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

WHEN: Tuesday, November 10, 2009
9 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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Presidential Documents

Title 3—

The President

Executive Order 13516 of November 2, 2009

Amending Executive Order 13462

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Executive Order 13462 of February 29, 2008, is amended as follows:

(a) by striking subsection (b) of section 2 and inserting in lieu thereof the following:

''(b) ''intelligence activities'' has the meaning specified in section 3.5 of Executive Order 12333 of December 4, 1981, as amended; and''

(b) by striking subsection (b) of section 3 and inserting in lieu thereof the following:

''(b) The PIAB shall consist of not more than 16 members appointed by the President from among individuals who are not full-time employees of the Federal Government.''

(c) by striking subsection (c) of section 3 and inserting in lieu thereof the following:

''(c) The President shall designate a Chair or Co-Chairs from among the members of the PIAB, who shall convene and preside at meetings of the PIAB, determine its agenda, and direct its work.''

(d) by inserting after subsection (b) of section 6 the following new subsection:

''(c) forward to the Attorney General information concerning intelligence activities that involve possible violations of Federal criminal laws or otherwise implicate the authority of the Attorney General;'', and renumbering the subsequent subsections of section 6 accordingly.

(e) by striking subsection (a) of section 8 and inserting in lieu thereof:

''To the extent permitted by law, the DNI and the heads of departments concerned shall provide such information and assistance as the PIAB and the IOB determine is needed to perform their functions under this order.''

(f) by substituting ''section 1.6(c) of Executive Order 12333, as amended'' for ''section 1.7(d) of Executive Order 12333'' each time it appears in the order.

(g) by striking subsection (b) of section 11 and inserting in lieu thereof:

''(b) Any person who is a member of the PIAB or the IOB, or who is granted access to classified national security information in relation to the activities of the PIAB or the IOB, as a condition of access to such information, shall sign and comply with appropriate agreements to protect such information from unauthorized disclosure. This order shall be implemented in a manner consistent with Executive Order 12958 of April 17, 1995, as amended, and Executive Order 12968 of August 2, 1995, as amended.''

Sec. 2. *General Provisions.*

(a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

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

THE WHITE HOUSE,
October 28, 2009.

[FR Doc. E9–26408
Filed 10–30–09; 8:45 am]
Billing code 3195–W9–P

Rules and Regulations

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

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2008–0017]

RIN 0579–AC77

Importation of Tomatoes From Souss-Massa-Draa, Morocco

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations to allow the importation of commercial consignments of tomatoes from the Souss-Massa-Draa region of Morocco subject to a systems approach similar to that which is already in place for tomatoes imported into the United States from other areas within Morocco. The tomatoes will have to be produced under conditions that include requirements for pest exclusion at the production site, fruit fly trapping inside the production site, and pest-exclusionary packinghouse procedures. The tomatoes will also be required to be accompanied by a phytosanitary certificate issued by the Moroccan national plant protection organization with an additional declaration stating that the tomatoes have been grown in registered pest-exclusionary structures in the Souss-Massa-Draa region and were pink at the time of packing. This action will allow for the importation of commercial consignments of tomatoes from the Souss-Massa-Draa region of Morocco into the United States while continuing to provide protection against the introduction of quarantine pests.

DATES: December 2, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Charisse Cleare, Project Coordinator, Regulations, Permits, and Manuals, PPQ, APHIS, 4700 River Road Unit 156, Riverdale, MD 20737–1231; (301) 734–0773.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in ''Subpart-Fruits and Vegetables'' (7 CFR 319.56 through 319.56-49, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

On May 16, 2008, we published in the **Federal Register** (73 FR 28377–28382, Docket No. APHIS–2008–0017) a proposal [1] to amend the regulations in § 319.56–28 to allow the importation of commercial shipments of tomatoes from the Souss-Massa-Draa [2] region of Morocco subject to a systems approach similar to that which is already in place in that section for tomatoes imported into the United States from other areas within Morocco. We proposed to require the tomatoes to be produced under conditions that include requirements for pest exclusion at the production site, fruit fly trapping inside and outside the production site, and pest-excluding packinghouse procedures. We further proposed that the tomatoes would be required to be accompanied by a phytosanitary certificate issued by the Moroccan national plant protection organization with an additional declaration stating that the tomatoes have been grown in registered pest-exclusionary structures in the Souss-Massa-Draa region and were pink at the time of packing.

We solicited comments concerning our proposal for 60 days ending July 15, 2008. We received four comments by that date. They were from a State department of agriculture, representatives of growers and importers, and the Moroccan Ministry of Agriculture. They are discussed below.

Two commenters opposed the importation of tomatoes from the Souss-Massa-Draa region of Morocco unless the tomatoes are treated for fruit flies with a Probit 9 treatment.

Probit 9 is a treatment standard that requires a pest mortality rate of greater than 99 percent. As described in the proposal, the systems approach uses methods other than treatment to mitigate the risk associated with fruit flies, and, therefore, application of a Probit 9 treatment is not required.

In order to address the risk associated with fruit flies, we proposed various mitigation measures, including ripeness requirements, a requirement that the tomatoes be produced in pest-exclusionary structures, fruit fly trapping, pest-exclusionary procedures at the production site and packinghouse, the removal of shade trees around the pest-exclusionary structures, and fruit fly bait spray applications.

One commenter, the Moroccan Ministry of Agriculture, stated that two of the proposed requirements would not be feasible to implement, specifically the requirement for removal of shade trees within 10 meters of the pest-exclusionary structures and the requirement to apply approved protein bait spray pesticide for Mediterranean fruit fly (Medfly, *Ceratitis capitata*) on shade trees and host plants within 200 meters of the pest-exclusionary structures every 6 to 10 days, starting at least 30 days before harvest. The commenter stated that these requirements would be in conflict with environmental protection requirements in Morocco. In addition, the Moroccan Ministry of Agriculture stated that the pesticide spraying requirements were not feasible because the small size of farms within the Souss-Massa-Draa region means that they are concentrated very close together and the ministry expressed concern that the frequency and concentration of the spraying could negatively affect the natural environment and could lead to fruit flies developing resistance to the protein bait spray pesticides. As an alternative, the Moroccan Ministry of Agriculture stated that it already has an export program in place in Souss-Massa-Draa that focuses on fruit fly protection measures inside the production site such as the use of a greater number of traps per hectare than in areas of Morocco and Western Sahara from which tomatoes are currently approved to be exported under § 319.56–28(c). The program also uses

[1] To view the proposed rule and the comments we received, go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0017*).

[2] In the proposed rule, we referred to the region as Souss-Massa. In this final rule, we use the full name of the region, Souss-Massa-Draa.

anti-thrips nets; as the anti-thrips nets are 50 mesh and fruit flies are much larger than thrips, this mesh size is adequate to prevent access to the production site by fruit flies. The commenter stated that the program was adequate to mitigate the risks associated with fruit flies.

We have determined that some of the measures the commenter identified as unfeasible are not necessary to provide phytosanitary security, given the demonstrated efficacy of the existing tomato export program in Morocco and Western Sahara. No fruit flies have ever been intercepted in this program. Therefore, in this final rule, we are not including the proposed requirement in § 319.56–28(g)(6) for the removal of shade trees within 10 meters of the pest-exclusionary structures. In addition, we have changed the proposed buffer zone and spraying requirements to be consistent with the requirements currently in place for the El Jadida and Safi production areas in Morocco and in Western Sahara.

As provided in current paragraph (c) of § 319.56–28, in the El Jadida and Safi production areas in Morocco and in Western Sahara, traps must be placed outside the registered pest-exclusionary structure within a 2-kilometer radius at a density of 4 traps per square kilometer 2 months prior to the start of the shipping season and continuing through the end of the shipping season. The capture of a single Medfly within 200 meters of a registered pest-exclusionary structure necessitates the addition of 6 more traps to be placed within a radius of 200 meters surrounding the initial detection. Capture of 2 Medflies within 200 meters of a registered pest-exclusionary structure within a 1-month time period necessitates bait sprays in the area every 7 to 10 days for 60 days to ensure eradication within the 200-meter buffer zone.

We are adding the requirements for trapping outside the pest-exclusionary structures to proposed paragraph (g)(3) and the requirements for additional trapping when a Medfly is trapped outside the greenhouse to proposed paragraph (g)(5). Because Souss-Massa-Draa is not an area of low prevalence for fruit flies, unlike the currently approved tomato export provinces in Morocco and Western Sahara, some additional mitigations are necessary in order to mitigate the additional pest risk associated with tomatoes from Souss-Massa-Draa. Therefore, we are retaining the proposed requirement for eight fruit fly traps per hectare within the pest-exclusionary structures, with a minimum of four traps per structure, as opposed to the requirement for four traps per hectare in the currently approved provinces. We are also retaining the proposed prohibition of fruit fly host material within 50 meters of the pest-exclusionary structures, which is not included in the requirements for the currently approved provinces.

In addition, we are retaining the proposed requirements for trapping program monitoring and retention of trapping records for 1 year, and the requirement that sea containers must be kept closed if stored within 20 meters of Medfly host materials prior to loading. We are also amending the regulations in § 319.56–28(c)(4) to make the 1-year retention of trapping records requirement applicable for all approved growing areas within Morocco and Western Sahara in order to harmonize our regulations.

Two commenters expressed concern or had questions regarding Morocco's ability to enforce the proposed systems approach or APHIS' review of the program. One commenter asked what APHIS's confidence level is in the Moroccan Ministry of Agriculture's Division of Plant Protection, Inspection, and Enforcement (DPVCTRF) and asked what quality control measures are in place to monitor compliance with the provisions of the systems approach within Morocco. Specifically, the commenter asked how many site visits have been made or are planned and how much fruit is inspected at the port of arrival.

Another commenter stated that the systems approach is inadequate because it cannot be effectively reviewed or enforced by APHIS. According to the commenter, the systems approach is too reliant on reviews by DPVCTRF staff that may not have proper training. The commenter also expressed concern that there may not be enough DPVCTRF staff to perform required tasks and that decisions within Morocco will not be scrutinized by APHIS in a timely manner.

Based on the track record of our program for the importation of tomatoes from other areas of Morocco and Western Sahara into the United States, we are confident the DPVCTRF can effectively oversee the application of these measures in the Souss-Massa-Draa region. In addition, trapping records must be maintained for each site for 1 year and made available to APHIS for review upon request. To provide additional oversight, we are adding in § 319.56–28(g)(1) a requirement that tomatoes must be grown in approved production sites and provisions for APHIS to maintain oversight by participating in the approval and monitoring of production sites. In addition, we are adding the provisions that, 2 months before harvest and continuing until the end of the shipping season, DPVCTRF will visit and inspect the production sites and that APHIS may monitor the production sites at any time during this period. Approval and monitoring of production sites are standard requirements for our more recent import programs.

If, through trapping records, site visits, or port-of-arrival inspections, we find that any of the required mitigation measures are not being properly implemented, we will suspend shipments from the offending sites. Two site visits have already been conducted, with a third planned for the future in order to approve the pest-exclusionary structures. We will monitor the program on a regular basis and make additional site visits as needed. A standard port-of-arrival inspection rate of 2 percent will apply.

The proposed rule included a requirement that the tomatoes be pink at the time of packing. As stated in the current regulations, we consider pink tomatoes to be tomatoes where the surface area of the tomato is more than 30 percent but not more than 60 percent pink and/or red. One commenter asked who makes the decision regarding whether the tomatoes are at the correct stage of ripeness.

DPVCTRF is responsible for determining whether the tomatoes are at the correct stage of ripeness. However, port-of-arrival inspection will serve to check compliance with that provision of the regulations.

One commenter asked what safeguards are in place to mitigate high Medfly population fluctuations and ensure that the packinghouse is free of fruit flies. The commenter also asked if there can be fruit fly host plants in close proximity to the packinghouse.

As proposed, the tomatoes will have to be packed within 24 hours of harvest and must be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing. In addition, they must be packed in insect-proof cartons or containers, or covered by insect-proof mesh or plastic tarpaulin for transit to the airport or ship and export to the United States. We are adding a provision in a new paragraph (g)(8) in § 319.56–28 that during the time the packinghouse is in use for exporting fruit to the United States, the packinghouse may only accept fruit from registered approved production sites. (We are also moving the provisions proposed in paragraph (g)(8) to a new paragraph (g)(9).) This

provision is standard for our import programs, including our import program for Chilean tomatoes, and will provide additional protection against infested host material entering the packinghouse and being transported to the United States. These measures are adequate to protect against the incursion of fruit flies into the packinghouse regardless of Medfly population fluctuations. In addition, as stated in the proposed rule, no fruit fly host material is permitted within 50 meters of the entry door of the packinghouse.

In addition to the changes discussed earlier, we are making several minor changes to the proposed requirements for the importation of tomatoes from Souss-Massa-Draa, Morocco, in § 319.56–28(g). We are replacing the word ''greenhouses'' with the phrase ''pest-exclusionary structures'' in the regulatory text we proposed and in the current regulations for the importation of tomatoes from the provinces of El Jadida and Safi in Morocco and the province of Dahkla in Western Sahara in § 319.56–28(c), as ''pest-exclusionary structures'' is a more inclusive term that allows us the flexibility to approve structures other than greenhouses that we have found to adequately mitigate risk. To be more consistent with the current regulations for the provinces of El Jadida and Safi in Morocco and the province of Dahkla in Western Sahara, and to reflect the current reality within Morocco, we are also making a change in proposed paragraph (g)(8), which we are redesignating (g)(9), of § 319.56–28 to state that the Moroccan Ministry of Agriculture, Fresh Product Export (EACCE) division and not DPVCTRF is responsible for export certification and issuance of phytosanitary certificates.

Since publication of the proposal, several Mediterranean countries, including Morocco, have experienced an outbreak of an additional quarantine pest of tomatoes, the tomato leaf miner (*Tuta absoluta)*. We have issued a Federal Order (FO) [3] that imposes additional restrictions on the movement of tomatoes from countries where the pest is known to occur, including Morocco, in order to prevent the spread of the pest. Under the FO, the following criteria must be met before tomatoes from Morocco are eligible to enter the United States:

- The tomatoes must be grown in approved production sites registered with DPVCTRF;
- Tomato production sites must include a pest-exclusionary structure which must have double self closing doors and have all other openings and vents covered with 1.6 mm (or smaller) of screening;
- Registered production sites must conduct regular inspections for *T. absoluta* throughout the harvest season and find these areas free of evidence (*e.g.*, eggs or larvae) of *T. absoluta*. If, within 30 days of harvest, 2 *T. absoluta* are captured inside the greenhouse or a single *T. absoluta* is found inside individual fruit or in a consignment of the fruit, shipments from the production site will be suspended until APHIS and
- DPVCTRF determine that an appropriate level of risk mitigation has been achieved; and DPVCTRF must maintain records of *T. absoluta* captures for 1 year following the date of the capture for APHIS review. DPVCTRF must maintain an APHIS-approved quality control program to monitor or audit the program. APHIS must be notified when a production site is removed or added to the program.

APHIS will conduct routine site visits to monitor the program and will issue a future rulemaking to revise the regulations in accordance with the requirements in the FO.

Finally, because the botanical name for tomatoes has been changed, we are replacing each occurrence of the old botanical name, *Lycopersicon esculentum*, in §§ 319.56–13 and 319.56–28 with the new botanical name, *Solanum lycopersicum*.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget. We have prepared an economic analysis for this final rule. The analysis, which considers the number and types of entities that are likely to be affected by this action and the potential economic effects on those entities, provides the basis for the Administrator's determination that the rule will not have a significant economic impact on a substantial number of small entities. The economic analysis may be viewed on the Regulations.gov Web site (see footnote 1 for instructions for accessing Regulations.gov). Copies of the economic analysis are also available from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Executive Order 12988

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

This final rule allows tomatoes to be imported into the United States from the Souss-Massa-Draa region of Morocco. State and local laws and regulations regarding tomatoes imported under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0345.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

§ 319.56–13 [Amended]

■ 2. In § 319.56–13, the table in paragraph (a) is amended, under the column heading ''Botanical name,'' by removing the words *Lycopersicon*

[3] The FO can be found on the APHIS Web site at (*http://www.aphis.usda.gov/import_export/plants/plant_imports/federal_order/index.shtml*).

esculentum'' each time they occur and adding the words *Solanum lycopersicum*'' in their place.

■ 3. Section 319.56–28 is amended as follows:

■ a. In paragraph (a) introductory text and paragraph (b) introductory text, by removing the words *Lycopersicon esculentum*'' each time they occur and adding the words *Solanum lycopersicum*'' in their place.

■ b. By revising paragraph (c) introductory text to read as set forth below.

■ c. In paragraph (c)(4), by removing the semicolon after the word ''request'' and adding a period in its place, and by adding at the end of the paragraph the sentence ''The trapping records must be maintained for 1 year for APHIS review;''

■ d. In paragraph (d) introductory text, paragraph (e) introductory text, and paragraph (f) introductory text, by removing the words *Lycopersicon esculentum*'' each time they occur and adding the words *Solanum lycopersicum*'' in their place.

■ e. By adding a new paragraph (g) to read as set forth below.

■ f. By revising the OMB citation at the end of the section to read as set forth below.

§ 319.56–28 Tomatoes from certain countries.

