all covered securities, wherever traded, would be subject to the same short sale price test. As such, the proposed short sale price test restrictions would not result in the type of disparate short sale regulation that existed under former Rule 10a–1 (in which different price tests were applied in different markets, potentially resulting in confusion, compliance difficulties, regulatory arbitrage, and an un-level playing field

[429] 15 U.S.C. 78c(f).

[430] 15 U.S.C. 78w(a)(2).

[431] *See supra* Section II.C., above (discussing restoring investor confidence).

among market participants).[432] This might help to avoid undermining competition and efficiency in the market.

In addition, the proposed short sale price tests include a number of provisions that are designed to help promote market efficiency and liquidity, while at the same time helping to promote the goals of our proposing at this time short sale price test restrictions and alternative circuit breaker rules. Moreover, the proposed modified uptick rule (and proposed circuit breaker modified uptick rule) is designed to provide trading centers and their customers with flexibility in determining how to handle orders that are not immediately executable or displayable by the trading center because the order is impermissibly priced. For example, if an order is impermissibly priced, a trading center could re-price the order at the lowest permissible price, execute the order immediately if the order is marketable at its new price, or hold it for later execution at its new price or better.[433] As quoted prices change, the proposed rule would allow a trading center to repeatedly re-price and display an order at the lowest permissible price down to the order's original limit order price (or, if a market order, until the order is filled). Permitting a trading center to re-price an impermissibly priced short sale order might help to allow for the more efficient functioning of the markets because trading centers would not have to reject or cancel impermissibly priced orders unless instructed to do so by the trading center's customer submitting the short sale order.

In addition, the proposed circuit breaker rules would be designed to target only those securities that experience severe intraday declines and, therefore, might also help prevent short selling, including potentially abusive or manipulative short selling, from being used as a tool for driving the market down or from being used to accelerate a declining market where needed most. By doing so, the proposed circuit breaker rules might help restore confidence in the securities markets[434] and, in turn, might help stabilize the market for individual securities during times of substantial uncertainty and help ensure that the markets function efficiently. Bolstering investor confidence in the markets might help to encourage investors to be more willing to invest in the market during times of substantial uncertainty, thus adding depth and liquidity to the markets and promoting capital formation.

For example, by halting short selling for the remainder of the trading day following a significant decline in a security's price, we believe the proposed circuit breaker halt rule, in particular, would be designed to provide sufficient time to re-establish equilibrium between buying and selling interests in the individual security in an orderly fashion. It would also be designed to help ensure that market participants have a reasonable opportunity to become aware of, and respond to, a significant decline in a security's price. By providing a pause in short selling resulting from a significant decline in the price of an individual equity security, we believe the proposed circuit breaker halt rule might provide a measure of stability to the markets. However, by allowing short selling to continue with price test restrictions once a circuit breaker was triggered, the proposed circuit breaker price test rules might have less impact on legitimate short selling and normal market activity including price discovery and the provision of liquidity than a circuit breaker with halt on short selling.

By targeting only those securities that experience severe intraday declines, all three proposed circuit breaker rules would be narrowly tailored so that most stocks would not fall under any new short sale restrictions. As such, the proposed circuit breaker rules might help preserve instant execution and liquidity. As discussed above, one of the benefits of legitimate short selling is that it provides market liquidity by, for example, adding to the selling interest of stock available to purchasers, and, when sellers are covering their short sales, adding to the buying interest of stock available to sellers. Thus, the proposed circuit breaker rules are designed to help reduce the potential harm toward the useful market purposes served by short selling by targeting only those securities that experience severe intraday declines.

In addition, the proposed amendment to Rule 200(g)(2) of Regulation SHO to require broker-dealers to mark a sale order as ''short exempt'' if the provisions of paragraph (c) or (d) of the proposed modified uptick rule (or paragraph (c) or (d) of the proposed circuit breaker modified uptick rule) are met, or if the seller is relying on an exception in paragraph (c) of the proposed uptick rule (or paragraph (c) of the proposed circuit breaker uptick rule), or if the seller is relying on an exception in paragraph (c) of the proposed circuit breaker halt rule, could help to promote price efficiency by helping to preserve instant execution and liquidity of such orders.

In addition, we believe that the proposed amendments would not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. We believe the proposed short sale price test restrictions and the proposed circuit breaker rules might help to avoid undermining competition by imposing a uniform price test on all similarly situated entities or individuals subject to the proposed amendments. We recognize, however, that the proposed three-month implementation period for the proposed short sale price test restrictions may not be sufficient for certain smaller broker-dealers and that any potential compliance costs associated with the short sale price test restrictions could likely disproportionately burden these smaller broker-dealers in terms of reduced order flow, thereby impeding competition.[435] However, we believe the proposed circuit breaker halt rule, in particular, might help to avoid undermining competition in that it may require less time and significantly less costs for implementation and compliance with its requirements.[436] In addition, the proposed ''short exempt'' marking requirements would apply to all NMS stocks wherever traded, thereby providing a uniform practice designed to ensure consistency within the equity markets. Moreover, the proposed amendments could help to address any possibility that abusive or manipulative short selling might be contributing to the disruption in the markets and, therefore, could help to address the erosion of investor confidence in the markets.

We request comment on whether the proposed amendments would likely promote efficiency, capital formation, and competition.

[432] *See supra* note 27 (discussing disparate short sale regulation under former Rule 10a–1).

[433] For example, if a trading center received a short sale order priced at $47.00 when the current national best bid in the security was $47.00, but the immediately preceding national best bid was $47.01 (*i.e.,* the current bid was below the previous bid), the trading center could re-price the order at the permissible offer price of $47.01, and display the order for execution at this new limit price.

[434] *See supra* Section II.C. above (discussing restoring investor confidence).

[435] *See* letter from Credit Suisse (discussing need for a much longer implementation period, particularly for smaller broker-dealers, and how compliance costs of a bid or tick test would likely disproportionately burden smaller broker-dealers and impede competition by forcing these smaller broker-dealers to route their flow through a handful of larger broker-dealers).

[436] *See id.*

XI. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or ''SBREFA,'' [437] we must advise the Office of Management and Budget as to whether the proposed regulation constitutes a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results or is likely to result in:

- An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effect on competition, investment or innovation.

If a rule is ''major,'' its effectiveness will generally be delayed for 60 days pending Congressional review. We request comment on the potential impact of the proposed amendments on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their view to the extent possible.

XII. Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA''), in accordance with the provisions of the Regulatory Flexibility Act,[438] regarding the proposed amendments to Rules 200(g) and 201 of Regulation SHO under the Exchange Act.

A. Reasons for the Proposed Action

We are proposing to amend Regulation SHO to impose a short sale price test that would restrict the prices at which certain securities may be sold short. We are also proposing as alternatives to a full-time price short sale price test two alternative circuit breaker rules. As discussed above, we believe it is appropriate at this time to examine and seek comment on whether to restore short sale price tests in light of the extreme market conditions that we are currently facing and the resulting deterioration in investor confidence.