* * * * *

(c) *Tomatoes (fruit) (Solanum lycopersicum) from the provinces of El Jadida or Safi in Morocco and the province of Dahkla in Western Sahara.* Pink tomatoes may be imported into the United States from the provinces of El Jadida or Safi in Morocco and the province of Dahkla in Western Sahara only in accordance with this section and other applicable provisions of this subpart.[7]

* * * * *

(g) *Tomatoes (fruit) (Solanum lycopersicum) from the Souss-Massa-Draa region of Morocco.* Pink tomatoes may be imported into the United States from the region of Souss-Massa-Draa in Morocco only in accordance with this section and other applicable provisions of this subpart.[8]

(1) The tomatoes must be grown in approved production sites within the region of Souss-Massa-Draa in Morocco in pest-exclusionary structures registered with, and inspected by, the Moroccan Ministry of Agriculture, Division of Plant Protection, Inspection, and Enforcement (DPVCTRF). Production sites will be approved jointly by DPVCTRF and APHIS. DPVCTRF will visit and inspect the production sites starting 2 months before harvest and continuing until the end of the shipping season. APHIS may monitor the production sites at any time during this period;

(2) The tomatoes may be shipped from the Souss-Massa-Draa region of Morocco only between December 1 and April 30, inclusive;

(3) Beginning 2 months prior to the start of the shipping season and continuing through the end of the shipping season, DPVCTRF must set and maintain Mediterranean fruit fly (Medfly) traps baited with trimedlure, or other approved protein bait, inside the pest-exclusionary structures at a rate of 8 traps per hectare, with a minimum of 4 traps per pest-exclusionary structure. Traps must also be placed outside registered pest-exclusionary structures within a 2-kilometer radius at a rate of 4 traps per square kilometer. All traps must be checked every 7 days;

(4) DPVCTRF must maintain records of trap placement, trap maintenance, and any Medfly captures, and make the records available to APHIS upon request. DPVCTRF must maintain an APHIS-approved quality control program to monitor or audit the trapping program. The trapping records must be maintained for 1 year for APHIS review;

(5) Capture of a single Medfly in a registered pest-exclusionary structure during the 2 months prior to export and continuing through the duration of the harvest, or detection of a Medfly in a consignment that is traced back to a registered pest-exclusionary structure, will immediately result in cancellation of exports from that pest-exclusionary structure until the source of the infestation is determined, the Medfly infestation has been eradicated, and measures are taken to preclude any future infestation. Exports will not be reinstated until APHIS and DPVCTRF mutually determine that risk mitigation has been achieved. Capture of a single Medfly within 200 meters of a registered pest-exclusionary structure will necessitate increasing trap density in order to determine whether there is a reproducing population in the area. Six additional traps must be placed within a radius of 200 meters surrounding the trap where the Medfly was captured. Capture of two Medflies within 200 meters of a registered pest-exclusionary structure and within a 1-month time period will necessitate Malathion bait sprays in the area every 7 to 10 days for 60 days to ensure eradication;

(6) No Medfly host material is permitted within 50 meters of the entry door of the pest-exclusionary structure or the packinghouse;

(7) The tomatoes must be packed within 24 hours of harvest and must be pink at the time of packing. They must be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing. They must be packed in insect-proof cartons or containers, or covered by insect-proof mesh or plastic tarpaulin for transit to the airport or ship and export to the United States. These safeguards must be intact upon arrival in the United States. Sea containers must be kept closed if stored within 20 meters of Medfly host materials prior to loading;

(8) During the time the packinghouse is in use for exporting fruit to the United States, the packinghouse may only accept fruit from registered approved production sites; and

(9) The Moroccan Ministry of Agriculture, Fresh Product Export (EACCE) is responsible for export certification inspection and issuance of phytosanitary certificates. Each consignment of tomatoes must be accompanied by a phytosanitary certificate issued by EACCE and bearing the declaration, ''These tomatoes were grown in registered pest-exclusionary structures in Souss-Massa-Draa Region, Morocco, and were pink at the time of packing.''

(Approved by the Office of Management and Budget under control numbers 0579–0049, 0579–0131, 0579–0316, 0579–0286, and 0579–0345)

§ 319.56–34 [Amended]

■ 4. In § 319.56–34, paragraph (j)(2), footnote 8 is redesignated as footnote 9.

Done in Washington, DC, this 26th day of October 2009.

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–26308 Filed 10–30–09: 8:45 am]

BILLING CODE: 3410–34–S

[7] See footnote 5 to paragraph (a) of this section.

[8] See footnote 5 to paragraph (a) of this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 983

[Doc. No. AMS–FV–09–0031; FV09–983–1 FR]

Pistachios Grown in California; Changes to Handling Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule changes the handling regulations prescribed under Marketing Agreement and Order No. 983 (order), which regulate the handling of pistachios grown in California, Arizona, and New Mexico. The changes were recommended by the Administrative Committee for Pistachios (committee), which is responsible for local administration of the order. The changes bring the handling regulations into conformance with amendments to the order by including certain regulatory language previously contained in the order's provisions in the order's administrative rules and regulations, lifting the suspension of certain language, removing obsolete language, and revising references to renumbered order provisions.

DATES: *Effective Date:* November 3, 2009.

FOR FURTHER INFORMATION CONTACT: Martin Engeler, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102–B, Fresno, California 93721; Telephone: (559) 487–5110, Fax: (559) 487–5906, or E-mail: *Martin.Engeler@ams.usda.gov*; or Laurel May, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Telephone: (202) 205–2830, Fax: (202) 720–8938, or E-mail: *Laurel.May@ams.usda.gov.*

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

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 983, both as amended (7 CFR part 983), regulating the handling of pistachios grown in California, Arizona, and New Mexico. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

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

This final rule makes changes to the administrative rules and regulations contained in the order. The changes will bring the current handling regulations into conformance with amendments to the order by including certain regulatory language previously contained in the order's provisions in the order's administrative rules and regulations, lifting the suspension of certain language, removing obsolete language, and revising references to renumbered order provisions. These changes were recommended by the committee and submitted to USDA on May 28, 2008.

A Secretary's decision, which describes the proposed amendments to the order, was published in the **Federal Register** on August 6, 2009 (74 FR 39230). A copy of the Secretary's decision may be viewed at: *http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a02766*. An order amending the order implementing the amendments is also scheduled to be published in the **Federal Register** on the date this rule is published.

Amendments to the order's provisions will expand the production area subject to regulation under the order to include the States of Arizona and New Mexico in addition to California. Additional amendments to the order will modify existing provisions regarding aflatoxin and quality regulations, revise various administrative procedures under the order, authorize the committee to recommend research projects, and make other related changes. The amendments were approved by producers participating in a referendum conducted during the period August 10 through August 22, 2009; thus, conforming changes to the order's administrative rules and regulations are necessary.

Among other things, specific regulatory language contained in the order's aflatoxin and quality provisions is being removed. To avoid a lapse in regulation, the committee recommended that specific order provisions concerning aflatoxin tolerance levels and testing procedures be added to the order's administrative rules and regulations section at the same time the amendments are effectuated. This will provide a seamless transition and will assure that pistachios continue to be handled under the same regulations previously in place for California pistachios under the order. This rule implements those conforming changes. It is intended that finalization of this rule correspond with the issuance of the order amending the order upon publication in the **Federal Register**.

Section 983.38 of the order previously specified the maximum aflatoxin tolerance level for domestic shipments of pistachios for human consumption. This section also specified aflatoxin testing and certification procedures. Section 983.39 of the order, which was suspended on December 10, 2007 (72 FR 69141), specified minimum quality levels for domestic shipments of pistachios for human consumption. Testing and certification procedures to verify pistachio quality were also specified in this section. Section 983.46(c) of the order authorized the committee to recommend administrative rules and regulations implementing the provisions of §§ 983.38 and 983.39.

The order as amended includes amendments to §§ 983.38 and 983.39 that removes specific regulatory language from those provisions and replaces it with general authority to recommend and establish aflatoxin and quality regulations through the informal rulemaking process. Sections 983.38 and 983.39 are also being redesignated as §§ 983.50 and 983.51, respectively. Such changes require the addition of new regulatory sections to the order's administrative rules and regulations, render certain other sections obsolete, and require the revision of other sections to reflect changes to the order provisions, including references to renumbered sections.

As a result of the amendment of § 983.38, certain specific handling requirements concerning aflatoxin levels and testing procedures previously provided in that section are being moved to a new § 983.150—Aflatoxin Regulations, which is added to the order's rules and regulations. Section 983.150 specifies an aflatoxin tolerance level of 15 ppb, which is the aflatoxin tolerance previously provided under the order. Section 983.150 also specifies the same aflatoxin sampling, testing, and certification procedures previously contained in the order, with some

modifications. For instance, the regulation requires that at least eight members of the committee recommend, and the Secretary approve, any alternative aflatoxin analysis methods. The regulation also requires accredited laboratories performing aflatoxin testing to certify that every lot of production area pistachios shipped domestically does not exceed the maximum aflatoxin tolerance level specified under the regulations. Additionally, handlers are required to maintain testing and shipping records for three years beyond the production year of their applicability. Finally, section references throughout the section are updated to reflect renumbered order provisions.

Section 983.138 of the order's administrative rules and regulations concerns the drawing of samples for aflatoxin testing in accordance with requirements in § 983.38. Because updated sampling procedures are contained in new § 983.150, this section would be obsolete under the amended order. Therefore, the committee recommended removing this section.

Due to amendment of § 983.39, the order will no longer contain specific regulations regarding minimal pistachio quality or testing. The committee will have general authority to consider and recommend minimal quality regulations and testing procedures. Certain references to the provisions of § 983.39 will also be obsolete. Therefore, the committee recommended that affected sections be revised to reflect proposed amendments to that section.

Section 983.141 outlines procedures for exempting handlers from minimum quality testing. This section has been suspended since December 10, 2007 (72 FR 69141), when the minimum quality provision of the order was also suspended. This section will be obsolete under the amended order. Therefore, the committee recommended lifting the suspension of § 983.141 and removing the section.

The order amendments include a change to § 983.40 that removes specific regulations regarding rework procedures for lots of pistachios failing aflatoxin and minimum quality testing. Those regulations are being replaced with general authority to recommend rework procedures for failed lots. Specific regulations describing rework provisions for lots failing aflatoxin testing are being moved to a new § 983.152—Failed lots/rework procedure. Conforming changes to the text of the current regulations are being made in § 983.152 to reference aflatoxin regulations in the amended order provisions, and references to renumbered sections are also being changed.

The order amendments include a change to § 983.41 that removes a quality testing exemption for handlers handling fewer than 1,000,000 pounds of pistachios annually and replaces it with general authority to recommend testing procedures for minimum quantities. Section 983.41 is also being redesignated as § 983.53. Section 983.47 previously provided for the collection of necessary reports from regulated handlers. As a result of the amendments, § 983.47 is being redesignated as § 983.64. Paragraph (d) of § 983.147 describes Form ACP–5—''Minimal Testing Form,'' for use by handlers handling fewer than 1,000,000 pounds of pistachios annually. That paragraph has been suspended since December 10, 2007 (72 FR 69141), when the minimum quality provision of the order was also suspended. The committee recommended revising that paragraph to specify that handlers may use Form ACP–5 to request permission to handle minimum quantities of pistachios according to the provisions of redesignated § 983.53. To remain consistent with the redesignation of § 983.47 as § 983.64, this rule redesignates § 983.147 as § 983.164.

The order amendments include a change to § 983.70, which previously provided an exemption from certain handling regulations under the order for handlers of fewer than 1,000 pounds of pistachios and authorized the committee to recommend revised exemption levels. The amendment raises the exemption level to 5,000 pounds. The section is also being redesignated as § 983.92. As authorized under § 983.70, § 983.170 of the order's administrative rules and regulations previously provided an exemption for handlers of fewer than 5,000 pounds. As a result of the amendment to § 983.70, § 983.170 is redundant. Therefore, the committee recommended that § 983.170 be removed. Additionally, a reference to § 983.170 in § 983.143 is revised to reference the exemption level in redesignated § 983.92. Finally, amendments to § 983.43 redesignate that section as § 983.55. To remain consistent with that redesignation, this rule also redesignates § 983.143 as § 983.155.

Section 983.53 of the order authorizes the collection of assessments from handlers on receipts of pistachios. Such assessments are used to fund expenses of the committee. Section 983.253 specifies the current assessment rate established for California pistachios. As explained above, the order amendments include expanding the production area to include the States of Arizona and New Mexico, in addition to California. Therefore, the committee recommended that paragraph (b) of § 983.253 be revised to establish an assessment rate applicable to all production area pistachios. To conform to the definition of the committee's ''production year'' contained in the order, the language of paragraph (b) of § 983.253 is also being revised to specify that assessments are due to the committee by December 15 of the applicable production year.

Initial Regulatory Flexibility Analysis

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

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

Small business firms, which include handlers regulated under the order, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000. Small agricultural producers have been defined as those with annual receipts of less than $750,000.

There are approximately 29 handlers and 875 producers of pistachios in California, Arizona, and New Mexico. The committee has estimated that approximately 50 per cent of California handlers would be considered small businesses, as defined by SBA. The industry has estimated that one of the Arizona handlers and all three New Mexico handlers would also be considered small businesses.

Data provided by the committee regarding the size of the 2007 crop, as well as data reported by the National Agricultural Statistics Service (NASS), suggests that the average California producer revenue for the 2007 crop was $733,200. It is estimated that 85 percent of California producers had receipts of less than $750,000 and would thus be considered small businesses according to the SBA definition. Although there is no official data available, the industry estimates that the majority of producers in Arizona and New Mexico would also be considered small businesses.

The order previously regulated only pistachios produced in California. As a result of amendments to the order, the production area is being expanded to include Arizona and New Mexico. Additional amendments to the order will remove specific aflatoxin and quality regulations and testing procedures from the order's provisions and replace them with general authority for the committee to recommend aflatoxin and quality regulations. This rule makes changes to the order's administrative rules and regulations by adding the specific aflatoxin regulations previously found in the order's provisions and clarifying that the regulations pertain to handlers throughout the expanded production area. Certain language in the administrative rules and regulations section that is currently suspended, or that is redundant or obsolete due to enactment of the amendments, is being removed or revised. References to order sections that have been redesignated are also revised to reference the renumbered sections. These changes were recommended by the committee to ensure a seamless transition in aflatoxin regulation when the amendments are approved and to conform to various changes to the order's provisions.

Specifically, this rule removes § 983.138—Samples for testing, § 983.141—Procedures for exempting handlers from minimum quality testing, and § 983.170—Handler exemption, from the order's administrative rules and regulations. Conforming changes are being made to the language and references in §§ 983.143, 983.147, 983.253 to reflect amendments to the order, such as the expansion of the production area to include Arizona and New Mexico and the redesignation of several order sections. Sections 983.143 and 983.147 are being redesignated as §§ 983.155 and 983.164, respectively. Finally, two new sections, § 983.150—Aflatoxin regulations, and § 983.152—Failed lots/rework procedure, are being added to incorporate specific regulations concerning aflatoxin tolerance levels and testing procedures that are removed from the order's provisions as a result of the amendments.

The impact of the amendments to the order on producers and handlers has been analyzed in the Secretary's Decision published in the **Federal Register** on August 6, 2009, at 74 FR 39230. It may be generally concluded from the final regulatory impact analysis that the order amendments will improve the operation and functioning of the marketing order program and that all producers and handlers will benefit regardless of size. The analysis examined the benefits and costs to producers and handlers as a result of the expansion of the production area to include Arizona and New Mexico and the regulation of handlers under the marketing order program, including aflatoxin certification requirements.

Many of the amendments in this rule simply change the location of the regulatory provisions concerning aflatoxin levels and testing from the order provisions to the regulations. Therefore, these changes should have no effect upon California pistachio handlers of any size since they are currently required to comply with those requirements. With regard to application of aflatoxin certification requirements on Arizona and New Mexico handlers, that impact is fully considered in the previously referenced final regulatory flexibility analysis. The minimum quality provisions of the order have been suspended since December 10, 2007 (72 FR 69141), so there will be no effect on handlers as a result of removing those provisions. The revision of certain language, redesignation of some sections, and references to redesignated sections of the order that will be made to conform to the amended order are administrative in nature and will have no effect on producers or handlers of any size.

The changes in this rule are necessary to conform to amendments to the order. With regard to alternatives, if the amendments had not been approved by producers voting in the referendum, these changes would not be made and the proposed rule would have been withdrawn.

This action will not impose any additional reporting or recordkeeping requirements on either small or large pistachio handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

These changes were recommended by the committee on March 6, 2008, and submitted to AMS on May 28, 2008. The committee's meeting was widely publicized throughout the pistachio industry and all interested persons were invited to attend and participate. All entities, both large and small, were able to express their views on the effects of the amendments contained herein.

A proposed rule concerning this action was published in the **Federal Register** on September 4, 2009 (74 FR 45772). Copies of the rule were provided to interested parties. The rule was also made available through the Internet by USDA and the Office of the Federal Register. A 10-day comment period ending on September 14, 2009, was provided to allow interested persons to respond to the proposal.

One comment was received during the comment period. The comment was submitted by the manager of the committee. The commenter requested that the implementation of the aflatoxin regulations be delayed for handlers in the States of Arizona and New Mexico (District 4). The commenter points out that these States will be added to the production area and subject to regulation as a result of amendments to the order. The commenter states that handlers in Arizona and New Mexico have not previously been subject to marketing order requirements and have not had access to the necessary inspection services and forms needed to comply with the marketing order requirements. In addition, the committee will need time to consider implementation of rules and regulations that could provide reimbursement to District 4 handlers for additional costs associated with aflatoxin testing and certification.

USDA agrees that it may take a period of time for the handlers in Arizona and New Mexico to be in a position to meet these marketing order requirements. California handlers have been operating under the requirements since 2005; however, the Arizona and New Mexico handlers will need some time to transition into the program.

USDA believes it is reasonable to implement the aflatoxin sampling, testing, and certification requirements for Arizona and New Mexico handlers in District 4. Therefore, a change is made in this final rule that will implement the aflatoxin regulations for Arizona and New Mexico handlers on or after October 30, 2009.

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

After consideration of all relevant matters presented, including the information and recommendation submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because, as stated in the final rule amending the current order, the new production year began on September 1, and these regulations, which implement the order as amended, should be in place as soon as possible. Further, the effective date of this final rule corresponds to the effective date of the amended order.

List of Subjects in 7 CFR Part 983

Pistachios, Marketing agreements and orders, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 983 is proposed to be amended as follows:

PART 983—PISTACHIOS GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 983 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 983.138 [Removed]

■ 2. Section 983.138 is removed.

§ 983.141 [Removed]

■ 3. Lift the December 10, 2007, suspension of § 983.141, and remove the section.

§ 983.143 [Redesignated as § 983.155 and Amended]

■ 4. Redesignate § 983.143 as § 983.155, and amend paragraph (b) of that section by removing the words ''§ 983.170'' and adding in their place the words ''§ 983.92.''

§ 983.147 [Redesignated as § 983.164]

■ 5. Lift the December 10, 2007, suspension of § 983.147(d), redesignate § 983.147 as § 983.164.

■ 6. Amend newly redesignated § 983.164 by revising paragraph (d) to read as follows:

§ 983.164 Reports.

* * * * *

(d) *ACP–5, Minimal Testing Form.* Each handler who handles less than 1,000,000 pounds of dried weight pistachios in a production year and who wishes to request permission to handle under the minimal quantities provisions (§ 983.53) of the order shall furnish this report to the committee office no later than August 1 of each production year.

* * * * *

■ 7. Add new § 983.150 to read as follows:

§ 983.150 Aflatoxin regulations.

(a) *Maximum level.* No handler shall ship for domestic human consumption, pistachios that exceed an aflatoxin level of 15 ppb; *Provided,* That the provisions of this section pertaining to aflatoxin levels, sampling, testing, and certification shall apply to handlers in District 4 on or after October 30, 2009. All shipments must also be covered by an aflatoxin inspection certificate. Pistachios that fail to meet the aflatoxin requirements shall be disposed in such manner as described in the Failed Lots/Rework Procedure of this part (§ 983.152).

(b) *Change in level.* The committee may recommend to the Secretary changes in the aflatoxin level specified in this section. If the Secretary finds, on the basis of such recommendation or other information, that such an adjustment of the aflatoxin level would tend to effectuate the declared policy of the Act, such change shall be made accordingly.

(c) *Transfers between handlers.* Transfers between handlers within the production area are exempt from the aflatoxin regulation of this section.

(d) *Aflatoxin testing procedures.* To obtain an aflatoxin inspection certificate, each lot to be certified shall be uniquely identified, be traceable from testing through shipment by the handler, and be subjected to the following:

(1) *Samples for testing.* Prior to testing, a sample shall be drawn from each lot (''lot samples'') of sufficient weight to comply with Table 1 and Table 2 of this section.

(2) *Test samples for aflatoxin.* Prior to submission of samples to an accredited laboratory for aflatoxin analysis, three samples shall be created equally from the pistachios designated for aflatoxin testing in compliance with the requirements of Tables 1 and 2 of this paragraph (''test samples''). The test samples shall be prepared by, or under the supervision of, an inspector, or as approved under an alternative USDA-recognized inspection program. The test samples shall be designated by an inspector as Test Sample #1, Test Sample #2, and Test Sample #3. Each sample shall be placed in a suitable container, with the lot number clearly identified, and then submitted to an accredited laboratory. The gross weight of the inshell lot sample for aflatoxin testing and the number of incremental samples required are shown in Table 1. The gross weight of the kernel (shelled) lot sample for aflatoxin testing and the number of incremental samples required is shown in Table 2.

TABLE 1 TO § 983.150(D)(2)—INSHELL PISTACHIO LOT SAMPLING INCREMENTS FOR AFLATOXIN CERTIFICATION

Lot weight (lbs)	Number of incremental samples for the lot sample	Total weight of lot sample (kilograms)	Weight of the test sample (kilograms)
220 or less	10	3.0	1.0
221–440	15	4.5	1.5
441–1,100	20	6.0	2.0
1,101–2,200	30	9.0	3.0
2,201–4,400	40	12.0	4.0
4,401–11,000	60	18.0	6.0
11,001–22,000	80	24.0	8.0
22,001–150,000	100	30.0	10.0

TABLE 2 TO § 983.150(D)(2)—SHELLED PISTACHIO KERNEL LOT SAMPLING INCREMENTS FOR AFLATOXIN CERTIFICATION

Lot weight (lbs)	Number of incremental samples for the lot sample	Total weight of lot sample (kilograms)	Weight of the test sample (kilograms)
220 or less	10	1.5	0.5
221–440	15	2.3	0.75
441–1,100	20	3.0	1.0
1,101–2,200	30	4.5	1.5
2,201–4,400	40	6.0	2.0
4,401–11,000	60	9.0	3.0
11,001–22,000	80	12.0	4.0
22,001–150,000	100	15.0	5.0

(3) *Testing of pistachios.* Test samples shall be received and logged by an accredited laboratory and each test sample shall be prepared and analyzed using High Pressure Liquid Chromatograph (HPLC), Vicam Method (Aflatest), or other methods as recommended by not fewer than eight members of the committee and approved by the Secretary. The aflatoxin level shall be calculated on a kernel weight basis.

(4) *Certification of lots ''negative'' as to aflatoxin.* Lots will be certified as ''negative'' on the aflatoxin inspection certificate if Test Sample #1 has an aflatoxin level at or below 5 ppb. If the aflatoxin level of Test Sample #1 is above 25 ppb, the lot fails and the accredited laboratory shall fill out a failed lot notification report as specified in § 983.52. If the aflatoxin level of Test Sample #1 is above 5 ppb and below 25 ppb, the accredited laboratory may at the handler's discretion analyze Test Sample #2, and the test results of Test Samples #1 and #2 will be averaged. Alternatively, the handler may elect to withdraw the lot from testing, rework the lot, and resubmit it for testing after reworking. If the handler directs the laboratory to proceed with the analysis of Test Sample #2, the lot will be certified as negative to aflatoxin and the laboratory shall issue an aflatoxin inspection certificate if the averaged results of Test Sample #1 and Test Sample #2 are at or below 10 ppb. If the averaged aflatoxin level of Test Samples #1 and #2 is at or above 20 ppb, the lot fails and the accredited laboratory shall fill out a failed lot notification report as specified in § 983.52. If the averaged aflatoxin level of Test Samples #1 and #2 is above 10 ppb and below 20 ppb, the accredited laboratory may, at the handler's discretion, analyze Test Sample #3, and the results of Test Samples #1, #2, and #3 will be averaged. Alternatively, the handler may elect to withdraw the lot from testing, rework the lot, and resubmit it for testing after reworking. If the handler directs the laboratory to proceed with the analysis of Test Sample #3, a lot will be certified as negative to aflatoxin and the laboratory shall issue an aflatoxin inspection certificate if the averaged results of Test Samples #1, #2, and #3 are at or below 15 ppb. If the averaged aflatoxin results of Test Samples #1, #2, and #3 are above 15 ppb, the lot fails and the accredited laboratory shall fill out a failed lot notification report as specified in § 983.52. The accredited laboratory shall send a copy of the failed lot notification report to the committee and to the failed lot's owner within 10 working days of any failure described in this section. If the lot is certified as negative as described in this section, the aflatoxin inspection certificate shall certify the lot using a certification form identifying each lot by weight and date. The certification expires for the lot or remainder of the lot after 12 months.

(5) *Certification of aflatoxin levels.* Each accredited laboratory shall complete aflatoxin testing and reporting and shall certify that every lot of pistachios shipped domestically does not exceed the aflatoxin levels as required in paragraph (a) of this section or as provided under § 983.50. Each handler shall keep a record of each test, along with a record of final shipping disposition. These records must be maintained for three years beyond the production year of their applicability, and are subject to audit by the Secretary or the committee at any time.

(6) *Test samples that are not used for analysis.* If a handler does not elect to use Test Samples #2 or #3 for certification purposes, the handler may request that the laboratory return them to the handler.

■ 8. Add new § 983.152 to read as follows:

§ 983.152 Failed lots/rework procedure.

(a) *Inshell rework procedure for aflatoxin.* If inshell rework is selected as a remedy to meet the aflatoxin regulations of this part, then 100% of the product within that lot shall be removed from the bulk and/or retail packaging containers and reworked to remove the portion of the lot that caused the failure. Reworking shall consist of mechanical, electronic, or manual procedures normally used in the handling of pistachios. After the rework procedure has been completed, the total weight of the accepted product and the total weight of the rejected product shall be reported to the committee. The reworked lot shall be sampled and tested for aflatoxin as specified in § 983.150, except that the lot sample size and the test sample size shall be doubled. If, after the lot has been reworked and tested, it fails the aflatoxin test for a second time, the lot may be shelled and the kernels reworked, sampled, and tested in the manner specified for an original lot of kernels, or the failed lot may be used for non-human consumption or otherwise disposed of.

(b) *Kernel rework procedure for aflatoxin.* If pistachio kernel rework is selected as a remedy to meet the aflatoxin regulations in § 983.150, then 100% of the product within that lot shall be removed from the bulk and/or retail packaging containers and reworked to remove the portion of the lot that caused the failure. Reworking shall consist of mechanical, electronic, or manual procedures normally used in the handling of pistachios. After the rework procedure has been completed, the total weight of the accepted product and the total weight of the rejected product shall be reported to the committee. The reworked lot shall be sampled and tested for aflatoxin as specified in § 983.150.

§ 983.170 [Removed]

■ 9. § 983.170 is removed.

■ 10. Amend § 983.253 by removing the word ''California'' in paragraph (a), and by revising paragraph (b) to read as follows:

§ 983.253 Assessment rate.

(a) * * *

(b) Each handler who receives pistachios for processing shall furnish the Receipts/Assessment Report and pay all due assessments to the committee by December 15 of the applicable production year.

Dated: October 26, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9–26148 Filed 10–30–09; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 983

[Doc. No. AO–FV–08–0147; AMS–FV–08–0051; FV08–983–1]

Pistachios Grown in California; Order Amending Marketing Order No. 983

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the marketing agreement and order for pistachios (order). The amendments were proposed by the Administrative Committee for Pistachios (Committee), which is responsible for local administration of the order. The amendments will: Expand the production area covered under the order to include Arizona and New Mexico in addition to California; authorize the Committee to reimburse handlers for a portion of their inspection and certification costs in certain situations; authorize the Committee to recommend research projects; modify existing order authorities concerning aflatoxin and quality regulations; modify the authority for interhandler transfers of order obligations; redesignate several sections of the order; remove previously suspended order provisions, and make other related changes. The amendments are intended to improve the operation and functioning of the marketing order program.

DATES: This rule is effective November 3, 2009.

FOR FURTHER INFORMATION CONTACT: Martin Engeler, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102–B, Fresno, California 93721; Telephone: (559) 487–5110, Fax: (559) 487–5906, or E-mail: *Martin.Engeler@ams.usda.gov*; or Laurel May, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–1509, Fax: (202) 720–8938, or E-mail: *Laurel.May@ams.usda.gov.*

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

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on July 15, 2008, and published in the July 18, 2008, issue of the **Federal Register** (73 FR 41298); a Recommended Decision issued on April 29 and published in the May 5, 2009, issue of the **Federal Register** (74 FR 20630); and a Secretary's Decision and Referendum Order issued on July 29, 2009, and published in the August 6, 2009, issue of the **Federal Register** (74 FR 39230).

This action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866.

Preliminary Statement

This final rule was formulated on the record of a public hearing held on July 29 and 30, 2008, in Fresno, California. Notice of this hearing was issued on July 15, 2008, and published in the July 18, 2008, issue of the **Federal Register** (73 FR 41298). The hearing was held to consider proposed amendments to the order.

The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act'', and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The Notice of Hearing contained several amendment proposals submitted by the Committee. Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of AMS on April 29, 2009, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto. This Recommended Decision was published in the May 5, 2009, issue of the **Federal Register** (74 FR 39230). No exceptions were filed.

A Secretary's Decision and Referendum Order was issued on July 29, 2009, and published in the August 6, 2009, issue of the **Federal Register** (74 FR 39230). This document directed that a referendum among pistachio growers be conducted during the period August 10 through August 22, 2009 to determine whether they favor the proposed amendments to the order. To become effective, the amendments had to be approved by at least two-thirds of the volume of pistachios represented by voters in the referendum. All of the proposed amendments were favored by at least 94 percent of those voting in the referendum and by at least 96 percent of the volume represented in the referendum.

The amendments included in this final order will:

1. Expand the production area to include the States of Arizona and New Mexico. The production area covered under the order was previously limited to the State of California. This amendment will revise existing § 983.26, Production area, and redesignate it as § 983.25. It will also result in corresponding changes being made to existing § 983.11, Districts; § 983.21, Part and subpart; and existing § 983.32, Establishment and membership. Existing sections 983.21 and 983.32 will also be redesignated as § 983.20 and § 983.41, respectively.

2. Authorize the Committee to reimburse handlers for travel and shipping costs related to aflatoxin inspection, under certain circumstances. This amendment will revise existing § 983.44, Inspection, certification and identification, and redesignate it as § 983.56.

3. Add a new § 983.46, Research, that will authorize the Committee to engage in research projects with the approval of USDA. This amendment will also require corresponding changes to existing § 983.34, Procedure, to establish voting requirements for Committee recommendations concerning research. It will also require corresponding changes to existing § 983.46, Modification or suspension of regulations, and § 983.54, Contributions. The existing § 983.34, § 983.46, and § 983.54 will also be redesignated as § 983.43, § 983.59, and § 983.72, respectively.

4. Provide broad authority for aflatoxin regulations by revising existing § 983.38, Aflatoxin levels, and redesignating it as § 983.50. This amendment also requires corresponding changes to existing § 983.40, and redesignating that section as § 983.52. It also requires corresponding changes to § 983.1, Accredited laboratory.

5. Provide broad authority for quality regulations by revising existing § 983.39, Minimum quality levels, and redesignating it as § 983.51. It also

removes provisions from that section concerning specific quality regulations that are currently suspended. This amendment will also require corresponding changes by removing currently suspended language in § 983.6, Assessed weight; revising § 983.7, Certified pistachios; removing existing § 983.19, Minimum quality requirements and § 983.20, Minimum quality certificate; revising existing § 983.31, Shelled pistachios; revising existing § 983.41, Testing of minimal quantities, and removing currently suspended language in that section; revising existing § 983.42, Commingling; and revising existing § 983.45, Substandard pistachios. Sections 983.31, 983.41, 983.42, and 983.45 will be redesignated as sections 983.30, 983.53, 983.54, and 983.57, respectively.

6. Add a new § 983.58, Interhandler Transfers. This proposal will modify existing authority under the order by expanding the range of marketing order obligations that may be transferred between handlers when pistachios are transferred between handlers. This proposal will require a corresponding change to existing § 983.53, Assessments, and will redesignate § 983.53 as § 983.71.

7. As a result of the proposed amendments and corresponding changes to the order summarized above, numerous administrative changes to the order will also be required. Such changes include numerical redesignations to several sections of the order, changes to cross references of section numbers in regulatory text as a result of the numerical redesignations, and removal of obsolete provisions. The title of order will be revised to include the States of Arizona and New Mexico. In addition, a change will be made to amend existing § 983.70 and redesignate it as § 983.92.

In addition to these amendments to the order, AMS proposed to make any such additional changes as may be necessary to the order to conform to any amendment that may be adopted. To the extent necessary, conforming changes have been made to the amendments. These conforming changes have been identified in the above list of amendments.

An amended marketing agreement was subsequently provided to all pistachio handlers in the production area for their approval. The marketing agreement was approved by handlers representing more than 50 percent of the volume of pistachios handled by all handlers during the representative period of September 1, 2008 through August 31, 2009.

Small Business Considerations

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit.

Small agricultural service firms, which include handlers regulated under the order, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000. Small agricultural producers have been defined as those with annual receipts of less than $750,000.

There are approximately 24 handlers and approximately 800 producers of pistachios in the State of California. It is estimated that approximately 50 percent of the processing handlers had annual receipts of less than $7,000,000, according to information presented at the hearing. In addition, based on the number of producers, the size of the 2007 crop, and the average producer price per pound data reported by the National Agricultural Statistics Service (NASS), the average producer revenue for the 2007 crop was $702,000. It is estimated that 85% of the producers in California produced less than $750,000 worth of pistachios and would thus be considered small businesses according to the SBA definition.

Based on information presented at the hearing, it is estimated that there are approximately 40 to 50 growers of pistachios in Arizona and approximately 30 growers in New Mexico. It is also estimated that there are 2 handlers in Arizona and 3 handlers in New Mexico. Although no official data is available, based on hearing testimony it is estimated that the majority of producers in Arizona and New Mexico are small businesses according to SBA's definition. It is also estimated that all of the handlers in New Mexico are small businesses and one of the handlers in Arizona is a small business.

California accounts for the vast majority of pistachio acreage and production in the U.S. According to data from the National Agricultural Statistics Service (NASS), California's total acreage in 2007 was reported at 176,400 acres. While no 2007 acreage data is available from NASS for Arizona and New Mexico, in 2006, Arizona acreage was reported at 2,500 acres while New Mexico acreage was reported at 1,350 acres in 2002. Two witnesses from New Mexico testified that they estimate acreage in New Mexico to be about 450 acres in 2007. Pistachios are also grown in small quantities in Texas, Utah, and Nevada. However, witnesses testified that pistachios produced in those States are considered to be the result of hobby farming and are not commercially significant in volume. California, Arizona, and New Mexico account for over 99.99 percent of domestic pistachio production and essentially all of the production used for commercial purposes, according to the record.

The order regulating the handling of pistachios grown in the State of California was established in 2004. The primary feature of the order is a quality provision that requires pistachios to be sampled and tested for aflatoxin prior to shipment to domestic markets. Such shipments of pistachios may not exceed a tolerance level for aflatoxin. Information collection and dissemination is also conducted under the order. The program is funded through assessments on handlers according to the quantity of pistachios handled. The order is administered by an industry committee of handlers and growers, and is designed to support both large and small pistachio handlers and growers. Committee meetings where regulatory recommendations and other decisions are made are open to the public. All members are able to participate in Committee deliberations, and each Committee member has an equal vote. Others in attendance at meetings are also allowed to express their views.

The Committee met on March 6, 2008, and requested that USDA conduct a public hearing to consider proposed amendments to the order. USDA reviewed the request and determined to proceed to a hearing. A hearing was conducted on July 29 and 30, 2008, in Fresno, California. The Committee's meeting and the hearing were both open to the public and all that attended were able to participate and express their views.

The amendments approved by producers in referendum will: Expand the production area to include the States of Arizona and New Mexico; authorize the Committee to reimburse handlers for certain inspection costs; authorize research activities under the order; provide broad authority for aflatoxin

regulation under the order, provide broad authority for quality regulation under the order; provide authority for interhandler transfer of marketing order obligations; and make corresponding administrative changes to the order as a result of the aforementioned proposed changes.

The amendments are intended to improve the operation and functioning of the marketing order program. Record evidence indicates that they are intended to benefit all producers and handlers under the order, regardless of size. All grower and handler witnesses at the hearing supported the amendments and while acknowledging the additional cost implications, they stated that they expected the benefits to outweigh the costs.

A description of the amendments and their anticipated economic impact on small and large entities is discussed below.

Evaluation of the Potential Economic Impacts of the Amendments

The key economic issues to examine in considering the amendments to the marketing order are the benefits and costs to growers and handlers of the expansion of the production area and the consequences of that expansion. The most significant change in terms of its potentially significant and immediate impact is the fact that expanding the production area to include Arizona and New Mexico will result in pistachio handlers in those two States being regulated under the order which will require them to meet the same aflatoxin certification requirements that apply to California handlers.