We are proposing two alternative short sale price tests. The first test would be the proposed modified uptick rule that would be based on the national best bid. The second test would be the proposed uptick rule that would be a modernized version of the tick test under former Rule 10a–1, and would be based on a last sale price. We are also proposing, as alternatives to a full-time short sale price test, circuit breaker rules that would establish limitations on short selling in a particular security during severe market declines in the price of that security. The proposed circuit breaker halt rule, when triggered by a severe price decline in a particular security, would temporarily prohibit any person from selling short that security during the effectiveness of the circuit breaker.[439] The proposed circuit breaker price test rules, when triggered by a severe market decline in a particular security, would temporarily establish either the proposed modified uptick rule or the proposed uptick rule, as each are described in detail above, for that security.[440]

In addition, we are proposing amendments to Rule 200(g) of Regulation SHO to impose a ''short exempt'' marking requirement and to Rule 200(g)(2) of Regulation SHO to require broker-dealers to mark a sell order ''short exempt'' only if the provisions in paragraph (c) or (d) of the proposed modified uptick rule (or paragraph (c) or (d) of the proposed circuit breaker modified uptick rule) are met, or if a seller is relying on an exception in paragraph (c) of the proposed uptick rule (or paragraph (c) of the proposed circuit breaker uptick rule), or if a seller is relying on an exception in paragraph (c) of the proposed circuit breaker halt rule.

B. Objectives

The two alternative short sale price tests proposed are designed to allow relatively unrestricted short selling in an advancing market. In addition, the short sale price tests are designed to restrict short selling at successively lower prices and, thereby, might help prevent short selling, including potentially abusive or manipulative short selling, from being used as a tool for driving the market down or from being used to accelerate a declining market by exhausting all remaining bids at one price level, causing successively lower prices to be established by long sellers. Further, by seeking to advance these goals, the two alternative short sale price tests would also be designed to help restore investor confidence in the securities markets.

Moreover, the proposed alternative circuit breaker rules would be designed to target only those securities that experience severe intraday declines and, therefore, might also help prevent short selling, including potentially abusive or manipulative short selling, from being used as a tool for driving the market down or from being used to accelerate a declining market when needed most.

C. Legal Basis

Pursuant to the Exchange Act and particularly, Sections 2, 3(b), 6, 9(h), 10, 11A, 15, 15A, 17, 19, 23(a), and 36 thereof, 15 U.S.C. 78b, 78c(b), 78(f), 78i(h), 78j, 78k–1, 78o, 78o–3, 78q, 78s, 78w(a), and 78mm the Commission is proposing amendments to §§ 242.200 and 242.201 of Regulation SHO.

D. Small Entities Subject to the Proposed Amendments

The proposed modified uptick rule and proposed circuit breaker modified uptick rule would require each trading center to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order at a down-bid price.[441] A ''trading center'' is defined as ''a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker-dealer that executes orders internally by trading as principal or crossing orders as agent.'' [442]

Rule 0–10(e) under the Exchange Act provides that the term ''small business'' or ''small organization,'' when referring to an exchange, means any exchange that: (i) Has been exempted from the reporting requirements of Rule 601 under the Exchange Act; [443] and (ii) is not affiliated with any person (other than a natural person) that is not a small business or small organization, as defined by Rule 0–10.[444] No national securities exchanges are small entities because none meet these criteria. There is one national securities association (FINRA) that would be subject to the proposed modified uptick rule. FINRA is not a small entity as defined by 13 CFR 121.201. Thus, the current national securities exchanges and one national securities association that would be subject to the proposed modified uptick rule are not considered ''small entities'' for purposes of the Regulatory Flexibility Act.

The remaining non-SRO trading centers that would be subject to the proposed modified uptick rule or the proposed circuit breaker modified

[437] Public Law 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. and as a note to 5 U.S.C. 601).

[438] 5 U.S.C. 603.

[439] The proposed circuit breaker halt rule could be imposed in place of, or in addition to, a permanent short sale price restriction rule.

[440] A circuit breaker that triggers a short sale price test rule would be adopted in place of a short sale price test rule.

[441] *See* proposed Rule 201(b)(1).

[442] *See* 17 CFR 242.600(b)(78).

[443] 17 CFR 242.601.

[444] *See* 17 CFR 240.0–10(e) and 13 CFR 121.201.

uptick rule are registered broker-dealers. The Commission has preliminarily determined that approximately 372 broker-dealers registered with the Commission that could meet the proposed definition of a trading center,[445] which includes broker-dealers operating as equity ATSs, broker-dealers registered as market makers or specialists in NMS stocks, and any broker-dealer that is in the business of executing orders internally in NMS stocks. Pursuant to Rule 0–10(c) under the Exchange Act, 17 CFR 240.0–10(c), a broker-dealer is defined as a small entity for purposes of the Exchange Act and the Regulatory Flexibility Act if the broker-dealer had a total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared, and it is not affiliated with any person (other than a natural person) that is not a small entity.[446] Of these 372 non-SRO trading centers, only five[447] are considered small for purposes of the Regulatory Flexibility Act pursuant to the standards of Rule 0–10(c) under the Exchange Act.

The entities covered by the proposed uptick rule, the proposed circuit breaker uptick rule, the proposed circuit breaker halt rule, and the proposed ''short exempt'' marking requirements, would include small entities that are small broker-dealers, small businesses, and any investor who effected a short sale that qualifies as a small entity. Although we are not aware of data that is available to permit us to quantify every type of small entity covered by the proposed amendments, paragraph (c)(1) of Rule 0–10 under the Exchange Act, as mentioned above, states that the term ''small business'' or ''small organization,'' when referring to a broker-dealer, means a broker-dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to § 240.17a–5(d); and is not affiliated with any person (other than a natural person) that is not a small business or small organization. We estimate that as of 2007 there were approximately 896 broker-dealers that qualified as small entities as defined above.[448]

As mentioned above, paragraph (e) of Rule 0–10 under the Exchange Act[449] states that the term ''small business'' or ''small organization,'' when referring to an exchange, means any exchange that: (i) Has been exempted from the reporting requirements of Rule 11Aa3–1 under the Exchange Act; and (ii) is not affiliated with any person (other than a natural person) that is not a small business or small organization, as defined by Rule 0–10. As mentioned above, no U.S. registered exchange is a small entity because none meets these criteria. Any business, however, regardless of industry, could be subject to the proposed uptick rule and the proposed provisions contained in paragraph (c) and (d) of the proposed modified uptick rule (or paragraph (c) or (d) of the proposed circuit breaker modified uptick rule), or the exceptions contained in paragraph (c) of the proposed uptick rule (or paragraph (c) of the proposed circuit breaker uptick rule), or the exceptions contained in paragraph (c) of the proposed circuit breaker halt rule if it effects a short sale. The Commission believes that, except for the broker-dealers discussed above, it is not possible to estimate the number of small entities that would fall under the proposed amendments because we are not aware of data, including the number of investors, who do or will engage in short selling.

E. Projected Reporting, Recordkeeping and Other Compliance Requirements

The proposed amendment may impose some new or additional reporting, recordkeeping, or compliance costs on trading centers and other broker-dealers that are small entities. The proposed modified uptick rule would focus on a trading center's written policies and procedures as the mechanism through which to help prevent the execution or display of short sale orders on a down-bid price. In addition, the proposed modified uptick rule's ''broker-dealer'' provision (and the proposed circuit breaker modified uptick rule's ''broker-dealer'' provision) would include a policies and procedures requirement to help prevent incorrect identification of orders for purposes of the proposed ''broker-dealer'' provision. In order to comply with Regulation NMS when it became effective in 2005, entities were required to modify their systems and surveillance mechanisms in order to comply with the order protection rule's policies and procedures requirement. Thus, the five non-SRO trading centers that would qualify as small entities may already have in place most of the infrastructure necessary to comply with the proposed modified uptick rule (or the proposed circuit breaker modified uptick rule), if adopted.