Aflatoxin Requirements

Pistachio handlers under the order must have all pistachio lots destined for the domestic market tested and certified that they do not exceed a maximum aflatoxin tolerance. To comply with the standard, handlers arrange for a sample to be taken from each lot that is to be shipped domestically and to have that sample tested for aflatoxin. Lots that meet the standard receive written certifications that allow shipment to the domestic market. Lots that exceed the aflatoxin tolerance cannot be shipped domestically. Handlers may rework the lots to remove contaminated nuts and then can begin the certification process again. There are costs associated with each of these steps, which were previously borne only by California handlers and will be borne by handlers in the other two States as a result of the amendment.

Before considering cost-related details, it is important to examine the benefits associated with mandatory aflatoxin certification. Various grower and handler witnesses testified that they expected significant benefits to accrue from the mandatory requirements enforced through the marketing order, and increased consumer confidence in the quality of U.S. pistachios. Arizona and New Mexico handler witnesses indicated that they would willingly comply with all of the steps involved in meeting the aflatoxin standards. Grower witnesses from Arizona and New Mexico indicated awareness that at least part of the increased handler costs from aflatoxin certification would be passed onto them, but that they expected the net effect to be strongly positive. Grower witnesses from Arizona and New Mexico also stated they did not expect to have to undertake any significant changes in their pistachio production operations as a result of coming under the authority of the marketing order. Witnesses said that they believed that they would have overall improved returns and higher sales than would be the case without the marketing order regulation. They expected the benefits of the proposed amendments to far outweigh the costs.

A 2005 benefit cost analysis of federal marketing order mandatory aflatoxin requirements for California was submitted as evidence at the hearing. The analysis, prepared by agricultural economists at the University of California-Davis, was entitled ''Economic Consequences of Mandated Grading and Food Safety Assurance: *Ex Ante* Analysis of the Federal Marketing Order for California Pistachios'' (Richard S. Gray and others, University of California, Giannini Foundation Monograph 46, March 2005). In present-value terms, over a 20-year horizon, the benefits to producers in the study's baseline scenario were estimated to be $75.3 million. The study reported a ''most likely scenario'' benefit cost ratio of nearly 6:1, with a range from about 4:1 to 9:1 under alternative scenarios representing low and high aflatoxin event impacts, respectively, on the pistachio market.

One witness noted that, depending on compliance cost and aflatoxin event assumptions under alternative scenarios in the study, the expected benefit cost ratio from implementation of mandatory aflatoxin standards under the California marketing order ranged between 5:1 and 17:1. Several grower and handler witnesses suggested that these significant benefit cost ratios for the California marketing order will also likely apply if the order is expanded to include Arizona and New Mexico.

The following section examines the cost impacts of the mandatory aflatoxin requirements in an expanded marketing order.

Differences in Aflatoxin Inspection and Certification Costs

Aflatoxin inspection and certification costs can be divided into the costs of: (1) Inspector travel time to pistachio handlers' premises; (2) time required for the inspector to draw samples from lots designated for domestic shipment; (3) cost of shipping samples to the testing laboratory; (4) aflatoxin analysis (testing cost); and (5) value of the destroyed pistachios used in the sampling and analysis.

Tables 1–3 that follow present estimated costs for representative handlers in California, Arizona, and New Mexico. Each table is designed to summarize handler costs for the lots being tested, including each of the five cost elements listed above. For clarity of the cost comparisons, the lot size to be sampled is assumed to be 50,000 pounds in the representative scenarios for all three States. The 50,000-pound lot size is most appropriate for California's handler plants, which are generally larger than the handler plants in Arizona and New Mexico. The impact in terms of higher unit cost for smaller lot sizes is discussed below.

Table 1 is a representation of the aflatoxin certification cost situation in California. It serves as a benchmark with which to compare the costs in the other two States, Arizona and New Mexico. Witnesses from the pistachio industry in each of the three States submitted as evidence the data used in the three tables, and stated that the data was representative of the situation that exists or would be faced by handlers in those States.

Witnesses pointed out that inspector travel costs and sample shipment costs were the most variable costs across the States. Inspector travel costs consist of the mileage reimbursement that inspectors need to be paid by the handlers, plus the time spent traveling to the handler's location. In California, inspectors are regularly in the plants, and there is no additional travel time associated with aflatoxin sampling. Witnesses testified that New Mexico inspector travel costs could be as high as $485 per lot due to the large distances involved, but that the figure of $432.50 was the most representative. Data presented at the hearing indicated that Arizona inspector travel cost could be as high as $100 per lot, but that a lower figure of $32.70 was more likely due to the closer proximity of Arizona Plant

Services inspectors, who may be certified to take the sample.

TABLE 1—CALIFORNIA PISTACHIOS: COST SCENARIO FOR SAMPLING AND AFLATOXIN TESTING FOR REPRESENTATIVE HANDLER

	50,000-pound lots		Description of cost elements
	Dollars per lot	Dollars per pound	
Inspector Travel Time to Plant	.....	.....	No inspector travel time; inspector regularly in plant.
Inspector Sampling Time	$70.00	$0.0014	[Cost of sampler time: 2 hours @ $35/hour = $70]; [2 hours to draw 100 samples for one lot[2]].
Value of Pistachio Sample	44.00	0.0009	[10 kg (22-lb.) weight of sample from 100 sub-samples]; [22 lbs. @ $2.00 per pound = 44].
Shipping Cost to Laboratory[1]	.....	.....	Onsite labs in plants; no shipping cost.
Aflatoxin Testing Cost[2]	90.00	0.0018	$90 lab fee to determine aflatoxin level of sample.
Total Cost	204.00	0.0041	
Pct. of price received by handler	.....	0.2%	Industry estimate of CA handler sale price per pound=2.00.
Pct. of price received by grower	.....	0.3%	NASS estimate of 2007 CA grower price per pound = $1.35.

[1] DFA laboratory in Fresno, CA.
[2] Aflatoxin analysis done in onsite laboratory; imputed cost of $90 is based on cost in outside laboratory.
Source: Testimony at pistachio federal marketing order hearing, July 29–30, 2008, in Fresno, CA.

TABLE 2—ARIZONA PISTACHIOS: COST SCENARIO FOR SAMPLING AND AFLATOXIN TESTING FOR REPRESENTATIVE HANDLER

	50,000-pound lots		Description of cost elements
	Dollars per lot	Dollars per pound	
Inspector Travel Time to Plant	$32.70	$0.0007	[24 miles[1] @ 0.40 per mile = $9.60]; [Cost of sampler time: 40 min. (0.66 hours) @ $35/hour = $23.10].
Inspector Sampling Time	70.00	0.0014	[Cost of sampler time: 2 hours @ $35/hour = $70]; 2 hours to draw 100 samples for one lot[2]].
Value of Pistachio Sample	60.50	0.0012	[(10 kg (22-lb.) weight of sample from 100 sub-samples]; [22 lbs. @ 2.75 per pound = 60.50].
Shipping Cost to Laboratory[3]	200.00	0.0040	Shipping cost per 10 kg sample.
Aflatoxin Testing Cost	90.00	0.0018	90 lab fee to determine aflatoxin level of sample.
Total Cost	453.20	0.0091	
Pct. of price received by handler	.....	0.3%	Industry estimate of AZ handler sale price per pound = $2.75.
Pct. of price received by grower	.....	0.7%	USDA/NASS estimate of 2007 CA grower price per pound = $1.35 (AZ price not available).

[1] 12 miles each way from pistachio handler plant in Bowie, AZ to the San Simon, AZ location of Arizona Plant Services inspectors (certified samplers).
[2] Three lots sampled per visit over a 6-hour period.
[3] DFA laboratory in Fresno, CA; handler witness expected to use overnight shipping, estimated at $200 per 10 kg sample.
Source: Computed by USDA, based on evidence presented at pistachio federal marketing order hearing, July 29–30, 2008, in Fresno, CA.

TABLE 3—NEW MEXICO PISTACHIOS: COST SCENARIO FOR SAMPLING AND AFLATOXIN TESTING FOR REPRESENTATIVE HANDLER

	50,000-pound lots		Description of cost elements
	Dollars per lot	Dollars per pound	
Inspector Travel Time to Plant	$432.50	$0.0087	600 miles[1] @ $0.40 per mile = $240]; [Cost of sampler time: 5.5 hours[2] @ $35/hour = $192.50].
Inspector Sampling Time	70.00	0.0014	[Cost of sampler time: 2 hours) @ $35/hour = $70]; [2 hours to draw 100 samples for one lot].
Value of Pistachio Sample	44.00	0.0009	[10 kg (22-lb).weight of sample from 100 sub-samples]; [22 lbs. @ $2.00 per pound = $44].
Shipping Cost to Laboratory[3]	105.00	0.0021	Shipping cost per 10 kg sample.[4]
Aflatoxin Testing Cost	90.00	0.0018	$90 lab fee to determine aflatoxin level of sample.
Total Cost	741.50	0.0148	

TABLE 3—NEW MEXICO PISTACHIOS: COST SCENARIO FOR SAMPLING AND AFLATOXIN TESTING FOR REPRESENTATIVE HANDLER—Continued

	50,000-pound lots		Description of cost elements
	Dollars per lot	Dollars per pound	
Pct. of price received by handler		0.7%	Industry estimate of NM handler sale price per pound = $2.00.
Pct. of price received by grower		1.1%	USDA/NASS estimate of 2007 CA grower price per pound = $1.35 (NM price not available).

[1] Average of round trip travel distances to Alamagordo, NM, pistachio handler plant from two NM inspector (certified sampler) locations—Portales (416 miles round trip) and Farmington (782 miles).
[2] Average of driving time estimates to two inspector locations: (4 + 7)/2 = 5.5 hours.
[3] DFA laboratory in Fresno, CA.
[4] Average of estimated range of shipping costs = ($90 + $120)/2 = $105.
Source: Computed by USDA, based on evidence presented at pistachio federal marketing order hearing, July 29–30, 2008, in Fresno, CA.

Two cost elements that are uniform across the three States are sampling time and testing cost. The estimated time that it takes an inspector to draw a 10 kg (22 pound) sample for aflatoxin testing of a 50,000 pound lot, based on 100 sub-samples, is 2 hours. At a standard hourly rate of $35 per hour, two hours of sampling time will cost the handler $70. The testing cost for a laboratory to determine the aflatoxin level from a sample is $90.

Witnesses indicated that the cost for the 22 pounds of pistachios used in the sample (handler sales revenue foregone) was $2.00 per pound ($44 total) in California and New Mexico and $2.75 in Arizona (about $61 total).

Given all of the assumptions that went into developing the cost summary in Table 1, the estimated cost per lot for a California handler for aflatoxin certification is $204, which is less than one half cent per pound (about four tenths of a cent). This represents 0.2 percent of the $2.00 pistachio value per pound at the handler level (estimate provided by industry witnesses) and 0.3 percent of the 2007 grower price per pound for California pistachios, estimated by NASS at $1.35 per pound. A California pistachio industry witness pointed out that the unit price would be even lower with larger lot sizes and that the average lot size for ''failed lots'' in a recent year under the marketing order (those that exceeded the maximum aflatoxin tolerance) was nearly 67,000 pounds.

Table 2 shows that a representative Arizona handler would pay twice as much as a California handler—$453 per lot, or nearly one cent per pound (about nine tenths of a cent). The data in Table 3 indicated that a New Mexico handler would pay even more for aflatoxin certification—$742 per 50,000 pound lot, or about 1.5 cents per pound. Thus the certification costs for the smaller plants in Arizona and New Mexico would be between two and four times higher, if lot sizes were the same.

Typical lot sizes may be smaller in Arizona and New Mexico; witnesses indicated that lot sizes could vary between 10,000 and 50,000 pounds. An Arizona handler witness presented evidence indicating that 40,000 pounds would be a more likely typical lot size, and that the sample size and related cost factors would be the same. With a smaller lot size, the Arizona handler cost per pound rises from nine tenths of a cent (50,000 pound lot) to 1.1 cents (40,000 pound lot). This cost per pound is nearly 3 times higher than the cost for a California handler with a 50,000 pound lot, but the percentage of the estimated handler sales price remains under one half of one percent (0.4%).

A New Mexico handler witness characterized their own operation as being quite a bit smaller than the main Arizona handler and most California handlers. If the typical lot size for a small New Mexico handler was 10,000 pounds, then the sample size would be smaller (13.2 pounds) and the inspector sampling time declines from two hours to one hour. The total cost would decline modestly, from $742 for a 50,000 pound lot to $689 for a 10,000 pound lot. However, since the costs are spread over fewer pounds, the unit cost for certification would rise to nearly seven cents per pound, about 3 percent of the handler sales price. If the small handler had a typical lot size of 30,000 pounds (the midpoint between 10,000 and 50,000 pounds) the certification cost would be about 2.5 cents per pound, just over one percent of the handler sale price.

However, the New Mexico handler witness indicated that they would try to organize their pistachio handling operation to keep the lot sizes for sampling and testing large enough to keep costs down. The 50,000 pound lot example shown in Table 3 therefore provides a reasonable representation of small handler certification costs. The higher costs are due largely to the less developed aflatoxin testing infrastructure than is available in California, and related issues such as greater distances for inspector travel.

Additional costs are incurred if a lot exceeds the maximum aflatoxin tolerance. Witnesses estimated that in all three States the cost for reworking a lot to remove the contaminated nuts would be 25 cents per pound. After reworking the lot a handler would incur another round of the sampling and testing costs highlighted in the tables.

Grower witnesses stated that the aflatoxin certification costs as presented by handler and other industry witnesses, and illustrated by the three tables, appeared to be reasonable representations of the cost of compliance with the aflatoxin requirements under the marketing order.

Proposed Reimbursement to Account for Handler Cost Differences

The significant cost differences highlighted above is the reason that pistachio industry witnesses from all three States supported a proposed amendment to authorize the Committee to reimburse handlers in more remote locations within the production area for the excess costs due to lack of access to inspection and certification services. Reimbursing handlers for the excess costs would eliminate any differential impact and would equalize the aflatoxin certification costs across the proposed expanded production area.

Although the precise details of reimbursement would be established through the informal rulemaking process upon recommendation of the Committee, the following example illustrates one way to estimate the amount of reimbursement that may occur. With a 50,000 pound lot size, Table 3 shows the cost per lot for a New

Mexico handler is about $742. The New Mexico handler would be expected to pay only the portion of the costs that are the same across the three States ($70 for inspector sampling, plus $90 testing cost, plus $44 in revenue foregone from destroyed pistachios, for a total cost per lot of $204). The handler represented by Table 3 would receive a reimbursement per lot of $538 ($742 minus $204).

Using different cost assumptions, a pistachio industry witness provided an example with a somewhat higher estimate of the likely cost ($605 per lot) that the Committee would reimburse New Mexico handlers. The witness estimated that with ten sampling trips per year, and one lot sampled per trip, the New Mexico reimbursements would total $6,050. With an anticipated total of 100 lots tested in Arizona in the example presented by the witness, and with a reimbursement rate of $235 per lot, the total Arizona cost would be $23,500. The sum for the two States would be about $30,000.

Based on similar assumptions used in developing the tables, the total current cost of marketing order aflatoxin certification for California handlers (excluding the Committee assessment) was estimated by an industry witness to be $530,000. Based on this example, a $30,000 reimbursement would be issued by the Committee to the Arizona and New Mexico handlers. The reimbursement would represent about a 6 percent increase above the $530,000 currently paid by the California handlers. The witness also stated that when the reimbursement system is implemented, all handlers of like-size operations would have comparable inspection costs.

All California handler and grower witnesses expressed their support for such a reimbursement provision. In addition, all of the Arizona and New Mexico handler and grower witnesses also testified in favor of such a reimbursement.

Handler and grower witnesses indicated that the expected benefits from the operation of the expanded marketing order would substantially exceed costs.

Other Proposed Amendments

The addition of production, post harvest, and nutrition research authority to the order would have no immediate cost impact on the industry. This amendment would allow the Committee to recommend research activities to USDA. If approved, the projects would be funded through handler assessments. It is likely that program assessments would increase in order to fund any projects recommended, which would increase costs to handlers. However, the order limits the total assessment that can be implemented under the order so that the entire assessment cannot exceed one half of one percent of the average price received by producers in the preceding crop year. To the extent that funds for research would only represent a portion of the assessment funds, the cost of any research that may be conducted would necessarily be less than one half of one percent of the average price received by producers. In addition, since assessments are collected from handlers based on the volume of pistachios handled, any cost associated with research projects would be proportionate to the size of the handlers.

Witnesses testified that the Committee would not undertake any research activities unless they expected the benefits to outweigh the costs. One witness testified that a presentation at a Symposium for Agricultural Research held on June 18 and 19, 2008, in Sacramento, California indicated that a benefit/cost ratio for agricultural research in California has been estimated at 30.7 to 1.

Handler and grower witnesses made positive comments in support of other order amendments, including the granting of broad authority for aflatoxin standards and for other quality regulations. Witnesses stated that there would be no immediate impact from the granting of these authorities, because there are no industry plans for changes in regulations. However, handler and grower witnesses stated that having such authority would be quite helpful to the future of the pistachio industry, and that if the authorities were exercised in the future, they expected that it would be done in a way that assured that benefits would outweigh costs. Since unanimity of the Committee would generally be required to make such changes, they expressed confidence that only regulations would be established that had very broad industry consensus. They expected additional improvements in product quality and improved returns to growers and handlers from the use of any such future regulations.

One other amendment, relating to interhandler transfers, merits discussion in the context of economic impact on handlers and growers, particularly small ones. When the marketing order was promulgated in 2004, authority was given for interhandler transfers of noncertified pistachios. Evidence presented at the hearing indicates that the amendment formalizes that authority and expands it to include other marketing order requirements, including the payment of assessments on hulled and dried pistachios, when that processing is done by the producer. Under the marketing order, the entity which hulls and dries pistachios is responsible for assessments and inspections. This provision was included because in California producers normally deliver pistachios to a handler (processor) for hulling and drying as well as the subsequent handling functions.

However, conditions in Arizona and New Mexico are different due to the limited processing capacity of some handlers, the lack of processing access of producers, and the small size of some producing operations. It is necessary in these conditions for some producers to process (hull and dry) their pistachios prior to delivery to a handler. The hulling and drying is part of the harvest process, and it is not the intent of these producers to perform any other handling functions. The proposal would therefore allow the transfer of responsibility for assessments, inspections and other marketing order requirements to the handler who places the pistachios into the stream of commerce.