In addition, in order to implement and comply with former Rule 10a–1, entities were required to modify their systems and surveillance mechanisms. Thus, the small entities that would be subject to the proposed uptick rule (or proposed circuit breaker uptick rule or proposed circuit breaker halt rule) may already be familiar with, and may have retained systems, that would aid in their implementation and compliance with the proposed uptick rule (or proposed circuit breaker uptick rule or proposed circuit breaker halt rule). Small entities, however, may still need to make some modifications to their systems and surveillance mechanisms to implement and ensure compliance with the proposed uptick rule (or proposed circuit breaker uptick rule or proposed circuit breaker halt rule), if adopted.[450]

In addition, the proposed amendment to Rule 200(g)(2) that would require that a sale order be marked ''short exempt'' only if the provisions of proposed Rule 201(c) or (d) of the proposed modified uptick rule (or proposed Rule 201(c) or (d) of the proposed circuit breaker modified uptick rule) are met, or if the seller is relying on an exception from the proposed uptick rule (or the proposed circuit breaker uptick rule), could impose some new or additional reporting, recordkeeping, or compliance costs on broker-dealers that are small entities. We believe, however, that such costs would not be significant. Rule 200(g) currently requires that broker-dealers mark all sell orders of any equity security as either ''long'' or ''short.''[451] Broker-dealers that are small entities should already be familiar with the current marking requirements and should already have in place mechanisms that could be used to comply with the proposed ''short exempt'' marking requirement if adopted.

F. Duplicative, Overlapping, or Conflicting Federal Rules

We believe that there are no rules that duplicate, overlap, or conflict with the proposed amendments to Rules 200(g) and 201 of Regulation SHO.

[445] *See supra* note 10.

[446] 17 CFR 240.0–10(c)(1).

[447] This number was derived from OEA's review of 2007 FOCUS Report filings and discussion with SRO staff.

[448] These numbers are based on OEA's review of 2007 FOCUS Report filings reflecting registered broker-dealers, including introducing broker-dealers. This number does not include broker-dealers that are delinquent on FOCUS Report filings.

[449] 17 CFR 240.0–10(e).

[450] *See* letter from Credit Suisse. *See also supra* note 122 and accompanying text.

[451] *See* 17 CFR 242.200(g).

G. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objective, while minimizing any significant adverse impact on small entities.[452] In connection with the proposed amendments, we considered the following alternatives: (i) Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) clarifying, consolidating, or simplifying compliance and reporting requirements under the rule for small entities; (iii) using performance rather than design standards; and (iv) exempting small entities from coverage of the rule, or any part of the rule.

A primary goal of the proposed amendments is to help restore investor confidence by restricting short selling at successively lower prices and, thereby, help prevent short selling, including potentially abusive or manipulative short selling, from being used as a tool for driving the market down or from being used to accelerate a declining market by exhausting all remaining bids at one price level, while at the same time allowing relatively unrestricted short selling in an advancing market. As such we believe that imposing different compliance requirements, and possibly a different timetable for implementing compliance requirements, for small entities would undermine the goal of restoring investor confidence. It also could create confusion in the market if some sellers were not required to comply. Further, it could undermine the goals of the proposed short sale price test restrictions or the proposed circuit breaker rules because it could provide an avenue for short sellers to evade the proposed amendments. In addition, we have concluded similarly that it is not consistent with the primary goal of the proposals to further clarify, consolidate or simplify the proposals for small entities. Finally, the proposals would impose performance standards rather than design standards.

H. General Request for Comments

We solicit written comments regarding our IRFA analysis. In particular, the Commission seeks comment on the number of small entities that would be affected by the proposed amendments. We request that commenters provide empirical data to quantify the number of small entities that could be affected by the proposed amendments. We request comment on whether the proposed amendments would have any effects that we have not discussed. We also request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

[452] *See* 5 U.S.C. 603(c).

XIII. Additional Request for Comment

In addition to the specific requests for comment found throughout this proposing release, we seek comment generally from all members of the public on all aspects of the proposed amendments to Rules 200(g) and 201 of Regulation SHO. We request that commenters provide empirical data to support their views and arguments related to these proposals. In addition to the questions set forth above, commenters are welcome to offer their views on any other matter raised by the proposed amendments to Regulation SHO. Specifically, are there any other possible restrictions on short selling that the Commission should consider, particularly ones that might be helpful in a severe market decline?

XIV. Statutory Authority

Pursuant to the Exchange Act and, particularly, Sections 2, 3(b), 6, 9(h), 10, 11A, 15, 15A, 17, 19, 23(a), and 36 thereof, 15 U.S.C. 78b, 78c(b), 78(f), 78i(h), 78j, 78k–1, 78o, 78o–3, 78q, 78s, 78w(a), and 78mm the Commission is proposing amendments to §§ 242.200 and 242.201 of Regulation SHO.

XV. Text of the Amendments to Regulation SHO

List of Subjects in 17 CFR Part 242

Brokers, Fraud, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, Title 17, Chapter II, Part 242, of the Code of Federal Regulations is proposed to be amended as follows.

PART 242—REGULATIONS M, SHO, ATS, AC, AND NMS AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

1. The authority citation for part 242 continues to read as follows:

Authority: Pursuant to the Exchange Act and, particularly, Sections 2, 3(b), 6, 9(h), 10, 11A, 15, 15A, 17, 19, 23(a), and 36 thereof, 15 U.S.C. 78b, 78c(b), 78(f), 78i(h), 78j, 78k–1, 78o, 78o–3, 78q, 78s, 78w(a), and 78mm the Commission is proposing amendments to §§ 242.200 and 242.201 of Regulation SHO.

Alternative I—Price Tests

A. Modified Uptick Rule

2. Section 242.200 is amended by revising paragraph (g) introductory text and adding paragraph (g)(2) to read as follows:

§ 242.200 Definition of ''short sale'' and marking requirements.

* * * * *

(g) A broker or dealer must mark all sell orders of any equity security as ''long,'' ''short,'' or ''short exempt.''

(1) * * *

(2) A sale order shall be marked ''short exempt'' only if the provisions of § 242.201(c) or (d) are met.

* * * * *

3. Section 242.201 is revised to read as follows:

§ 242.201 Price test.

(a) *Definitions.* For the purposes of this section:

(1) The term *covered security* shall mean any NMS stock as defined in § 242.600(b)(47).

(2) The term *down-bid price* shall mean a price that is less than the current national best bid or, if the last differently priced national best bid was greater than the current national best bid, a price that is less than or equal to the current national best bid.

(3) The term *national best bid* shall have the same meaning as in § 242.600(b)(42).

(4) The term *national market system plan* shall have the same meaning as in § 242.600(b)(43).

(5) The term *odd lot* shall have the same meaning as in § 242.600(b)(49).

(6) The term *riskless principal* shall mean a transaction in which a broker or dealer, after having received an order to buy a security, purchases the security as principal at the same price to satisfy the order to buy or, after having received an order to sell, sells the security as principal at the same price to satisfy the order to sell.

(7) The term *trading center* shall have the same meaning as in § 242.600(b)(78).

(b)(1) A trading center shall establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security at a down-bid price. *Provided, however,*

(i) The policies and procedures must be reasonably designed to permit the execution of a displayed short sale order of a covered security by a trading center if, at the time of display of the short sale order, the order was not at a down-bid price.

(ii) The policies and procedures must be reasonably designed to permit the execution or display of a short sale order of a covered security marked ''short exempt'' without regard to whether the order is at a down-bid price.

(2) A trading center shall regularly surveil to ascertain the effectiveness of the policies and procedures required by paragraph (b)(1) of this section and shall take prompt action to remedy deficiencies in such policies and procedures.