According to evidence presented at the hearing, this amendment will allow a small number of producers who hull and dry their own production, but perform no additional handling functions (estimated at less than ten), to limit their responsibility to filing a form at the time of pistachio delivery. This amendment will more clearly delineate the responsibilities of handlers and the small number of affected producers. Both will continue their current practices in virtually all cases, and the amendment neither increases or decreases returns. This amendment has the effect of assisting small business operations by removing them from paperwork and other burdens.

Handler Assessment Costs

Under the marketing order, handlers pay assessments to the Committee for costs associated with administering the program. Following is an evaluation of the impact these costs will have on handlers in Arizona and New Mexico.

The assessment rate authorized under the order is limited to one-half of one percent (.005) of the average grower price received in the preceding crop year. The current assessment rate under the order is $.0007 per pound, or .07 cents per pound. This compares to an estimated average grower price for the 2007 crop year of $1.35 per pound. The assessment rate for the 2007 crop year was .05 percent (5/100ths of one percent) of the grower price.

Although there are no NASS data available regarding New Mexico pistachio production, information presented by witnesses at the hearing indicates average annual production in New Mexico could be in the range of 300,000 to 350,000 pounds. At an assessment rate of $.0007, this would equate to a total annual assessment ranging from $210 to $245 for all New Mexico handlers combined. Production from Arizona was 7 million pounds in 2007, according to NASS data. At the $.0007 per pound assessment rate, this would equate to a total annual assessment of $4,900 for all Arizona handlers combined. Assessments under the order present a cost to handlers, but as can be seen from the foregoing example, the cost is minimal. In addition, the costs are applied to handlers in proportion to the quantity of pistachios handled, so there is no differential impact anticipated for small and large handlers.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments to the order on small entities. The record evidence indicates that the amendments are intended to benefit all producers and handlers under the order, regardless of size. Further, the record shows that the costs associated with implementing regulations would be outweighed by the benefits expected to accrue to the pistachio industry.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. These amendments are designed to enhance the administration and functioning of the order to the benefit the pistachio industry.

Paperwork Reduction Act

Information collection requirements for Part 983 are currently approved by the Office of Management and Budget (OMB) under OMB No. 0581–0215, ''Pistachios Grown in California.'' The information requirements generated by the amendments result in an increase in burden, which has been submitted to OMB for approval under OMB No. 0581–NEW. We have requested that this collection be merged into OMB No. 0581–0215 when approved.

Producers and handlers of pistachios located in the States of Arizona and New Mexico will be required to complete forms relating to committee nominations, background questionnaires, referendum and nomination ballots, and handler reports. The estimated number of respondents is 85. This will result in a burden of 29 hours. Additionally, handlers will have to maintain related records and documentation for three full years following the end of the crop year.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

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

Civil Justice Reform

The amendments to Marketing Agreement and Order 983 proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of the entry of the ruling.

Order Amending the Order Regulating the Handling of Pistachios Grown in California, Arizona, and New Mexico

Findings and Determinations

The findings and determinations set forth hereinafter are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the agreement and order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings and Determinations Upon the Basis of the Hearing Record.*

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601–674) and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to Marketing Order No. 983 (7 CFR part 983), regulating the handling of pistachios grown in California.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing agreement and order, as amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as amended, regulate the handling of pistachios grown in the production area in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which a hearing has been held;

(3) The marketing agreement and order, as amended, are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing agreement and order, as amended, prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of pistachios grown in the production area; and

(5) All handling of pistachios grown in the production area as defined in the marketing agreement and order, is in the current interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Additional Findings.*

It is necessary and in the public interest to make these amendments effective not later than one day after publication in the **Federal Register**. A later effective date would unnecessarily delay implementation of the amendments. These amendments should be in place as soon as possible as the new production year began on September 1.

In view of the foregoing, it is hereby found and determined that good cause exists for making these amendments effective one day after publication in the

Federal Register, and that it would be contrary to the public interest to delay the effective date for 30 days after publication in the **Federal Register** (Sec. 553(d), Administrative Procedure Act; 5 U.S.C. 551–559).

(c) *Determinations.* It is hereby determined that:

(1) The ''Marketing Agreement Regulating the Handling of Pistachios Grown in California, Arizona, and New Mexico,'' upon which the aforesaid public hearing was held, has been signed by handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping pistachios covered by the order) who during the period September 1, 2008, through August 31, 2009, handled not less than 50 percent of the volume of such pistachios covered by the order; and

(2) The issuance of this amendatory order, amending the aforesaid order, is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of approval and who, during the period of September 1, 2008, through July 31, 2009, (which has been determined to be a representative period), have been engaged within the production area in the production of such pistachios, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum.

Order Relative to Handling of Pistachios Grown in California, Arizona, and New Mexico

It is therefore ordered, That on and after the effective date hereof, all handling of pistachios grown in California, Arizona, and New Mexico shall be in conformity to, and in compliance with the terms and conditions of the said order as hereby amended as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the Secretary's Decision issued on July 29, 2009, and published in the **Federal Register** on August 6, 2009, (74 FR 39230) shall be and are the terms and provisions of this order amending the order and are set forth in full herein.

List of Subjects in 7 CFR Part 983

Pistachios, Marketing agreements and orders, Reporting and recordkeeping requirements.

PART 983—PISTACHIOS GROWN IN CALIFORNIA, ARIZONA, AND NEW MEXICO

■ For the reasons set forth in the preamble, Title 7 of Chapter XI of the Code of Federal Regulations is amended by amending part 983 to read as follows:

■ 1. The authority citation for 7 CFR part 983 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. The heading for part 983 is revised to read as follows:

PART 983—PISTACHIOS GROWN IN CALIFORNIA, ARIZONA, AND NEW MEXICO

■ 3. Revise § 983.1 to read as follows:

§ 983.1 Accredited laboratory.

An *accredited laboratory* is a laboratory that has been approved or accredited by the U.S. Department of Agriculture.

■ 4. Lift suspension of § 983.6, published on December 7, 2007 (72 FR 69141) and effective on December 10, 2007, and revise the section to read as follows:

§ 983.6 Assessed weight.

Assessed weight means pounds of inshell pistachios, with the weight computed at 5 percent moisture, received for processing by a handler within each production year: *Provided,* That for loose kernels, the actual weight shall be multiplied by two to obtain an inshell weight; *Provided further,* That the assessed weight may be based upon quality requirements for inshell pistachios that may be recommended by the Committee and approved by the Secretary.

■ 5. Lift suspension of § 983.7, published on December 7, 2007 (72 FR 69141) and effective on December 10, 2007, and revise the section to read as follows:

§ 983.7 Certified pistachios.

Certified pistachios are those that meet the inspection and certification requirements under this part.

■ 6. Revise § 983.8 to read as follows:

§ 983.8 Committee.

Committee means the Administrative Committee for Pistachios established pursuant to § 983.41.

§ 983.11 [Amended]

■ 7. Amend § 983.11 by adding a paragraph (a)(4) to read as follows:

§ 983.11 Districts.

(a) * * *

(4) *District 4* consists of the States of Arizona and New Mexico.

* * * * *

§ 983.19 [Removed and Reserved]

■ 8. Lift suspension of § 983.19, published on December 7, 2007 (72 FR 69141) and effective on December 10, 2007, and remove the section.

§ 983.20 [Removed and Reserved]

■ 9. Lift suspension of § 983.20, published on December 7, 2007 (72 FR 69141) and effective on December 10, 2007, and remove the section.

§ 983.21 [Redesignated as § 983.20]

■ 10. Redesignate § 983.21 as § 983.20, and revise the section to read as follows:

§ 983.20 Part and subpart.

Part means the order regulating the handling of pistachios grown in the States of California, Arizona and New Mexico, and all the rules, regulations and supplementary orders issued thereunder. The aforesaid order regulating the handling of pistachios grown in California, Arizona and New Mexico shall be a subpart of such part.

§ 983.22 [Redesignated as § 983.21]

■ 11. Redesignate § 983.22 as § 983.21.

§ 983.23 [Redesignated as § 983.22]

■ 12. Redesignate § 983.23 as § 983.22, and revise the section to read as follows:

§ 983.22 Pistachios.

Pistachios means the nuts of the pistachio tree of the genus and species *Pistacia vera* grown in the production area, whether inshell or shelled.

§ 983.24 [Redesignated as § 983.23]

■ 13. Redesignate § 983.24 as § 983.23.

§ 983.25 [Redesignated as § 983.24]

■ 14. Redesignate § 983.25 as § 983.24.

§ 983.26 [Redesignated as § 983.25]

■ 15. Redesignate § 983.26 as § 983.25, and revise the section to read as follows:

§ 983.25 Production area.

Production Area means the States of California, Arizona, and New Mexico.

§§ 983.27 through 983.30 [Redesignated as §§ 983.26 through 983.29]

■ 16. Redesignate §§ 983.27 through 983.30 as §§ 983.26 through 983.29, respectively.

§ 983.31 [Redesignated as § 983.30]

■ 17. Lift suspension of § 983.31, published on December 7, 2007 (72 FR 69141) and effective on December 10, 2007, redesignate § 983.31 as § 983.30, and revise the section to read as follows:

§ 983.30 Substandard pistachios.

Substandard pistachios means pistachios, inshell or shelled, which do not meet regulations established pursuant to §§ 983.50 and 983.51.

§ 983.53 [Redesignated as § 983.71]

■ 18. Redesignate § 983.53 as § 983.71, and revise paragraph (a) to read as follows:

§ 983.71 Assessments.

(a) Each handler who receives pistachios for processing in each production year, except as provided in § 983.58, shall pay the committee on demand, an assessment based on the *pro rata* share of the expenses authorized by the Secretary for that year attributable to the assessed weight of pistachios received by that handler in that year.

* * * * *

§ 983.54 [Redesignated as § 983.72]

■ 19. Redesignate § 983.54 as § 983.72, and revise the section to read as follows:

§ 983.72 Contributions.

The committee may accept voluntary contributions but these shall only be used to pay for committee expenses unless specified in support of research under § 983.46. Furthermore, research contributions shall be free of additional encumbrances by the donor and the committee shall retain complete control of their use.

§ 983.55 [Redesignated as § 983.73]

■ 20. Redesignate § 983.55 as § 983.73.

§ 983.56 [Redesignated as § 983.74]

■ 21. Redesignate § 983.56 as § 983.74, and amend it by removing the reference to ''§ 983.53'' and adding in its place ''§ 983.71'' in paragraph (a)(1).

§ 983.57 [Redesignated as § 983.75]

■ 22. Redesignate § 983.57 as § 983.75, and revise the section to read as follows:

§ 983.75 Implementation and amendments.

The Secretary, upon the recommendation of a majority of the committee, may issue rules and regulations implementing or modifying §§ 983.64 through 983.74 inclusive.

§§ 983.58 through 983.64 [Redesignated as §§ 983.80 through 983.86]

■ 23. Redesignate §§ 983.58 through 983.64 and their corresponding undesignated heading as §§ 983.80 through 983.86, respectively.

§ 983.65 [Redesignated as § 983.87]

■ 24. Redesignate § 983.65 as § 983.87, and revise the section to read as follows:

§ 983.87 Effective time.

The provisions of this part, as well as any amendments, shall become effective at such time as the Secretary may declare, and shall continue in force until terminated or suspended in one of the ways specified in § 983.88 or § 983.89.

§§ 983.66 through 983.69 [Redesignated as §§ 983.88 through 983.91]

■ 25. Redesignate §§ 983.66 through 983.69 as §§ 983.88 through 983.91, respectively.

§ 983.70 [Redesignated as § 983.92]

■ 26. Redesignate § 983.70 as § 983.92, and revise the section to read as follows:

§ 983.92 Exemption.

Any handler may handle pistachios within the production area free of the requirements in §§ 983.50 through 983.58 and § 983.71 if such pistachios are handled in quantities not exceeding 5,000 dried pounds during any production year. The Secretary, upon recommendation of the committee, may issue rules and regulations changing the 5,000 pound quantity applicable to this exemption.

§ 983.41 [Redesignated]

■ 27. Lift suspension of § 983.41, published on December 7, 2007 (72 FR 69141) and effective on December 10, 2007, redesignate § 983.41 as § 983.53, and revise the section to read as follows:

§ 983.53 Testing of minimal quantities.

(a) *Aflatoxin.* Handlers who handle less than 1 million pounds of assessed weight per year have the option of utilizing both of the following methods for testing for aflatoxin:

(1) The handler may have an inspector sample and test his or her entire inventory of hulled and dried pistachios for the aflatoxin certification before further processing.

(2) The handler may segregate receipts into various lots at the handler's discretion and have an inspector sample and test each specific lot. Any lots that are found to have less aflatoxin than the level established by the committee and approved by the Secretary can be certified by an inspector to be negative as to aflatoxin. Any lots that are found to have aflatoxin exceeding the level established by the committee and approved by the Secretary may be tested after reworking in the same manner as specified in § 983.50.

(b) *Quality.* The committee may, with the approval of the Secretary, establish regulations regarding the testing of minimal quantities of pistachios for quality.

§ 983.42 [Redesignated as § 983.54]

■ 28. Lift suspension of § 983.42, published on December 7, 2007 (72 FR 69141) and effective on December 10, 2007, redesignate § 983.42 as § 983.54, and revise the section to read as follows:

§ 983.54 Commingling.

Certified lots may be commingled with other certified lots, but the commingling of certified and uncertified lots shall cause the loss of certification for the commingled lots.

§ 983.43 [Redesignated as § 983.55]

■ 29. Redesignate § 983.43 as § 983.55.

§ 983.44 [Redesignated as § 983.56]

■ 30. Redesignate § 983.44 as § 983.56, and revise it to read as follows:

§ 983.56 Inspection, certification and identification.

Upon recommendation of the committee and approval of the Secretary, all pistachios that are required to be inspected and certified in accordance with this part shall be identified by appropriate seals, stamps, tags, or other identification to be affixed to the containers by the handler. All inspections shall be at the expense of the handler, *Provided,* That for handlers making shipments from facilities located in an area where inspection costs for inspector travel and shipment of samples for aflatoxin testing would otherwise exceed the average of those same inspection costs for comparable handling operations located in Districts 1 and 2, such handlers may be reimbursed by the committee for the difference between their respective inspection costs and such average, or as otherwise recommended by the committee and approved by the Secretary.

§ 983.45 [Redesignated as § 983.57]

■ 31. Lift suspension of § 983.45, published on December 7, 2007 (72 FR 69141) and effective on December 10, 2007, redesignate § 983.45 as § 983.57, and revise the section to read as follows:

§ 983.57 Substandard pistachios.

The committee shall, with the approval of the Secretary, establish such reporting and disposition procedures as it deems necessary to ensure that pistachios which do not meet the aflatoxin and quality requirements established pursuant to §§ 983.50 and 983.51 shall not be shipped for domestic human consumption.

§ 983.46 [Redesignated as § 983.59]

■ 32. Redesignate § 983.46 as § 983.59, and revise the section to read as follows:

§ 983.59 Modification or suspension of regulations.

(a) In the event that the committee, at any time, finds that by reason of changed conditions, any regulations issued pursuant to §§ 983.50 through 983.58 should be modified or suspended, it shall, pursuant to § 983.43, so recommend to the Secretary.

(b) Whenever the Secretary finds from the recommendations and information submitted by the committee or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments of pistachios in order to effectuate the declared policy of the Act, the Secretary shall modify or suspend such provisions. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the Act, the Secretary shall suspend or terminate such regulation.

(c) The Secretary, upon recommendation of committee, may issue rules and regulations implementing §§ 983.50 through 983.58.

§§ 983.47 through 983.51 [Redesignated as §§ 983.64 through 983.68]

■ 33. Redesignate §§ 983.47 through 983.51 and their corresponding undesignated center heading as §§ 983.64 through 983.68, respectively.

§ 983.52 [Redesignated as § 983.70]

■ 34. Redesignate § 983.52 and its corresponding undesignated center heading as § 983.70.

■ 35. Add a new § 983.58 to read as follows:

§ 983.58 Interhandler transfers.

Within the production area, any handler may transfer pistachios to another handler for additional handling, and any assessments, inspection requirements, aflatoxin testing requirements, and any other marketing order requirements with respect to pistachios so transferred may be assumed by the receiving handler. The committee, with the approval of the Secretary, may establish methods and procedures, including necessary reports, to maintain accurate records for such transfers.

§ 983.32 [Redesignated as § 983.41]

■ 36. Redesignate § 983.32 as § 983.41

■ 37. Amend newly designated § 983.41 by removing the words ''eleven (11)'' from the introductory paragraph and adding in their place the words ''twelve (12),'' and by revising paragraph (b) to read as follows:

§ 983.41 Establishment and membership.

(a) * * *

(b) *Producers.* Nine members shall represent producers. Producers within the respective districts shall nominate four producers from District 1, three producers from District 2, one producer from District 3, and one producer from District 4. The Secretary, upon recommendation of the committee, may reapportion producer representation among the districts to ensure proper representation.

* * * * *

§ 983.33 [Redesignated as § 983.42]

■ 38. Redesignate § 983.33 as § 983.42.

§ 983.42 [Amended]

■ 39. Amend newly designated § 983.42 by removing the word ''grower'' and adding in its place the word ''producer'' in paragraph (a), removing the reference to ''§ 983.32'' and adding in its place ''§ 983.41'' in paragraph (j), and by removing the reference to ''§§ 983.32, 983.33, and 983.34'' and adding in its place ''§§ 983.41, 983.42, and 983.43'' in paragraph (n).

§ 983.34 [Redesignated as § 983.43]

■ 40. Redesignate § 983.34 as § 983.43

■ 41. Amend newly designated § 983.43 by revising paragraph (a) to read as follows:

§ 983.43 Procedure.

(a) *Quorum.* A quorum of the committee shall be any seven voting committee members. The vote of a majority of members present at a meeting at which there is a quorum shall constitute the act of the committee: *Provided,* That:

(1) Actions of the committee with respect to the following issues shall require twelve (12) concurring votes of the voting members regarding any recommendation to the Secretary for adoption or change in:

(i) Quality regulation;

(ii) Aflatoxin regulation;

(iii) Research under § 983.46; and

(2) Actions of the committee with respect to the following issues shall require eight (8) concurring votes of the voting members regarding recommendation to the Secretary for adoption or change in:

(i) Inspection programs;

(ii) The establishment of the committee.

* * * * *

§ 983.35 [Redesignated as § 983.44]

■ 42. Redesignate § 983.35 as § 983.44.