(c) A broker or dealer may mark a short sale order of a covered security ''short exempt'' if the broker or dealer that submits the order identifies that the order is not on a down-bid price at the time of submission of the order to the trading center. *Provided, however,*

(1) The broker or dealer that identifies a short sale order of a covered security in accordance with this paragraph must establish, maintain, and enforce written policies and procedures reasonably designed to prevent incorrect identification of orders for purposes of this paragraph; and

(2) The broker or dealer shall regularly surveil to ascertain the effectiveness of the policies and procedures required by paragraph (c) of this section and shall take prompt action to remedy deficiencies in such policies and procedures.

(d) A broker or dealer may mark a short sale order of a covered security ''short exempt'' if the broker or dealer has a reasonable basis to believe:

(1) The short sale order of a covered security is by a person that is deemed to own the covered security pursuant to § 242.200, provided that the person intends to deliver the security as soon as all restrictions on delivery have been removed.

(2) The short sale order of a covered security is by a market maker to off-set customer odd-lot orders or to liquidate an odd-lot position that changes such broker's or dealer's position by no more than a unit of trading.

(3) The short sale order of a covered security is for a good faith account by a person who then owns another security by virtue of which he is, or presently will be, entitled to acquire an equivalent number of securities of the same class as the securities sold; provided such sale, or the purchase which such sale offsets, is effected for the bona fide purpose of profiting from a current difference between the price of the security sold and the security owned and that such right of acquisition was originally attached to or represented by another security or was issued to all the holders of any such securities of the issuer.

(4) The short sale order of a covered security is for a good faith account submitted to profit from a current price difference between a security on a foreign securities market and a security on a securities market subject to the jurisdiction of the United States, provided that the short seller has an offer to buy on a foreign market that allows the seller to immediately cover the short sale at the time it was made. For the purposes of this section, a depository receipt of a security shall be deemed to be the same security as the security represented by such receipt.

(5)(i) The short sale order of a covered security is by an underwriter or member of a syndicate or group participating in the distribution of a security in connection with an over-allotment of securities; or

(ii) Any short sale order with respect to a lay-off sale by an underwriter or member of a syndicate or group in connection with a distribution of securities through a rights or standby underwriting commitment.

(6) The short sale order of a covered security is by a broker or dealer effecting the execution of a customer purchase or the execution of a customer ''long'' sale on a riskless principal basis; *provided, however,* the purchase or sell order must be given the same per-share price at which the broker or dealer sold shares to satisfy the facilitated order, exclusive of any explicitly disclosed markup or markdown, commission equivalent or other fee. In addition, for purposes of this section, a broker or dealer must have written policies and procedures in place to assure that, at a minimum: The customer order was received prior to the offsetting transaction; the offsetting transaction is allocated to a riskless principal or customer account within 60 seconds of execution; and the broker or dealer has supervisory systems in place to produce records that enable the broker or dealer to accurately and readily reconstruct, in a time-sequenced manner, all orders on which a broker or dealer relies pursuant to this exception.

(7) The short sale order is for the sale of a covered security at the volume weighted average price (VWAP) that meets the following criteria:

(i) The VWAP for the covered security is calculated by:

(A) Calculating the values for every regular way trade reported in the consolidated system for the security during the regular trading session, by multiplying each such price by the total number of shares traded at that price;

(B) Compiling an aggregate sum of all values; and

(C) Dividing the aggregate sum by the total number of reported shares for that day in the security.

(ii) The transactions are reported using a special VWAP trade modifier.

(iii) No short sales used to calculate the VWAP are marked ''short exempt.''

(iv) The VWAP matched security:

(A) Qualifies as an ''actively-traded security''; or

(B) The proposed short sale transaction is being conducted as part of a basket transaction of twenty or more securities in which the subject security does not comprise more than five percent of the value of the basket traded.

(v) The transaction is not effected for the purpose of creating actual, or apparent, active trading in or otherwise affecting the price of any security.

(vi) A broker or dealer shall be permitted to act as principal on the contra-side to fill customer short sale orders only if the broker's or dealer's position in the covered security, as committed by the broker or dealer during the pre-opening period of a trading day and aggregated across all of its customers who propose to sell short the same security on a VWAP basis, does not exceed 10% of the covered security's relevant average daily trading volume.

(e) No self-regulatory organization shall have any rule that is not in conformity with, or conflicts with this section.

(f) The provisions of this section shall apply to short sale orders in a covered security at times when a national best bid for the covered security is calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan.

(g) Upon written application or upon its own motion, the Commission may grant an exemption from the provisions of this section, either unconditionally or on specified terms and conditions, to any person or class of persons, to any transaction or class of transactions, or to any security or class of securities to the extent that such exemption is necessary or appropriate, in the public interest, and is consistent with the protection of investors.

B. Uptick Rule

2. Section 242.200 is amended by revising paragraph (g) introductory text and adding paragraph (g)(2) to read as follows:

§ 242.200 Definition of ''short sale'' and marking requirements.

* * * * *

(g) A broker or dealer must mark all sell orders of any equity security as ''long,'' ''short,'' or ''short exempt.''

(1) * * *

(2) A sale order shall be marked ''short exempt'' if the seller is relying on an exception from the price test of § 242.201.

* * * * *

3. Section 242.201 is revised to read as follows:

§ 242.201 Price test.

(a) *Definitions.* For the purposes of this section:

(1) The term *actively traded security* shall have the same meaning as in § 242.101(c)(1).

(2) The term *average daily trading volume* shall have the same meaning as in § 242.100(b).

(3) The term *national market system plan* shall have the same meaning as in § 242.600(b)(43).

(4) The term *covered security* shall mean any NMS stock as defined in § 242.600(b)(47).

(5) The term *odd lot* shall have the same meaning as in § 242.600(b)(49).

(6) The term *riskless principal* shall mean a transaction in which a broker or dealer, after having received an order to buy a security, purchases the security as principal at the same price to satisfy the order to buy or, after having received an order to sell, sells the security as principal at the same price to satisfy the order to sell.

(b) No person shall, for his own account or for the account of any other person, effect a short sale of any covered security, if trades in such security are reported pursuant to an effective national market system plan and information as to such trades is made available in accordance with such plan on a real-time basis to vendors of market transaction information:

(1) Below the price at which the last sale thereof, regular way, was reported pursuant to an effective national market system plan; or

(2) At such price unless such price is above the next preceding different price at which a sale of such security, regular way, was reported pursuant to an effective national market system plan.

(c) The provisions of paragraph (b) of this section shall not apply to:

(1) Any sale by any person of a covered security that the person is deemed to own pursuant to § 242.200, provided that the person intends to deliver the security as soon as all restrictions on delivery have been removed.

(2) Any sale by a broker or dealer of a covered security for an account in which it has no interest, pursuant to an order marked long.

(3) Any sale of a covered security by a market maker to off-set customer odd-lot orders or to liquidate an odd-lot position which changes such broker's or dealer's position by no more than a unit of trading.

(4) Any sale of a covered security for a good faith account by a person who then owns another security by virtue of which he is, or presently will be, entitled to acquire an equivalent number of securities of the same class as the securities sold; provided such sale, or the purchase which such sale offsets, is effected for the bona fide purpose of profiting from a current difference between the price of the security sold and the security owned and that such right of acquisition was originally attached to or represented by another security or was issued to all the holders of any such securities of the issuer.

(5) Any sale of a covered security for a good faith account submitted to profit from a current price difference between a security on a foreign securities market and a security on a securities market subject to the jurisdiction of the United States, provided that the short seller has an offer to buy on a foreign market that allows the seller to immediately cover the short sale at the time it was made. For the purposes of this section, a depository receipt of a security shall be deemed to be the same security as the security represented by such receipt.