§ 983.36 [Redesignated as § 983.45]

■ 43. Redesignate § 983.36 as § 983.45.

§ 983.37 [Redesignated as § 983.47]

■ 44. Redesignate § 983.37 and its corresponding undesignated center heading as § 983.47.

§ 983.38 [Redesignated as § 983.50]

■ 45. Lift suspension of § 983.38, published on December 7, 2007 (72 FR 69141) and effective on December 10, 2007, redesignate § 983.38 and its corresponding undesignated center heading as § 983.50 and revise the section to read as follows:

Regulations

§ 983.50 Aflatoxin regulations.

The committee shall establish, with the approval of the Secretary, such aflatoxin sampling, analysis, and inspection requirements applicable to pistachios to be shipped for domestic human consumption as will contribute to orderly marketing or be in the public interest. No handler shall ship, for human consumption, pistachios that exceed an aflatoxin level established by the committee with approval of the Secretary. All domestic shipments must be covered by an aflatoxin inspection certificate.

§ 983.39 [Redesignated as § 983.51]

■ 46. Lift suspension of § 983.39, published on December 7, 2007 (72 FR 69141) and effective on December 10, 2007, redesignate § 983.39 as § 983.51, and revise the section to read as follows:

§ 983.51 Quality regulations.

For any production year, the committee may establish, with the approval of the Secretary, such quality and inspection requirements applicable to pistachios to be shipped for domestic human consumption as will contribute to orderly marketing or be in the public interest. In such production year, no handler shall ship pistachios for

domestic human consumption unless they meet the applicable requirements as evidenced by certification acceptable to the committee.

§ 983.40 [Redesignated as § 983.52]

■ 47. Lift suspension of § 983.40, published on December 7, 2007 (72 FR 69141) and effective on December 10, 2007, redesignate § 983.40 as § 983.52, and revise the section to read as follows:

§ 983.52 Failed lots/rework procedure.

(a) *Substandard pistachios.* Each lot of substandard pistachios may be reworked to meet aflatoxin or quality requirements. The committee may establish, with the Secretary's approval, appropriate rework procedures.

(b) *Failed lot reporting.* If a lot fails to meet the aflatoxin and/or the quality requirements of this part, a failed lot notification report shall be completed and sent to the committee within 10 working days of the test failure. This form must be completed and submitted to the committee each time a lot fails either aflatoxin or quality testing. The accredited laboratories shall send the failed lot notification reports for aflatoxin tests to the committee, and the handler, under the supervision of an inspector, shall send the failed lot notification reports for the lots that do not meet the quality requirements to the committee.

■ 48. Add a new § 983.46, preceded by an undesignated center heading, to read as follows:

Research

§ 983.46 Research.

The committee, with the approval of the Secretary, may establish or provide for the establishment of projects involving research designed to assist or improve the efficient production and postharvest handling of quality pistachios. The committee, with the approval of the Secretary, may also establish or provide for the establishment of projects designed to determine the effects of pistachio consumption on human health and nutrition. Pursuant to § 983.43(a), such research projects may only be established with 12 concurring votes of the voting members of the committee. The expenses of such projects shall be paid from funds collected pursuant to §§ 983.71 and 983.72.

Dated: October 26, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9–26149 Filed 10–30–09; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1710

RIN 0572–AC15

Electric Program: Definition of Rural Area

AGENCY: Rural Utilities Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Rural Utilities Service (RUS) is amending its regulations to administer the Electric Program. This action implements the provision in the Food, Conservation, and Energy Act of 2008 hereinafter called the ''2008 Farm Bill,'' amending the definition of ''rural area.'' The 2008 Farm Bill revises the definition of rural to include any area other than a city, town, or unincorporated area that has a population of greater than 20,000 inhabitants. The 2008 Farm Bill also includes in the revised rural definition those service areas of borrowers having an outstanding loan under Titles I through V of the Rural Electrification Act of 1936. The intended effect is to update agency regulations to reflect current statutory authority. No adverse comments are expected.

DATES: This rule will become effective December 17, 2009 unless the Agency receives written adverse comments or a written notice of intent to submit adverse comments on or before December 2, 2009. If we receive adverse comments or notices, the Agency will publish a timely document in the **Federal Register** withdrawing the rule. Comments received will be considered under the proposed rule published in this edition of the **Federal Register** in the proposed rule section. A second public comment period will not be held. Written comments must be received by the Agency or carry a postmark or equivalent no later than December 2, 2009.

ADDRESSES: Submit adverse comments or notice of intent to submit adverse comments by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* In the ''Search Documents'' box, enter RUS–09–Electric–0002, check the box under the Search box labeled ''Select to find documents accepting comments or submissions,'' and click on the GO>> key. To submit a comment, choose ''Send a comment or submission,'' under the Docket Title. In order to submit your comment, the information requested on the ''Public Comment and Submission Form,'' must be completed. (If you click on the hyperlink of the docket when the search returns it, you will see the docket details. Click on the yellow balloon to receive the ''Public Comment and Submission Form.'') Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''How to Use this Site'' link.
- Postal Mail/Commercial Delivery: Please send your comment addressed to Michele Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Development, STOP 1522, Room, 5159 1400 Independence Avenue, SW., Washington, DC 20250–1522. Please state that your comment refers to Docket No. RUS–09–Electric–0002.

Other Information: Additional information about RUS and its programs is available at *http://www.rurdev.usda.gov/index.html.*

FOR FURTHER INFORMATION CONTACT: Chris Tuttle, Economist, Electric Programs, Rural Utilities Service, USDA Rural Development, 1400 Independence Avenue, STOP 1570, Room 5038 South Building, Washington, DC 20250–1570. Telephone: (202) 205–3655; FAX: (202) 690–0717; e-mail: *chris.tuttle@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12372

The program is not subject to the provisions of Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' as implemented under USDA's regulations at 7 CFR part 3015.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted; no retroactive effect will be given to the rule; and in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994, (7 U.S.C. 6912(e)), administrative appeal procedures, if any, must be exhausted before litigation against the Department or its agencies may be initiated.

Executive Order 13132, Federalism

This rule will not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, consultation with states is not required.

Regulatory Flexibility Act Certification

The Agency certifies that this rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, 5 U.S.C. 605(b); therefore, no further analysis is required. The amendments reflect only statutory changes that Congress has mandated and over which the Agency has no discretion. They also involve minimal procedural matters on other agreements already negotiated.

Information Collection and Recordkeeping Requirements

This rule contains no new reporting or recordkeeping burdens under Office of Management and Budget (OMB) control number 0572–0032 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

National Environmental Policy Act Certification

This final rule has been examined under Agency environmental regulations at 7 CFR part 1794. The Administrator has determined that this rule is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an Environmental Impact Statement or Assessment is not required.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) number assigned to the Electric Loan and Loan Guarantee program is 10.850 Rural Electrification Loans and Loan Guarantees. The catalog is available on the Internet and the General Services Administration's (GSA) free CFDA website at *http://www.cfda.gov.* The CFDA website also contains a PDF file version of the Catalog that, when printed, has the same layout as the printed document that the Government Printing Office (GPO) provides. GPO prints and sells the CFDA to interested buyers. For information about purchasing the Catalog of Federal Domestic Assistance from GPO, call the Superintendent of Documents at 202–512–1800 or toll free at 866–512–1800, or access GPO's on-line bookstore at *http://bookstore.gpo.gov.*

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

E-Government Act Compliance

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

Background

The Rural Electrification Act of 1936 (7 U.S.C. 901–950bb (REACT)), as amended establishes the authority for RUS to provide loans and loan guarantees to eligible entities for the purpose of financing the construction and operation of generating plants, electric transmission and distribution lines or systems for the furnishing and improving of electric service to rural areas, including by assisting electric borrowers to implement demand side management, energy conservation programs, and on and off grid renewable energy systems.

The Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110–246) hereinafter called the ''2008 Farm Bill,'' amends Section 13 of the Rural Electrification Act of 1936 by revising the definition of rural area to include any area other than a city, town, or unincorporated area that has a population of greater than 20,000 inhabitants. The 2008 Farm Bill also includes in the revised rural definition those service areas of borrowers having an outstanding loan under Titles I through V of the REACT. The general and preloan policies and procedures common to Electric Program loans and loan guarantees are established in 7 CFR part 1710.

The amendments will have no financial impact on the public or the Agency. It is a necessary action to comply with the requirements of the 2008 Farm Bill. These amendments are not published for proposed rulemaking because they merely reflect changes in statutory authority enacted by the 2008 Farm Bill and make only minor technical corrections to the regulations, which do not involve matters of agency discretion. Notice and public comment, therefore, are impractical, unnecessary, and contrary to the public interest.

List of Subjects in 7 CFR Part 1710

Electric power, Loan programs-energy, Reporting and recordkeeping requirements, Rural areas.

■ For reasons set forth in the preamble, chapter XVII of title 7 of the Code of Federal Regulations is amended as follows:

PART 1710—GENERAL PRE–LOAN POLICIES AND PROCEDURES COMMON TO ELECTRIC LOANS AND GUARANTEES

■ 1. The authority citation for part 1710 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.,* 1921 *et seq.,* 6941 *et seq.*

Subpart A—General

■ 2. Amend § 1710.2(a) to revise the definitions of ''Rural Area'' and ''Urban Area'' to read as follows:

§ 1710.2 Definitions and rules of construction.

(a)

* * * * *

Rural area means

(i) any area of the United States, its territories and insular possessions (including any area within the Federated States of Micronesia, the Marshall Islands, and the Republic of Palau) other than a city, town, or unincorporated area that has a population of greater than 20,000 inhabitants; and

(ii) any area within a service area of a borrower for which a borrower has an outstanding loan as of June 18, 2008, made under titles I through V of the Rural Electrification Act of 1936 (7 U.S.C. 901–950bb). For initial loans to a borrower made after June 18, 2008, the ''rural'' character of an area is determined at the time of the initial loan to furnish or improve service in the area.

* * * * *

Urban area is defined as any area not considered a rural area per the definition contained in this subpart.

* * * * *

Jonathan Adelstein,

Administrator, Rural Utilities Service.

[FR Doc. E9–26204 Filed 10–30–09; 8:45 am]

BILLING CODE 3410–15–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2010–1 and CP2010–1; Order No. 323]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding Priority Mail Contract 19 to the Competitive Product List. This action is consistent with changes in a recent law governing postal operations. Republication of the lists of market dominant and competitive products is also consistent with new requirements in the law.

DATES: Effective November 2, 2009 and is applicable beginning October 26, 2009.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 or *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION:

Regulatory History, 74 FR 54108 (October 21, 2009).

I. Introduction
II. Background
III. Comments
IV. Commission Analysis
V. Ordering Paragraphs

I. Introduction

The Postal Service seeks to add a new product identified as Priority Mail Contract 19 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

II. Background

On October 13, 2009, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Priority Mail Contract 19 to the Competitive Product List.[1] The Postal Service asserts that the Priority Mail Contract 19 product is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). This Request has been assigned Docket No. MC2010–1.

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract has been assigned Docket No. CP2010–1.

In support of its Request, the Postal Service filed the following materials: (1) A redacted version of the Governors' Decision, originally filed in Docket No. MC2009–25, authorizing the Priority Mail Contract Group;[2] (2) a redacted version of the contract;[3] (3) a requested change in the Mail Classification Schedule product list;[4] (4) a Statement of Supporting Justification as required by 39 CFR 3020.32;[5] (5) a certification of compliance with 39 U.S.C. 3633(a);[6] and (6) an application for non-public treatment of the materials filed under seal.[7] The redacted version of the contract provides that the contract is terminable on 30 days' notice by either party, but could continue for 3 years from the effective date subject to annual price adjustments. Request, Attachment B.

In the Statement of Supporting Justification, Mary Prince Anderson, Acting Manager, Sales and Communications, Expedited Shipping, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to coverage of institutional costs, and will increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. Request, Attachment D, at 1. W. Ashley Lyons, Manager, Regulatory Reporting and Cost Analysis, Finance Department, certifies that the contract complies with 39 U.S.C. 3633(a). *Id.,* Attachment E.

The Postal Service filed much of the supporting materials, including the supporting data and the unredacted contract, under seal. The Postal Service maintains that the contract and related financial information, including the customer's name and the accompanying analyses that provide prices, certain terms and conditions, and financial projections, should remain confidential. *Id.,* Attachment F at 2–3.

In Order No. 313, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.[8]

III. Comments

Comments were filed by the Public Representative.[9] No comments were submitted by other interested parties. The Public Representative states that the Postal Service's filing comports with title 39 and the relevant Commission rules. Public Representative Comments at 1, 3. He further states that the agreement employs pricing terms favorable to the customer, the Postal Service, and thereby, the public. *Id.* at 3–4. The Public Representative also believes that the Postal Service has provided appropriate justification for maintaining confidentiality in this case. *Id.* at 3.

IV. Commission Analysis

The Commission has reviewed the Request, the contract, the financial analysis provided under seal that accompanies it, and the comments filed by the Public Representative.

Statutory requirements. The Commission's statutory responsibilities in this instance entail assigning Priority Mail Contract 19 to either the Market Dominant Product List or to the Competitive Product List. 39 U.S.C. 3642. As part of this responsibility, the Commission also reviews the proposal for compliance with the Postal Accountability and Enhancement Act (PAEA) requirements. This includes, for proposed competitive products, a review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

Product list assignment. In determining whether to assign Priority Mail Contract 19 as a product to the Market Dominant Product List or the Competitive Product List, the Commission must consider whether

> the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.

39 U.S.C. 3642(b)(1). If so, the product will be categorized as market dominant. The competitive category of products consists of all other products.

The Commission is further required to consider the availability and nature of enterprises in the private sector engaged in the delivery of the product, the views of those who use the product, and the likely impact on small business concerns. 39 U.S.C. 3642(b)(3).

[1] Request of the United States Postal Service to Add Priority Mail Contract 19 to Competitive Product List and Notice of Filing (Under Seal) of Contract and Supporting Data, October 13, 2009 (Request). The Postal Service filed an errata to the supporting data on October 15, 2009. Errata to Supporting Data, October 15, 2009.

[2] Attachment A to the Request, reflecting Governors' Decision No. 09–6, April 27, 2009.

[3] Attachment B to the Request.

[4] Attachment C to the Request.

[5] Attachment D to the Request.

[6] Attachment E to the Request.

[7] Attachment F to the Request.

[8] PRC Order No. 313, Notice and Order Concerning Priority Mail Contract 19 Negotiated Service Agreement, October 15, 2009 (Order No. 313).

[9] Public Representative Comments in Response to United States Postal Service Request to Add Priority Mail Contract 19 Negotiated Service Agreement to the Competitive Product List, October 23, 2009 (Public Representative Comments). The Public Representative also filed a Motion of the Public Representative for Late Acceptance of Comments in Response to United States Postal Service Request to Add Priority Mail Contract 19 to the Competitive Product List, October 23, 2009. That motion is granted.

The Postal Service asserts that its bargaining position is constrained by the existence of other shippers who can provide similar services, thus precluding it from taking unilateral action to increase prices without the risk of losing volume to private companies. Request, Attachment D, para. (d). The Postal Service also contends that it may not decrease quality or output without risking the loss of business to competitors that offer similar expedited delivery services. *Id.* It further states that the contract partner supports the addition of the contract to the Competitive Product List to effectuate the negotiated contractual terms. *Id.,* para. (g). Finally, the Postal Service states that the market for expedited delivery services is highly competitive and requires a substantial infrastructure to support a national network. It indicates that large carriers serve this market. Accordingly, the Postal Service states that it is unaware of any small business concerns that could offer comparable service for this customer. *Id.,* para. (h).

No commenter opposes the proposed classification of Priority Mail Contract 19 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Priority Mail Contract 19 is appropriately classified as a competitive product and should be added to the Competitive Product List.

Cost considerations. The Postal Service presents a financial analysis showing that Priority Mail Contract 19 results in cost savings while ensuring that the contract covers its attributable costs, does not result in subsidization of competitive products by market dominant products, and increases contribution from competitive products.

Based on the data submitted, the Commission finds that Priority Mail Contract 19 should cover its attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, an initial review of proposed Priority Mail Contract 19 indicates that it comports with the provisions applicable to rates for competitive products.

Application for non-public treatment. The Commission has repeatedly held that applications for non-public treatment for an indefinite time period are premature finding that if the need for non-public treatment remains well into the future due to ongoing business relationships, the Postal Service may submit a motion to the Commission to extend the duration at the appropriate time.[10] Nonetheless, the Postal Service continues to request indefinite non-public treatment of materials.[11] The Commission finds its prior rulings on this topic to be clear and sufficiently precedential to avoid the necessity of continually ruling on this issue in every case. Accordingly, if the Postal Service continues its requests for indefinite non-public treatment of materials in the future, the Commission's silence on that matter (or any similar request to deviate from the default rules) shall not be deemed to be a ruling on the merits.

Other considerations. The Postal Service shall notify the Commission if termination occurs prior to the scheduled termination date. Following the scheduled termination date of the agreement, the Commission will remove the product from the Competitive Product List.

In conclusion, the Commission approves Priority Mail Contract 19 as a new product. The revision to the Competitive Product List is shown below the signature of this order and is effective upon issuance of this order.

V. Ordering Paragraphs

It is ordered:

1. Priority Mail Contract 19 (MC2010–1 and CP2010–1) is added to the Competitive Product List as a new product under Negotiated Service Agreements, Domestic.

2. The Postal Service shall notify the Commission if termination occurs prior to the scheduled termination date.

3. The Secretary shall arrange for the publication of this order in the **Federal Register.**

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure; Postal Service.

[10] *See, e.g.,* Docket No. MC2009–40, Order Concerning Parcel Select & Parcel Return Service Contract 2 Negotiated Service Agreement, September 4, 2009, at 7; Docket No. MC2009–42, Order Concerning Priority Mail Contract 18 Negotiated Service Agreement, September 28, 2009, at 7; Docket No. N2009–1, P.O. Ruling N2009–1/8, September 25, 2009, at 4.

[11] *See e.g.,* Request, Attachment F, at 1, 7; Docket No. CP2009–64, Notice of United States Postal Service Filing of Functionally Equivalent Global Expedited Package Services 2 Negotiated Service Agreement and Application for Non-public Treatment of Materials Filed Under Seal, September 15, 2009; Docket No. CP2009–66, Notice of United States Postal Service Filing of Functionally Equivalent Global Expedited Package Services 2 Negotiated Service Agreement and Application for Non-public Treatment of Materials Filed Under Seal, September 25, 2009; and Docket No. N2009–1, Notice of United States Postal Service Filing of Library Reference N2009–1/17 and Application for Non-public Status, September 29, 2009.

By the Commission.

Shoshana M. Grove,

Secretary.

■ For the reasons discussed in the preamble, the Postal Regulatory Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3020—PRODUCT LISTS

■ 1. The authority citation for part 3020 continues to read as follows:

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise Appendix A to Subpart A of Part 3020—Mail Classification Schedule to read as follows:

Appendix A to Subpart A of Part 3020—Mail Classification Schedule

Part A—Market Dominant Products

1,000 Market Dominant Product List

First-Class Mail
- Single-Piece Letters/Postcards
- Bulk Letters/Postcards
- Flats
- Parcels
- Outbound Single-Piece First-Class Mail International
- Inbound Single-Piece First-Class Mail International

Standard Mail (Regular and Nonprofit)
- High Density and Saturation Letters
- High Density and Saturation Flats/Parcels
- Carrier Route
- Letters
- Flats
- Not Flat-Machinables (NFMs)/Parcels

Periodicals
- Within County Periodicals
- Outside County Periodicals

Package Services
- Single-Piece Parcel Post
- Inbound Surface Parcel Post (at UPU rates)
- Bound Printed Matter Flats
- Bound Printed Matter Parcels
- Media Mail/Library Mail

Special Services
- Ancillary Services
- International Ancillary Services
- Address List Services
- Caller Service
- Change-of-Address Credit Card Authentication
- Confirm
- International Reply Coupon Service
- International Business Reply Mail Service
- Money Orders
- Post Office Box Service

Negotiated Service Agreements
- HSBC North America Holdings Inc. Negotiated Service Agreement
- Bookspan Negotiated Service Agreement
- Bank of America Corporation Negotiated Service Agreement
- The Bradford Group Negotiated Service Agreement
- Inbound International
- Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Market Dominant Services

Market Dominant Product Descriptions

First-Class Mail
[Reserved for Class Description]
Single-Piece Letters/Postcards
[Reserved for Product Description]
Bulk Letters/Postcards
[Reserved for Product Description]
Flats
[Reserved for Product Description]
Parcels
[Reserved for Product Description]
Outbound Single-Piece First-Class Mail International
[Reserved for Product Description]
Inbound Single-Piece First-Class Mail International
[Reserved for Product Description]
Standard Mail (Regular and Nonprofit)
[Reserved for Class Description]
High Density and Saturation Letters
[Reserved for Product Description]
High Density and Saturation Flats/Parcels
[Reserved for Product Description]
Carrier Route
[Reserved for Product Description]
Letters
[Reserved for Product Description]
Flats
[Reserved for Product Description]
Not Flat-Machinables (NFMs)/Parcels
[Reserved for Product Description]
Periodicals
[Reserved for Class Description]
Within County Periodicals
[Reserved for Product Description]
Outside County Periodicals
[Reserved for Product Description]
Package Services
[Reserved for Class Description]
Single-Piece Parcel Post
[Reserved for Product Description]
Inbound Surface Parcel Post (at UPU rates)
[Reserved for Product Description]
Bound Printed Matter Flats
[Reserved for Product Description]
Bound Printed Matter Parcels
[Reserved for Product Description]
Media Mail/Library Mail
[Reserved for Product Description]
Special Services
[Reserved for Class Description]
Ancillary Services
[Reserved for Product Description]
Address Correction Service
[Reserved for Product Description]
Applications and Mailing Permits
[Reserved for Product Description]
Business Reply Mail
[Reserved for Product Description]
Bulk Parcel Return Service
[Reserved for Product Description]
Certified Mail
[Reserved for Product Description]
Certificate of Mailing
[Reserved for Product Description]
Collect on Delivery
[Reserved for Product Description]
Delivery Confirmation
[Reserved for Product Description]
Insurance
[Reserved for Product Description]
Merchandise Return Service
[Reserved for Product Description]
Parcel Airlift (PAL)
[Reserved for Product Description]
Registered Mail
[Reserved for Product Description]
Return Receipt
[Reserved for Product Description]
Return Receipt for Merchandise
[Reserved for Product Description]
Restricted Delivery
[Reserved for Product Description]
Shipper-Paid Forwarding
[Reserved for Product Description]
Signature Confirmation
[Reserved for Product Description]
Special Handling
[Reserved for Product Description]
Stamped Envelopes
[Reserved for Product Description]
Stamped Cards
[Reserved for Product Description]
Premium Stamped Stationery
[Reserved for Product Description]
Premium Stamped Cards
[Reserved for Product Description]
International Ancillary Services
[Reserved for Product Description]
International Certificate of Mailing
[Reserved for Product Description]
International Registered Mail
[Reserved for Product Description]
International Return Receipt
[Reserved for Product Description]
International Restricted Delivery
[Reserved for Product Description]
Address List Services
[Reserved for Product Description]
Caller Service
[Reserved for Product Description]
Change-of-Address Credit Card Authentication
[Reserved for Product Description]
Confirm
[Reserved for Product Description]
International Reply Coupon Service
[Reserved for Product Description]
International Business Reply Mail Service
[Reserved for Product Description]
Money Orders
[Reserved for Product Description]
Post Office Box Service
[Reserved for Product Description]
Negotiated Service Agreements
[Reserved for Class Description]
HSBC North America Holdings Inc. Negotiated Service Agreement
[Reserved for Product Description]
Bookspan Negotiated Service Agreement
[Reserved for Product Description]
Bank of America Corporation Negotiated Service Agreement
The Bradford Group Negotiated Service Agreement

Part B—Competitive Products

2,000 Competitive Product List

Express Mail
Express Mail
Outbound International Expedited Services
Inbound International Expedited Services
Inbound International Expedited Services 1 (CP2008–7)
Inbound International Expedited Services 2 (MC2009–10 and CP2009–12)
Priority Mail
Priority Mail
Outbound Priority Mail International
Inbound Air Parcel Post
Royal Mail Group Inbound Air Parcel Post Agreement
Parcel Select
Parcel Return Service
International
International Priority Airlift (IPA)
International Surface Airlift (ISAL)
International Direct Sacks—M–Bags
Global Customized Shipping Services
Inbound Surface Parcel Post (at non-UPU rates)
Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services (MC2009–8 and CP2009–9)
International Money Transfer Service
International Ancillary Services
Special Services
Premium Forwarding Service
Negotiated Service Agreements
Domestic
Express Mail Contract 1 (MC2008–5)
Express Mail Contract 2 (MC2009–3 and CP2009–4)
Express Mail Contract 3 (MC2009–15 and CP2009–21)
Express Mail Contract 4 (MC2009–34 and CP2009–45)
Express Mail & Priority Mail Contract 1 (MC2009–6 and CP2009–7)
Express Mail & Priority Mail Contract 2 (MC2009–12 and CP2009–14)
Express Mail & Priority Mail Contract 3 (MC2009–13 and CP2009–17)
Express Mail & Priority Mail Contract 4 (MC2009–17 and CP2009–24)
Express Mail & Priority Mail Contract 5 (MC2009–18 and CP2009–25)
Express Mail & Priority Mail Contract 6 (MC2009–31 and CP2009–42)
Express Mail & Priority Mail Contract 7 (MC2009–32 and CP2009–43)
Express Mail & Priority Mail Contract 8 (MC2009–33 and CP2009–44)
Parcel Select & Parcel Return Service Contract 1 (MC2009–11 and CP2009–13)
Parcel Select & Parcel Return Service Contract 2 (MC2009–40 and CP2009–61)
Parcel Return Service Contract 1 (MC2009–1 and CP2009–2)
Priority Mail Contract 1 (MC2008–8 and CP2008–26)
Priority Mail Contract 2 (MC2009–2 and CP2009–3)
Priority Mail Contract 3 (MC2009–4 and CP2009–5)
Priority Mail Contract 4 (MC2009–5 and CP2009–6)
Priority Mail Contract 5 (MC2009–21 and CP2009–26)
Priority Mail Contract 6 (MC2009–25 and CP2009–30)
Priority Mail Contract 7 (MC2009–25 and CP2009–31)
Priority Mail Contract 8 (MC2009–25 and CP2009–32)
Priority Mail Contract 9 (MC2009–25 and CP2009–33)
Priority Mail Contract 10 (MC2009–25 and CP2009–34)
Priority Mail Contract 11 (MC2009–27 and CP2009–37)
Priority Mail Contract 12 (MC2009–28 and CP2009–38)
Priority Mail Contract 13 (MC2009–29 and CP2009–39)
Priority Mail Contract 14 (MC2009–30 and CP2009–40)
Priority Mail Contract 15 (MC2009–35 and CP2009–54)

Priority Mail Contract 16 (MC2009–36 and CP2009–55)
Priority Mail Contract 17 (MC2009–37 and CP2009–56)
Priority Mail Contract 18 (MC2009–42 and CP2009–63)
Priority Mail Contract 19 (MC2010–1 and CP2010–1)
Outbound International
Direct Entry Parcels Contracts
Direct Entry Parcels 1 (MC2009–26 and CP2009–36)
Global Direct Contracts (MC2009–9, CP2009–10, and CP2009–11)
Global Expedited Package Services (GEPS) Contracts
GEPS 1 (CP2008–5, CP2008–11, CP2008–12, and CP2008–13, CP2008–18, CP2008–19, CP2008–20, CP2008–21, CP2008–22, CP2008–23, and CP2008–24)
Global Expedited Package Services 2 (CP2009–50)
Global Plus Contracts
Global Plus 1 (CP2008–8, CP2008–46 and CP2009–47)
Global Plus 2 (MC2008–7, CP2008–48 and CP2008–49)
Inbound International
Inbound Direct Entry Contracts with Foreign Postal Administrations
Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6, CP2008–14 and MC2008–15)
Inbound Direct Entry Contracts with Foreign Postal Administrations 1 (MC2008–6 and CP2009–62)
International Business Reply Service Competitive Contract 1 (MC2009–14 and CP2009–20)
Competitive Product Descriptions
Express Mail
[Reserved for Group Description]
Express Mail
[Reserved for Product Description]
Outbound International Expedited Services
[Reserved for Product Description]
Inbound International Expedited Services
[Reserved for Product Description]
Priority
[Reserved for Product Description]
Priority Mail
[Reserved for Product Description]
Outbound Priority Mail International
[Reserved for Product Description]
Inbound Air Parcel Post
[Reserved for Product Description]
Parcel Select
[Reserved for Group Description]
Parcel Return Service
[Reserved for Group Description]
International
[Reserved for Group Description]
International Priority Airlift (IPA)
[Reserved for Product Description]
International Surface Airlift (ISAL)
[Reserved for Product Description]
International Direct Sacks—M–Bags
[Reserved for Product Description]
Global Customized Shipping Services
[Reserved for Product Description]
International Money Transfer Service
[Reserved for Product Description]
Inbound Surface Parcel Post (at non-UPU rates)
[Reserved for Product Description]
International Ancillary Services
[Reserved for Product Description]
International Certificate of Mailing
[Reserved for Product Description]
International Registered Mail
[Reserved for Product Description]
International Return Receipt
[Reserved for Product Description]
International Restricted Delivery
[Reserved for Product Description]
International Insurance
[Reserved for Product Description]
Negotiated Service Agreements
[Reserved for Group Description]
Domestic
[Reserved for Product Description]
Outbound International
[Reserved for Group Description]

Part C—Glossary of Terms and Conditions [Reserved]

Part D—Country Price Lists for International Mail [Reserved]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

42 CFR Part 34

[Docket No. CDC–2009–0003]

RIN 0920–AA26

Medical Examination of Aliens—Removal of Human Immunodeficiency Virus (HIV) Infection From Definition of Communicable Disease of Public Health Significance

AGENCY: Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services (HHS)

ACTION: Final rule.

SUMMARY: Through this final rule, the Centers for Disease Control and Prevention (CDC), within the U.S. Department of Health and Human Services (HHS), is amending its regulations to remove ''Human Immunodeficiency Virus (HIV) infection'' from the definition of *communicable disease of public health significance* and remove references to ''HIV'' from the scope of examinations for aliens.

Prior to this final rule, aliens with HIV infection were considered to have a *communicable disease of public health significance* and were thus inadmissible to the United States per the Immigration and Nationality Act (INA). While HIV infection is a serious health condition, it is not a communicable disease that is a significant public health risk for introduction, transmission, and spread to the U.S. population through casual contact. As a result of this final rule, aliens will no longer be inadmissible into the United States based solely on the ground they are infected with HIV, and they will not be required to undergo HIV testing as part of the required medical examination for U.S. immigration.

DATES: This final rule is effective January 4, 2010.

FOR FURTHER INFORMATION CONTACT: Stacy M. Howard, Division of Global Migration and Quarantine, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, 1600 Clifton Road, NE., MS E–03, Atlanta, Georgia 30333; telephone 404–498–1600.

SUPPLEMENTARY INFORMATION: The preamble to this final rule is organized as follows:

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I. National Technology Transfer and Advancement Act
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K. Executive Order 12988: Civil Justice Reform
L. Plain Language in Government Writing

I. Legal Authority

HHS/CDC is promulgating this rule under the authority of 42 U.S.C. 252 and 8 U.S.C. 1182 and 1222.

II. Background

A. Medical Examination and Inadmissibility

Under section 212(a)(1) of the INA (8 U.S.C. 1182(a)(1)), any alien who is determined to have a *communicable disease of public health significance* is inadmissible to the United States. As a result of this statute, aliens outside the United States who have a *communicable disease of public health significance* are ineligible to receive a visa for admission into the United States, absent the grant of a waiver on the ground of inadmissibility. The grounds of inadmissibility also apply to most aliens who reside in the United States and are seeking adjustment of their status to that of a lawful permanent resident.

The Secretary of Health and Human Services (HHS) is authorized to promulgate regulations establishing the requirements for the medical examination of aliens by sections 212(a)(1) and 232 of the Immigration and Nationality Act (INA), and section 325 of the Public Health Service Act (42 U.S.C. 252). The regulations, administered by HHS/CDC, are promulgated at 42 CFR part 34.

HHS/CDC issues Technical Instructions, that provide the technical consultation and guidance to panel physicians and civil surgeons who conduct the medical examinations of aliens. Panel physicians, designated by the U.S. Department of State (DoS) consular officers, perform medical examinations on those refugees and/or persons living outside the United States who are seeking to immigrate to the United States. Civil surgeons, designated by the U.S. Citizenship and Immigration Services within the U.S. Department of Homeland Security (DHS), perform medical examinations for aliens who are already present in the United States and are seeking adjustment of status. The CDC Technical Instructions for Medical Examination of Aliens, including the most current updates, that panel physicians and civil surgeons must follow in accordance with these regulations, are available to the public on the CDC Web site, located at the following Internet address: *http://www.cdc.gov/ncidod/dq/technica.htm*.

B. Legislative and Regulatory History

Beginning in 1952, the language of the INA mandated that aliens ''who are afflicted with any dangerous contagious disease'' are ineligible to receive a visa and therefore are excluded from admission into the United States. In April 1986, prior to the recent developments in medicine and epidemiologic principles concerning HIV infection, HHS published a proposal in the **Federal Register** to include *acquired immunodeficiency syndrome (AIDS)* as a dangerous contagious disease. *See* 51 FR 15354 (April 23, 1986). In June 1987, HHS published a final rule adopting this proposal. *See* 52 FR 21532 (June 8, 1987). Also during this time, HHS separately published a proposed rule to substitute HIV infection for AIDS on the list of dangerous contagious diseases. *See* 52 FR 21607 (June 8, 1987). While this proposed rule was pending public comment, Congress added HIV infection to the list of dangerous contagious diseases. Pub. L. 100–71, section 518, 101 Stat. 475 (July 11, 1987). In response to the congressional mandate, HHS issued final regulations to that effect in August of that year. *See* 52 FR 32540 (August 28, 1987). Accordingly and immediately, aliens infected with HIV became ineligible to receive visas and were excluded from admission into the United States. *See* INA section 212(a)(6), 8 U.S.C. 1182(a)(6)(1988).

In 1990, Congress amended the INA by revising the classes of excludable aliens to provide that an alien who is determined (in accordance with regulation prescribed by the Secretary of Health and Human Services) to have a *communicable disease of public health significance* is excludable from the United States. Immigration Act of 1990, Public Law 101–649, section 601, 104 Stat. 4978 January 23, 1990; INA section 212(a)(1)(A)(i), 8 U.S.C. 1182(a)(1)(A)(i) (effective June 1, 1991). HHS/CDC subsequently published a proposed rule that would have removed from the list all diseases, including HIV infection, except for infectious tuberculosis. *See* 56 FR 2484 (January 23, 1991). Based on public comments received on this proposal, and after reconsideration of the issues, HHS published an interim final rule retaining all diseases on the list, including HIV infection, and committed its initial proposal for further study. *See* 56 FR 25000 (May 31, 1991). Congress subsequently amended INA section 212(a)(1) to specify that ''infection with the etiologic agent for acquired immune deficiency syndrome'' is a *communicable disease of public health significance,* thereby making explicit in the INA that aliens with HIV are ineligible for admission into the United States. National Institutes of Health Revitalization Act of 1993, Public Law 103–43, section 2007, 107 Stat. 122 (June 10, 1993).

In summer 2008, Congress amended the INA by striking ''which shall include infection with the etiologic agent for acquired immune deficiency syndrome,'' thereby leaving to the Secretary of HHS the discretion for determining whether HIV infection should remain in the definition of *communicable disease of public health significance* provided for in 42 CFR 34.2(b). [Tom Lantos and Henry Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008, Pub. L. 110–293, section 305, 122 Stat. 2963 (July 30, 2008)].

In a separate action on October 6, 2008, HHS/CDC published an Interim Final Rule (IFR) announcing a revised definition of *communicable disease of public health significance* and revised scope of the medical examination in 42 CFR part 34. This IFR addressed concerns regarding emerging and reemerging diseases in immigrant and refugee populations who are bound for the United States. *See* 73 FR 58047 and 73 FR 62210. With the revision to 42 CFR Part 34, the definition of *communicable disease of public health significance* was modified to include two disease categories: (1) Quarantinable diseases designated by Presidential Executive Order; and (2) a communicable disease that may pose a public health emergency of international concern in accordance with the International Health Regulations of 2005, provided the disease meets specified criteria. Specific illnesses remaining as a *communicable disease of public health significance* were active tuberculosis, infectious syphilis, gonorrhea, infectious leprosy, chancroid, lymphogranuloma venereum, granuloma inguinale, and HIV infection.