(6)(i) Any sale of a covered security by an underwriter or member of a syndicate or group participating in the distribution of a security in connection with an over-allotment of securities; or

(ii) Any lay-off sale by an underwriter or member of a syndicate or group in connection with a distribution of securities through a rights or standby underwriting commitment.

(7) Any sale of a covered security at the volume weighted average price (VWAP) that meets the following criteria:

(i) The VWAP for the covered security is calculated by:

(A) Calculating the values for every regular way trade reported in the consolidated system for the security during the regular trading session, by multiplying each such price by the total number of shares traded at that price;

(B) Compiling an aggregate sum of all values; and

(C) Dividing the aggregate sum by the total number of reported shares for that day in the security.

(ii) The transactions are reported using a special VWAP trade modifier.

(iii) No short sales used to calculate the VWAP are marked ''short exempt'';

(iv) The VWAP matched security:

(A) Qualifies as an ''actively-traded security''; or

(B) The proposed short sale transaction is being conducted as part of a basket transaction of twenty or more securities in which the subject security does not comprise more than five percent of the value of the basket traded.

(v) The transaction is not effected for the purpose of creating actual, or apparent, active trading in or otherwise affecting the price of any security.

(vi) A broker or dealer shall be permitted to act as principal on the contra-side to fill customer short sale orders only if the broker's or dealer's position in the covered security, as committed by the broker or dealer during the pre-opening period of a trading day and aggregated across all of its customers who propose to sell short the same security on a VWAP basis, does not exceed 10% of the covered security's relevant average daily trading volume.

(8) Any sale of a covered security in an electronic trading system that matches buying and selling interest at various times throughout the day that meets the following criteria:

(i) Matches occur at an externally derived price within the existing market and above the current national best bid;

(ii) Sellers and purchasers are not assured of receiving a matching order;

(iii) Sellers and purchasers do not know when a match will occur;

(iv) Persons relying on the exception contained in paragraph (c)(8) of this section shall not be represented in the primary market offer or otherwise influence the primary market bid or offer at the time of the transaction;

(v) Transactions shall not be made for the purpose of creating actual, or apparent, active trading in, or depressing or otherwise manipulating the price of, any security;

(vi) The covered security:

(A) Qualifies as an ''actively-traded security''; or

(B) The proposed short sale transaction is being conducted as part of a basket transaction of twenty or more securities in which the subject security does not comprise more than five percent of the value of the basket traded; and

(vii) During the period of time in which the electronic trading system may match buying and selling interest, there can be no solicitation of customer orders, or any communication with customers that the match has not yet occurred.

(9) Any sale of a covered security by a broker or dealer effecting the execution of a customer purchase or the execution of a customer ''long'' sale on a riskless principal basis; *provided, however,* the purchase or sell order must be given the same per-share price at which the broker or dealer sold shares to satisfy the facilitated order, exclusive of any explicitly disclosed markup or markdown, commission equivalent or other fee. In addition, for purposes of

this section, a broker or dealer must have written policies and procedures in place to assure that, at a minimum: The customer order was received prior to the offsetting transaction; the offsetting transaction is allocated to a riskless principal or customer account within 60 seconds of execution; and the broker or dealer has supervisory systems in place to produce records that enable the broker or dealer to accurately and readily reconstruct, in a time-sequenced manner, all orders on which a broker or dealer relies pursuant to this exception.

(10) Any sale of a covered security (except a sale to a stabilizing bid complying with § 242.104) by a registered specialist or registered exchange market maker for its own account on any exchange with which it is registered for such security, or by a third market maker for its own account over-the-counter:

(i) Effected at a price equal to the most recent offer communicated for the security by such registered specialist, registered exchange market maker or third market maker to an exchange or a national securities association (''association'') pursuant to § 242.602, if such offer, when communicated, was equal to or above the last sale, regular way, reported for such security pursuant to an effective national market system plan. Provided, however,

(ii) That any self-regulatory organization, by rule, may prohibit its registered specialist and registered exchange market makers from availing themselves of the exemption afforded by this paragraph (c)(10) if that self-regulatory organization determines that such action is necessary or appropriate in its market in the public interest or for the protection of investors.

(11) Any sale of a covered security (except a sale to a stabilizing bid complying with § 242.104) by any broker or dealer, for his own account or for the account of any other person, effected at a price equal to the most recent offer communicated by such broker or dealer to an exchange or association pursuant to § 242.602 in an amount less than or equal to the quotation size associated with such offer, if such offer, when communicated, was:

(i) Above the price at which the last sale, regular way, for such security was reported pursuant to an effective national market system plan; or

(ii) At such last sale price, if such last sale price is above the next preceding different price at which a sale of such security, regular way, was reported pursuant to an effective national market system plan.

(12) Any sale of a security by a registered market maker or specialist publishing two-sided quotes to facilitate customer market or marketable limit buy orders.

(d) No self-regulatory organization shall have any rule that is not in conformity with, or conflicts with this section.

(e) The provisions of this section shall apply to short sale orders in a covered security at times when a last sale price for the covered security is calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan.

(f) Upon written application or upon its own motion, the Commission may grant an exemption from the provisions of this section, either unconditionally or on specified terms and conditions, to any person or class of persons, to any transaction or class of transactions, or to any security or class of securities to the extent that such exemption is necessary or appropriate, in the public interest, and is consistent with the protection of investors.

Alternative II—Circuit Breaker Rules

A. Circuit Breaker Halt Rule

2. Section 242.200 is amended by revising paragraph (g) introductory text and adding paragraph (g)(2) to read as follows:

§ 242.200 Definition of ''short sale'' and marking requirements.

* * * * *

(g) A broker or dealer must mark all sell orders of any equity security as ''long,'' ''short,'' or ''short exempt.''

(1) * * *

(2) A sale order shall be marked ''short exempt'' if the seller is relying on an exception from the prohibition against short selling of § 242.201.

* * * * *

3. Section 242.201 is revised to read as follows:

§ 242.201 Circuit breaker.

(a) *Definitions.* For the purposes of this section:

(1) The term *covered security* shall mean any NMS stock as defined in § 242.600(b)(47).

(2) The term *regular trading hours* shall have the same meaning as in § 242.600(b)(64).

(3) The term *national market system plan* shall have the same meaning as in § 242.600(b)(43).

(b) If the price of a covered security, as reported in the consolidated system, decreases by ten percent or more from that covered security's last price reported during regular trading hours the prior day, as reported in the consolidated system, no person shall, for his own account or for the account of any other person, effect a short sale of that covered security, wherever traded, at times when a last sale price for the covered security is calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan, for the remainder of the day.

(c) The provisions of paragraph (b) of this section shall not apply if the decrease in the price of a covered security occurs within thirty minutes from the end of regular trading hours.

(d) The provisions of paragraph (b) of this section shall not apply to:

(1) Any sale of a covered security by a registered market maker, block positioner, or other market maker obligated to quote in the over-the-counter market, in each case that are selling short a covered security as part of bona fide market making in such covered security.

(2) Any sale of a covered security by any person as a result of automatic exercise or assignment of an equity option, or in connection with a futures contract, that is held prior to the trigger event identified in paragraph (b) of this section due to expiration of the option or futures contract.

(3) Any sale of a covered security by any person that is the writer of a call option if the sale is as a result of assignment following exercise by the holder of the call.

(4) Any sale of a covered security by any person that is a market maker, including an over-the-counter market maker, if the sale is part of a bona fide market making and hedging activity related directly to bona fide market making in: (i) Derivative securities based on that covered security; or (ii) exchange traded funds and exchange traded notes of which that covered security is a component.

(5) Any sale of a covered security by any person that is deemed to own the covered security pursuant to § 242.200, provided that the person intends to deliver the security as soon as all restrictions on delivery have been removed.

(e) No self-regulatory organization shall have any rule that is not in conformity with, or conflicts with, this section.

(f) Upon written application or upon its own motion, the Commission may grant an exemption from the provisions of this section, either unconditionally or on specified terms and conditions, to any person or class of persons, to any transaction or class of transactions, or to

any security or class of securities to the extent that such exemption is necessary or appropriate, in the public interest, and is consistent with the protection of investors.

B. Circuit Breaker With Modified Uptick Rule

2. Section 242.200 is amended by revising paragraph (g) introductory text and adding paragraph (g)(2) to read as follows:

§ 242.200 Definition of ''short sale'' and marking requirements.

* * * * *

(g) A broker or dealer must mark all sell orders of any equity security as ''long,'' ''short,'' or ''short exempt.''

(1) * * *

(2) A sale order shall be marked ''short exempt'' only if the provisions of § 242.201(d) or (e) are met.

* * * * *

3. Section 242.201 is revised to read as follows:

§ 242.201 Circuit breaker.

(a) *Definitions.* For the purposes of this section:

(1) The term *covered security* shall mean any NMS stock as defined in § 242.600(b)(47).

(2) The term *regular trading hours* shall have the same meaning as in § 242.600(b)(64).

(3) The term *down-bid price* shall mean a price that is less than the current national best bid or, if the last differently priced national best bid was greater than the current national best bid, a price that is less than or equal to the current national best bid.

(4) The term *national best bid* shall have the same meaning as in § 242.600(b)(42).

(5) The term *national market system plan* shall have the same meaning as in § 242.600(b)(43).

(6) The term *odd lot* shall have the same meaning as in § 242.600(b)(49).

(7) The term *riskless principal* shall mean a transaction in which a broker or dealer, after having received an order to buy a security, purchases the security as principal at the same price to satisfy the order to buy or, after having received an order to sell, sells the security as principal at the same price to satisfy the order to sell.

(8) The term *trading center* shall have the same meaning as in § 242.600(b)(78).

(b) (1) A trading center shall establish, maintain, and enforce written policies and procedures reasonably designed to prevent, when the price of a covered security decreases by ten percent or more from that covered security's last price reported during regular trading hours the prior day, as reported in the consolidated system, the execution or display of a short sale order of that covered security at a down-bid price at times when a national best bid for the covered security is calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan, for the remainder of the day. *Provided, however,*

(i) The policies and procedures must be reasonably designed to permit the execution of a displayed short sale order of a covered security by a trading center if, at the time of display of the short sale order, the order was not at a down-bid price.

(ii) The policies and procedures must be reasonably designed to permit the execution or display of a short sale order of a covered security marked ''short exempt'' without regard to whether the order is at a down-bid price.

(2) A trading center shall regularly surveil to ascertain the effectiveness of the policies and procedures required by paragraph (b)(1) of this section and shall take prompt action to remedy deficiencies in such policies and procedures.

(c) The provisions of paragraph (b) of this section shall not apply if the decrease in the price of a covered security occurs within thirty minutes from the end of regular trading hours.

(d) A broker or dealer may mark a short sale order of a covered security ''short exempt'' if the broker or dealer that submits the order identifies that the order is not on a down-bid price at the time of submission of the order to the trading center. *Provided, however,*

(1) The broker or dealer that identifies a short sale order of a covered security in accordance with this paragraph must establish, maintain, and enforce written policies and procedures reasonably designed to prevent incorrect identification of orders for purposes of this paragraph; and

(2) The broker or dealer shall regularly surveil to ascertain the effectiveness of the policies and procedures required by paragraph (c) of this section and shall take prompt action to remedy deficiencies in such policies and procedures.

(e) A broker or dealer may mark a short sale order of a covered security ''short exempt'' if the broker or dealer has a reasonable basis to believe:

(1) The short sale order of a covered security is by a person that is deemed to own the covered security pursuant to § 242.200, provided that the person intends to deliver the security as soon as all restrictions on delivery have been removed.

(2) The short sale order of a covered security is by a market maker to off-set customer odd-lot orders or to liquidate an odd-lot position that changes such broker's or dealer's position by no more than a unit of trading.

(3) The short sale order of a covered security is for a good faith account by a person who then owns another security by virtue of which he is, or presently will be, entitled to acquire an equivalent number of securities of the same class as the securities sold; provided such sale, or the purchase which such sale offsets, is effected for the bona fide purpose of profiting from a current difference between the price of the security sold and the security owned and that such right of acquisition was originally attached to or represented by another security or was issued to all the holders of any such securities of the issuer.

(4) The short sale order of a covered security is for a good faith account submitted to profit from a current price difference between a security on a foreign securities market and a security on a securities market subject to the jurisdiction of the United States, provided that the short seller has an offer to buy on a foreign market that allows the seller to immediately cover the short sale at the time it was made. For the purposes of this section, a depository receipt of a security shall be deemed to be the same security as the security represented by such receipt.

(5)(i) The short sale order of a covered security is by an underwriter or member of a syndicate or group participating in the distribution of a security in connection with an over-allotment of securities; or

(ii) Any short sale order with respect to a lay-off sale by an underwriter or member of a syndicate or group in connection with a distribution of securities through a rights or standby underwriting commitment.

(6) The short sale order of a covered security is by a broker or dealer effecting the execution of a customer purchase or the execution of a customer ''long'' sale on a riskless principal basis; *provided, however,* the purchase or sell order must be given the same per-share price at which the broker or dealer sold shares to satisfy the facilitated order, exclusive of any explicitly disclosed markup or markdown, commission equivalent or other fee. In addition, for purposes of this section, a broker or dealer must have written policies and procedures in place to assure that, at a minimum: The customer order was received prior to the offsetting transaction; the offsetting

transaction is allocated to a riskless principal or customer account within 60 seconds of execution; and the broker or dealer has supervisory systems in place to produce records that enable the broker or dealer to accurately and readily reconstruct, in a time-sequenced manner, all orders on which a broker or dealer relies pursuant to this exception.

(7) The short sale order is for the sale of a covered security at the volume weighted average price (VWAP) that meets the following criteria:

(i) The VWAP for the covered security is calculated by:

(A) Calculating the values for every regular way trade reported in the consolidated system for the security during the regular trading session, by multiplying each such price by the total number of shares traded at that price;

(B) Compiling an aggregate sum of all values; and

(C) Dividing the aggregate sum by the total number of reported shares for that day in the security.

(ii) The transactions are reported using a special VWAP trade modifier.

(iii) No short sales used to calculate the VWAP are marked ''short exempt.''

(iv) The VWAP matched security:

(A) Qualifies as an ''actively-traded security''; or

(B) The proposed short sale transaction is being conducted as part of a basket transaction of twenty or more securities in which the subject security does not comprise more than five percent of the value of the basket traded.

(v) The transaction is not effected for the purpose of creating actual, or apparent, active trading in or otherwise affecting the price of any security.

(vi) A broker or dealer shall be permitted to act as principal on the contra-side to fill customer short sale orders only if the broker's or dealer's position in the covered security, as committed by the broker or dealer during the pre-opening period of a trading day and aggregated across all of its customers who propose to sell short the same security on a VWAP basis, does not exceed 10% of the covered security's relevant average daily trading volume.

(f) No self-regulatory organization shall have any rule that is not in conformity with, or conflicts with, this section.

(g) Upon written application or upon its own motion, the Commission may grant an exemption from the provisions of this section, either unconditionally or on specified terms and conditions, to any person or class of persons, to any transaction or class of transactions, or to any security or class of securities to the extent that such exemption is necessary or appropriate, in the public interest, and is consistent with the protection of investors.

C. Circuit Breaker With Uptick Rule

2. Section 242.200 is amended by revising paragraph (g) introductory text and adding paragraph (g)(2) to read as follows:

§ 242.200 Definition of ''short sale'' and marking requirements.

* * * * *

(g) A broker or dealer must mark all sell orders of any equity security as ''long,'' ''short,'' or ''short exempt.''

(1) * * *

(2) A sale order shall be marked ''short exempt'' if the seller is relying on an exception from the price test of § 242.201.

* * * * *

3. Section 242.201 is revised to read as follows:

§ 242.201 Circuit breaker.

(a) *Definitions.* For the purposes of this section:

(1) The term *covered security* shall mean any NMS stock as defined in § 242.600(b)(47).

(2) The term *regular trading hours* shall have the same meaning as in § 242.600(b)(64).

(3) The term *actively traded security* shall have the same meaning as in § 242.101(c)(1).

(4) The term *average daily trading volume* shall have the same meaning as in § 242.100(b).

(5) The term *national market system plan* shall have the same meaning as in § 242.600(b)(43).

(6) The term *odd lot* shall have the same meaning as in § 242.600(b)(49).

(7) The term *riskless principal* shall mean a transaction in which a broker or dealer, after having received an order to buy a security, purchases the security as principal at the same price to satisfy the order to buy or, after having received an order to sell, sells the security as principal at the same price to satisfy the order to sell.

(b) If the price of a covered security, as reported in the consolidated system, decreases by ten percent or more from that covered security's last price reported during regular trading hours the prior day, as reported in the consolidated system, no person shall, for his own account or for the account of any other person, effect a short sale of that covered security, wherever traded, at times when a last sale price for the covered security is calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan, for the remainder of the day, if trades in such security are reported pursuant to an effective national market system plan and information as to such trades is made available in accordance with such plan on a real-time basis to vendors of market transaction information:

(1) Below the price at which the last sale thereof, regular way, was reported pursuant to an effective national market system plan; or

(2) At such price unless such price is above the next preceding different price at which a sale of such security, regular way, was reported pursuant to an effective national market system plan.

(c) The provisions of paragraph (b) of this section shall not apply if the decrease in the price of a covered security occurs within thirty minutes from the end of regular trading hours.

(d) The provisions of paragraph (b) of this section shall not apply to:

(1) Any sale by any person of a covered security that the person is deemed to own pursuant to § 242.200, provided that the person intends to deliver the security as soon as all restrictions on delivery have been removed.

(2) Any sale by a broker or dealer of a covered security for an account in which it has no interest, pursuant to an order marked long.

(3) Any sale of a covered security by a market maker to off-set customer odd-lot orders or to liquidate an odd-lot position which changes such broker's or dealer's position by no more than a unit of trading.

(4) Any sale of a covered security for a good faith account by a person who then owns another security by virtue of which he is, or presently will be, entitled to acquire an equivalent number of securities of the same class as the securities sold; provided such sale, or the purchase which such sale offsets, is effected for the bona fide purpose of profiting from a current difference between the price of the security sold and the security owned and that such right of acquisition was originally attached to or represented by another security or was issued to all the holders of any such securities of the issuer.

(5) Any sale of a covered security for a good faith account submitted to profit from a current price difference between a security on a foreign securities market and a security on a securities market subject to the jurisdiction of the United States, provided that the short seller has an offer to buy on a foreign market that allows the seller to immediately cover the short sale at the time it was made. For the purposes of this section, a

depository receipt of a security shall be deemed to be the same security as the security represented by such receipt.

(6)(i) Any sale of a covered security by an underwriter or member of a syndicate or group participating in the distribution of a security in connection with an over-allotment of securities; or

(ii) Any lay-off sale by an underwriter or member of a syndicate or group in connection with a distribution of securities through a rights or standby underwriting commitment.

(7) Any sale of a covered security at the volume weighted average price (VWAP) that meets the following criteria:

(i) The VWAP for the covered security is calculated by:

(A) Calculating the values for every regular way trade reported in the consolidated system for the security during the regular trading session, by multiplying each such price by the total number of shares traded at that price;

(B) Compiling an aggregate sum of all values; and

(C) Dividing the aggregate sum by the total number of reported shares for that day in the security.

(ii) The transactions are reported using a special VWAP trade modifier.

(iii) No short sales used to calculate the VWAP are marked ''short exempt.''

(iv) The VWAP matched security:

(A) Qualifies as an ''actively-traded security''; or

(B) The proposed short sale transaction is being conducted as part of a basket transaction of twenty or more securities in which the subject security does not comprise more than five percent of the value of the basket traded.

(v) The transaction is not effected for the purpose of creating actual, or apparent, active trading in or otherwise affecting the price of any security.

(vi) A broker or dealer shall be permitted to act as principal on the contra-side to fill customer short sale orders only if the broker's or dealer's position in the covered security, as committed by the broker or dealer during the pre-opening period of a trading day and aggregated across all of its customers who propose to sell short the same security on a VWAP basis, does not exceed 10% of the covered security's relevant average daily trading volume.

(8) Any sale of a covered security in an electronic trading system that matches buying and selling interest at various times throughout the day that meets the following criteria:

(i) Matches occur at an externally derived price within the existing market and above the current national best bid;

(ii) Sellers and purchasers are not assured of receiving a matching order;

(iii) Sellers and purchasers do not know when a match will occur;

(iv) Persons relying on the exception contained in paragraph (c)(8) of this section shall not be represented in the primary market offer or otherwise influence the primary market bid or offer at the time of the transaction;

(v) Transactions shall not be made for the purpose of creating actual, or apparent, active trading in, or depressing or otherwise manipulating the price of, any security;

(vi) The covered security:

(A) Qualifies as an ''actively-traded security''; or

(B) The proposed short sale transaction is being conducted as part of a basket transaction of twenty or more securities in which the subject security does not comprise more than five percent of the value of the basket traded; and

(vii) During the period of time in which the electronic trading system may match buying and selling interest, there can be no solicitation of customer orders, or any communication with customers that the match has not yet occurred.

(9) Any sale of a covered security by a broker or dealer effecting the execution of a customer purchase or the execution of a customer ''long'' sale on a riskless principal basis; *provided*, *however*, the purchase or sell order must be given the same per-share price at which the broker or dealer sold shares to satisfy the facilitated order, exclusive of any explicitly disclosed markup or markdown, commission equivalent or other fee. In addition, for purposes of this section, a broker or dealer must have written policies and procedures in place to assure that, at a minimum: the customer order was received prior to the offsetting transaction; the offsetting transaction is allocated to a riskless principal or customer account within 60 seconds of execution; and the broker or dealer has supervisory systems in place to produce records that enable the broker or dealer to accurately and readily reconstruct, in a time-sequenced manner, all orders on which a broker or dealer relies pursuant to this exception.

(10) Any sale of a covered security (except a sale to a stabilizing bid complying with § 242.104) by a registered specialist or registered exchange market maker for its own account on any exchange with which it is registered for such security, or by a third market maker for its own account over-the-counter:

(i) Effected at a price equal to the most recent offer communicated for the security by such registered specialist, registered exchange market maker or third market maker to an exchange or a national securities association (''association'') pursuant to § 242.602, if such offer, when communicated, was equal to or above the last sale, regular way, reported for such security pursuant to an effective national market system plan. Provided, however,

(ii) That any self-regulatory organization, by rule, may prohibit its registered specialist and registered exchange market makers from availing themselves of the exemption afforded by this paragraph (d)(10) if that self-regulatory organization determines that such action is necessary or appropriate in its market in the public interest or for the protection of investors.

(11) Any sale of a covered security (except a sale to a stabilizing bid complying with § 242.104) by any broker or dealer, for his own account or for the account of any other person, effected at a price equal to the most recent offer communicated by such broker or dealer to an exchange or association pursuant to § 242.602 in an amount less than or equal to the quotation size associated with such offer, if such offer, when communicated, was:

(i) Above the price at which the last sale, regular way, for such security was reported pursuant to an effective national market system plan; or

(ii) At such last sale price, if such last sale price is above the next preceding different price at which a sale of such security, regular way, was reported pursuant to an effective national market system plan.

(12) Any sale of a security by a registered market maker or specialist publishing two-sided quotes to facilitate customer market or marketable limit buy orders.

(e) No self-regulatory organization shall have any rule that is not in conformity with, or conflicts with this section.

(f) Upon written application or upon its own motion, the Commission may grant an exemption from the provisions of this section, either unconditionally or on specified terms and conditions, to any person or class of persons, to any transaction or class of transactions, or to any security or class of securities to the extent that such exemption is necessary or appropriate, in the public interest, and is consistent with the protection of investors.

By the Commission.

Dated: April 10, 2009.

Florence E. Harmon,

Deputy Secretary.

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FEDERAL REGISTER PAGES AND DATE, APRIL

14703–14928 1
14929–15214 2
15215–15358 3
15359–15634 6
15635–15828 7
15829–16096 8
16097–16320 9
16321–16752 10
16753–17074 13
17075–17370 14
17371–17586 15
17587–17764 16
17765–17898 17
17899–18114 20

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
8354 15629
8355 15631
8356 15633
8357 15829
8358 16751
8359 17069
8360 17369
8361 17765

Executive Orders:

Administrative Orders:
Presidential Determinations: No. 2009-17 of April 9, 2009 17587
13507 17071

7 CFR

271 14935
272 14935
273 14935
276 14935
301 16097
305 15635
318 15640
319 15635
331 16753
905 15641
944 15641
948 17589
966 17589
985 16321
1216 15226
1240 17767
1421 15644
1434 15644
1435 15359

Proposed Rules:
Chap. XXXIV 17909
305 16146
319 16146
340 16797
610 15673
905 16798
1000 16296
1001 16296
1005 16296
1006 16296
1007 16296
1030 16296
1032 16296
1033 16296
1124 16296
1126 16296
1131 16296
1205 16331
1208 .....16266, 16289
1209 15677

8 CFR

208 15367

9 CFR

71 .....14703, 17371
121 16753
145 14710
146 14710
166 15215
247 14710
392 16104

Proposed Rules:
94 17115

10 CFR

430 16040

Proposed Rules:
37 17794
50 16802
73 17115
430 16920

12 CFR

24 15657
202 17899
230 17768
1410 17371

Proposed Rules:
611 17612
613 17612
615 17612
619 17612
620 17612

14 CFR

23 .....17371, 17382
25 .....15831, 15833, 15838
39 .....14719, 14929, 15369, 15371, 15665, 15841, 16108, 16112, 16114, 16116, 16117, 16121, 16754, 16755, 17075, 17384, 17386, 17593
71 .....15842, 17388, 17389, 17390, 17391, 17899, 17900, 17901
95 16758
97 .....17077, 17080

Proposed Rules:
23 17438
25 .....15888, 15890
39 .....14750, 14751, 15399, 15401, 15681, 15683, 15894, 15896, 16152, 16154, 16803, 16807, 16809, 16811, 17795, 17797, 17799
65 17910
71 .....15403, 16812, 17439, 17440, 17441, 17443, 17911, 17912
119 17910
121 17910
135 17910
142 17910

15 CFR

801 15843

902 15373
Proposed Rules:
801 16337

16 CFR

Proposed Rules:
318 17914

17 CFR

40 17392
41 17392
145 17392
211 17769
232 ..... 15666, 17595
239 15666
249 15666
Proposed Rules:
242 18042
248 17925

18 CFR

38 15374
Proposed Rules:
38 16160

20 CFR

403 16326
429 16326
655 17597

21 CFR

5 14720
520 17770
1300 15596
1301 15596
1304 15596
1306 15596
Proposed Rules:
589 16160

22 CFR

62 15844
215 14931

24 CFR

30 14725

26 CFR

1 14931
Proposed Rules:
1 ..... 16161, 17119

29 CFR

4022 17395

30 CFR

Proposed Rules:
935 17802
946 17806

31 CFR

543 16763
544 16771

33 CFR

117 ..... 14725, 14726, 14932, 15218, 16781, 16782, 16783, 17082, 17396
165 ..... 14726, 14729, 15845, 15854, 17084, 17397, 17601, 17902, 17905
Proposed Rules:
101 ..... 16161, 17444
104 ..... 16161, 17444
105 ..... 16161, 17444
106 ..... 16161, 17444
110 14938
117 16814
165 ..... 15404, 15407, 15409, 15412, 15414, 15417, 15899, 16814, 17625, 17627, 17926, 17928, 17931

37 CFR

Proposed Rules:
370 15901

38 CFR

21 17907

39 CFR

20 14932
111 ..... 15376, 15380, 16124, 17399
3001 16734
3020 15384
3030 16734
3031 16734
Proposed Rules:
111 ..... 15226, 17128

40 CFR

35 17403
52 ..... 14731, 14734, 15219, 15856, 15864, 17086, 17771, 17781, 17783
70 17086
112 14736
180 ..... 14738, 14743, 14744, 15865, 15869, 15876, 15880, 17405
228 17406
261 ..... 17414, 17419
271 ..... 17423, 17785
300 16126
707 16327
Proposed Rules:
51 14941
52 ..... 14759, 17129, 17810
55 17934
59 14941
63 17130
70 17129
86 16448
87 16448
89 16448
90 16448
94 16448
98 16448
300 16162
600 16448
1033 16448
1039 16448
1042 16448
1045 16448
1048 16448
1051 16448
1054 16448
1065 16448

41 CFR

300-3 16327
301-2 16327
301-11 ..... 16327, 16329, 17436
301-70 16327

42 CFR

440 15221

43 CFR

2 17090

44 CFR

Ch. 1 15328
64 17094
65 16783
67 16785
Proposed Rules:
206 15228

45 CFR

Proposed Rules:
302 17445
303 17445
307 17445
612 16815

46 CFR

390 17097

47 CFR

1 16794
300 16795
Proposed Rules:
Chapter III 17938
36 15236
73 17811

48 CFR

2 17793
22 17793
52 17793
528 17089
552 17089
Proposed Rules:
2 16823
19 16823
52 16823

49 CFR

23 15222
26 15222
171 16135
173 16135
176 16135
178 16135
180 16135
192 17090
195 17090
232 15387
373 15388
Proposed Rules:
26 ..... 15904, 15910

50 CFR

17 ..... 15070, 15123, 17288
21 15394
622 ..... 17102, 17603
635 15669
648 ..... 14933, 17030, 17102, 17106, 17107, 17907
679 ..... 15887, 16144, 16145, 17111, 17112, 17113
Proposed Rules:
17 16169
20 16339
218 15419
226 17131
300 17630
622 ..... 15911, 17812
648 ..... 14760, 17135
665 15685
679 ..... 14950, 15420, 17137

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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H.R. 146/P.L. 111–11
Omnibus Public Land Management Act of 2009 (Mar. 30, 2009; 123 Stat. 991)

H.R. 1512/P.L. 111–12
Federal Aviation Administration Extension Act of 2009 (Mar. 30, 2009; 123 Stat. 1457)

Last List March 23, 2009

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