In response to the 2008 amendment to the INA, on July 2, 2009, HHS/CDC published a Notice of Proposed Rule Making (NPRM), which proposed two regulatory changes: (1) The removal of HIV infection from the definition of *communicable disease of public health significance;* and (2) removal of

references to serologic testing for HIV from the scope of examinations.

C. Classes of Immigrants for Whom the Regulation Applies

The provisions in 42 CFR part 34 apply to the medical examination of (1) aliens outside the United States who are applying for a visa at an embassy or consulate of the United States; (2) aliens arriving in the United States; and (3) aliens required by the U.S. Department of Homeland Security (DHS) to have a medical examination in connection with determination of their admissibility into the United States; and (4) aliens who apply for adjustment of their immigration status to that of lawful permanent resident.

While 42 CFR part 34 can apply to individuals who wish to come to the United States on a temporary basis, such as leisure or business travelers, a medical examination is not routinely required as a condition for issuance of non-immigrant visas or entry into the United States.

Aliens who are already in the United States may apply to adjust to permanent resident status pursuant to statutorily-eligible adjustment categories. *See INA* § 245; 8 U.S.C. 1255. Refugees and aslyees may also apply to adjust to permanent resident status from inside the United States. *See INA* § 209; 8 U.S.C. 1159.

An alien seeking permanent residence, whether through an immigrant visa or asylee status, or through an adjustment of status must undergo a medical examination to determine whether the alien is inadmissible on medical grounds. Aliens seeking admission as refugees also undergo medical examinations overseas. Overseas examinations are conducted by panel physicians designated by the Department of State. Applicants for adjustment of status to lawful permanent resident are required to have a medical examination conducted by a civil surgeon designated by U.S. Citizenship and Immigration Services within DHS.

D. Global Context

In 2004, the Joint United Nations Programme on HIV/AIDS (UNAIDS) and the International Organization for Migration (IOM) issued the ''UNAIDS/IOM Statement on HIV/AIDS-related travel restrictions'' that provides guidance to governments in regard to addressing the public health, economic, and human rights concerns involved in HIV-related travel restrictions. This document concludes that HIV-related travel restrictions have no public health justification.

III. Summary of NPRM

On July 2, 2009, HHS/CDC published a notice of proposed rulemaking (NPRM) to remove HIV infection from the definition of *communicable disease of public health significance,* as defined in 42 CFR 34.2(b) and from the scope of examinations in 42 CFR 34.3. *See* 74 FR 31798.

Section 34.2(b) Communicable Diseases of Public Health Significance

Until this final rule, human immunodeficiency virus (HIV) infection was among those diseases listed in the definition of *communicable disease of public health significance,* as defined in 42 CFR part 34.2(b). As described in the ''Legislative and Regulatory History'' section above, Congress amended the INA by striking ''which shall include infection with the etiologic agent for acquired immune deficiency syndrome,'' thereby leaving to the Secretary of HHS the discretion for determining whether HIV infection should remain in the definition of *communicable disease of public health significance* provided for in 42 CFR 34.2(b). In consideration of scientific evidence, including epidemiologic principles and current medical knowledge regarding the mode of HIV transmission, HHS/CDC proposed to remove HIV infection from the definition of *communicable disease of public health significance.*

Section 34.3 Scope of Examinations

HHS/CDC also proposed to remove all references to serologic testing for HIV infection in 42 CFR 34.3, which is entitled ''Scope of examinations.'' This section applies to those aliens who are required to undergo a medical examination for U.S. immigration purposes. The scope of examinations outlines those matters that relate to the inadmissible health-related conditions. This section provides specific screening and testing requirements for those diseases that meet the definition of *communicable disease of public health significance* and directly relates to the diseases listed in Section 34.2(b) of 42 CFR part 34. It does not provide specific testing requirements for other health-related conditions that are not included in the current definition of *communicable disease of public health significance.*

Therefore, HHS/CDC proposed to remove the specific testing requirements for HIV infection in 42 CFR 34.3.

IV. Relation of This Final Rule to the July 2, 2009, Notice of Proposed Rulemaking

Through this final rule, HHS/CDC is now removing HIV infection from the definition of *communicable disease of public health significance* and from the scope of examinations. HHS/CDC received over 20,000 public comments on the NPRM, with the vast majority of commenters in support of the proposed changes, as written. HHS/CDC's evaluation of the comments did not lead to changes between the NPRM and this final rule. While HIV infection is a serious health condition, scientific evidence shows that it does not represent a communicable disease that is a significant risk for introduction, transmission, and spread to the United States population through casual contact. An arriving alien with HIV infection—or one adjusting status to that of a legal permanent resident—does not pose a public health risk to the general population through casual contact.

Beginning on the effective date of this final rule, HIV infection will no longer be an inadmissible condition, and HIV testing will no longer be required, for those aliens who are required to undergo a medical examination for U.S. immigration purposes.

The specific illnesses that are now listed in the definition of *communicable disease of public health significance* are: Active tuberculosis, infectious syphilis, gonorrhea, infectious leprosy, chancroid, lymphogranuloma venereum, and granuloma inguinale. The definition of *communicable disease of public health significance* also consists of (1) quarantinable diseases designated by Presidential Executive Order (E.O. 13295 as amended), and (2) communicable diseases that could pose a public health emergency of international concern, in accordance with the revised International Health Regulations of 2005, provided the disease meets specified criteria.

As a result of this final rule, HHS/CDC has also revised the Technical Instructions provided to panel physicians and civil surgeons to reflect the removal of the HIV testing requirement. The revised Technical Instructions will be immediately available to the public on the HHS/CDC Division of Global Migration and Quarantine Web site, located at the following Internet address: *http://www.cdc.gov/ncidod/dq/technica.htm.*

HHS/CDC will continue to work with DoS and DHS to ensure that panel physicians and civil surgeons are aware of the revision to the Technical Instructions. DHS and DoS will

determine the process for those applicants with HIV infection who have current applications pending.

V. Overview of Public Comments

The public comment period for the NPRM lasted for forty-five (45) days and ended on August 17, 2009. HHS/CDC received approximately 20,100 comments; of these, approximately 18,500 were largely similar ''form'' letters in favor of the proposed rule and also several ''form'' letters against the proposed rule. Comments were submitted by individuals; advocacy organizations; international and national public health agencies; immigration organizations; State and local health departments; medical associations; international, national and local AIDS organizations; corporate entities; various human rights; and other organizations from across the globe. Some comments were the collaborative effort of multiple groups. The comments will be permanently located in the docket for this final rule and maintained by HHS/CDC.

The sections below summarize and discuss the comments in detail: Comments on removing HIV infection from the definition of *communicable disease of public health significance;* comments on removing HIV testing from the scope of examinations; comments on the Economic Impact Analysis (EIA); and comments on technical correction. Data on the numbers of comments received in support of and opposed to the rule are provided below for informational purposes. However, these data are not the determinative factor in guiding public policy or in making these policy changes.

A. Comments on Removing HIV Infection From the Definition of Communicable Disease of Public Health Significance

Most commenters supported CDC's public health assessment that HIV infection should be removed from the definition of *communicable disease of public health significance* as defined in 42 CFR 34.2(b) (approximately 19,500 comments were received in support of CDC's preliminary determination).

Many commenters stated that the practice of excluding HIV-infected visitors and immigrants from the United States has no medical or public health rationale. Most of these individuals and organizations supported the language of the NPRM stating that the scientific evidence shows that HIV infection is not a risk to the general population through casual contact. Other comments submitted by individuals supporting equal rights and HIV advocacy groups urged HHS/CDC to adopt the NPRM verbatim as a final rule that removes HIV infection from the definition of *communicable disease of public health significance* as defined in 42 CFR 34.2(b). In response, HHS/CDC has adopted the revisions to 42 CFR 34.2(b), as proposed. HHS/CDC has taken this action because based on scientific evidence, HIV infection is not a threat to the general population through casual contact and is no longer considered a significant public health risk given advances in public health practices and interventions for prevention and control.

A number of commenters supported the proposed rule for humanitarian reasons, stating that the former regulation (a) stigmatizes and discriminates against HIV-infected people, which include battered women and children; the lesbian, gay, bisexual and transgender (LGBT) community; or other vulnerable or already stigmatized populations; (b) separates loved ones; (c) denies U.S. businesses and research institutions access to talented workers; (d) bars students and tourists from accessing opportunities and supporting our economy; and/or (e) violates human rights by denying or interfering with the rights to life, freedom of movement, privacy, liberty and work. While HHS/CDC acknowledges these assertions, its mission is to protect public health and base decisions upon solid scientific and medical grounds. Therefore, there is no public health benefit for retaining this government-imposed barrier.

Several organizations and individuals noted that preventing HIV-infected travelers and/or immigrants from entering the United States is also counter to the nation's longstanding leadership in fighting the HIV/AIDS epidemic internationally. These commenters noted that no international conference on HIV/AIDS has been held in the United States since 1990 because of the former regulations. In response, HHS/CDC notes that with this final rule, the United States will no longer be included among the other countries that maintain entry restrictions for HIV-infected individuals.

Many commenters suggested that the former regulations undermine public health efforts, including the fight against HIV/AIDS, by keeping HIV-infected researchers, advocates and experts from entering the country and by preventing HIV-infected immigrants from taking their medications in an effort to conceal their status from U.S. immigration authorities. Some commenters indicated that effective treatment of HIV infection requires a continuous antiviral regimen, and that interrupting antiviral medication can result in difficulty treating the virus as well as higher viral loads, which is also the most important factor in transmissibility. In response, HHS/CDC acknowledges these humanitarian and medical considerations. This final rule, based on solid scientific and public health practices, removes HIV as a condition barring entry into the United States.

A number of commenters did not support CDC's assessment that HIV infection should be removed from the definition of *communicable disease of public health significance* as defined in 42 CFR 34.2(b) (almost 600 comments). Many commenters who opposed the removal of HIV infection from the definition of *communicable disease of public health significance* cite financial concerns. They suggested that neither State health departments, Federal government, nor individuals should have to bear a significant financial burden to pay costs associated with treating HIV conditions in immigrants. In addition, many submissions pointed to the state of the economy and the recent debate over the strength of the health care system as a reason not to admit HIV-infected persons. Some commenters indicated that proof of ability to pay for health care should be required for HIV-infected immigrants, noting that HIV is a chronic, life-long infection, which is costly to monitor and even more costly to effectively treat.

CDC acknowledges these concerns, including those related to the potential financial burden that may result from this regulatory change. However, these reasons are not part of the scientific criteria used in determining whether HIV infection should be included as a defined *communicable disease of public health significance* and as a basis for admission to the United States. An individual infected with HIV will not pose a significant risk to the general U.S. population since HIV infection already exists as an endemic disease. Data have shown that decrease in transmission rates of HIV is directly correlated with national prevention efforts. CDC has and will continue to work on a number of fronts to reduce the impact of HIV across the nation by enhancing access to available prevention programs. These program activities include expanding HIV testing to increase knowledge of HIV status, improving surveillance to identify the leading edge of the epidemic, and exploring innovative and promising new prevention approaches. Communities and public health partners are working to tailor prevention efforts to meet local needs, mobilize

communities, and expand the reach of HIV prevention.

Some commenters noted that changing the regulation at this current time is ill advised, and several of the commenters opposed to the proposed rule requested that the waiver remain a requirement for entry into the United States. HHS/CDC acknowledges these comments, but notes that the Part 34 regulations do not address the criteria for a waiver of inadmissibility under Section 212 of the INA.

A few commenters asked why the U.S. government would put even one person at risk of contracting HIV from an immigrant. In response, as stated previously, scientific evidence confirms that HIV infection is not transmitted in casual settings. An arriving alien with HIV infection—or one adjusting status to that of a legal permanent resident—does not pose a public health risk to the general population through casual contact.

A few of these commenters, who did not support the removal of HIV infection as a condition of inadmissibility, expressed concerns that HIV infection should remain a *communicable disease of public health significance* or be accepted as a disease of ''public health significance,'' and cited morbidity and mortality rates of HIV infection domestically and internationally. HHS/CDC acknowledges that HIV infection is a serious illness and a major public health concern both domestically and internationally. However, HHS/CDC notes that the purpose of the NPRM was to determine whether HIV infection should remain as a disease that bans entry to the United States *for immigration purposes*. HHS/CDC, through this final rule, notes that HIV infection will no longer be included in the definition of *communicable disease of public health significance,* because scientific evidence suggests that it is not transmitted through casual contact.

Other reasons cited by commenters opposing the rule change include various comments such as: (a) HIV-infected persons should be allowed in for tourism but not for permanent relocation; (b) allowing HIV-infected immigrants into the country would allow new strains of HIV to circulate in the United States; (c) reporting requirements for HIV infection seem to indicate that HIV is a disease of public health significance; and (d) removing HIV infection from the disease list is inconsistent with leaving other sexually transmitted infections on the disease list. In response, HHS/CDC acknowledges these comments, however as previously stated, the basis for this regulatory change is based on solid scientific knowledge and current public health practices. Additionally, HHS/CDC is reviewing the other sexually transmitted diseases on the disease list to determine whether additional revisions to Part 34 are warranted.

In summary, HHS/CDC appreciates all the comments received on the proposed change. After considering these comments, CDC has determined that HIV infection is not a communicable disease that is a significant risk for introduction and spread through casual contact to the general U.S. population, where HIV infection already exists as an endemic disease. Thus, HHS/CDC finalized the proposal to remove HIV infection from the definition of *communicable disease of public health significance*.

B. Comments on Removing HIV Testing From the Scope of Examinations

On the topic of removing HIV infection from the scope of examinations, some commenters stated that mandatory testing for HIV infection should no longer be required if they meet all other conditions of admissibility. These commenters also noted that maintaining testing while removing HIV infection from the definition of *communicable disease of public health significance* is legally and procedurally problematic. HHS/CDC maintains that it is appropriate to remove HIV testing from the immigration process, since HIV infection has been removed as a *communicable disease of public health significance.* As previously stated, HHS/CDC also notes that the regulations found at 42 CFR part 34 regulations do not specify testing for any illness that is not included in the definition of *communicable disease of public health significance.*

Other commenters stated that immigrants and refugees are not tested for other expensive chronic diseases (*i.e.,* diabetes, heart disease, obesity) and so, maintaining testing for HIV is discriminatory and would fuel the stigmatization of HIV-infected individuals. In response, HHS/CDC notes that testing for those chronic diseases are not within the scope of Part 34 regulations since they neither fall under the diseases listed in the INA for the purpose of a medical examination for U.S. immigration nor are they defined as a *communicable disease of public health significance*. HHS/CDC notes that this regulatory change will result in reducing stigma of HIV-infected persons.

Another group of commenters maintained that any mention of serologic testing for HIV should be removed from the regulation. These comments stated that (1) the entry ban for HIV infection amounted to mandatory testing of all immigrants for HIV, which should not be included in routine medical screening of aliens seeking admission into the United States; (2) that people living with HIV should be allowed to enter the United States or adjust to permanent resident status if they meet all other conditions of admissibility; and (3) that when tested, many immigrants do not receive adequate counseling and in some cases have their privacy violated. For these reasons, these groups felt that testing for HIV should be separate from the immigration process.

In response, HHS/CDC acknowledges these humanitarian concerns but notes that HIV testing was required as a part of the 42 CFR part 34 rule when HIV infection was an inadmissible condition based on the definition of *communicable disease of public health significance*. With this final rule, HIV infection will no longer be contained in this definition and HIV testing will not be required as part of the medical examination.

Some comments in support of the proposed change to remove HIV infection from the Part 34 regulations also stressed the importance of HIV testing for immigrants and refugees for their own benefit and that of their potential sexual partners (approximately 30 comments). Specifically, several commenters said that testing for HIV enables immigrants to receive counseling and education related to HIV/AIDS, including information on treatment mechanisms and support systems, as well as prevention. These individuals and groups submit that health care outcomes are improved when testing is administered and access to treatment is determined or planned prior to arrival. Improved outcomes mentioned due to HIV testing prior to arrival included longer duration until AIDS diagnosis, reduced onward HIV transmission, reduced risk of active tuberculosis infection, and increased quality of life. In response, HHS/CDC acknowledges that diagnosis and linkage to high quality medical care in the context of the required immigration medical examination could positively impact the health of persons with HIV infection. HHS/CDC currently recommends and funds routine HIV screening in medical settings for all U.S. residents, including immigrants in contact with the health system.

Some individuals noted that in September 2006, HHS/CDC recommended that all persons age

13–64 undergo testing at least once for HIV. They suggested that keeping the HIV testing requirement for would-be immigrants would be consistent with HHS/CDC existing policy, would help to meet the HHS/CDC recommendation of voluntary testing, and would ensure that would-be permanent residents were aware of their HIV status.

HHS/CDC appreciates these comments and emphasizes the importance of adolescents and adults knowing their individual HIV status. However, removing the requirement for HIV testing at the time of the medical examination for immigration purposes will not prevent individuals from knowing their status upon and after arrival in the U.S. CDC has and will continue to work on a number of fronts to reduce the impact of HIV across the nation by enhancing access to available prevention programs. These program activities include expanding HIV testing to increase knowledge of HIV status, improving surveillance to identify the leading edge of the epidemic, and exploring innovative and promising new prevention approaches. Communities and public health partners are working to tailor prevention efforts to meet local needs, mobilize communities, and expand the reach of HIV prevention. Further, Part 34 regulations do not specify testing for any disease that is not included in the definition of *communicable disease of public health significance*. For example, other recommended screening procedures such as cholesterol tests, Pap smears, mammograms, or other diagnostic tests for the presence of asymptomatic chronic health conditions such as hepatitis B, are not conducted as part of the required medical examination. CDC recognizes that the medical exam provides a unique opportunity to both inform immigrants of their health status and, if warranted, link them with care. If, as a part of the medical examination for immigration, the panel physician detects a condition that might warrant additional follow-up or testing, CDC will continue to encourage the panel physician to inform the applicant about the condition and to seek appropriate medical care and counseling services. This would include anyone with symptoms suggestive of hepatitis, AIDS, or other chronic infectious diseases that are not inadmissible conditions.

Commenters also asked HHS/CDC to clarify how local public health departments and voluntary agencies will be funded and equipped to provide testing and counseling services to immigrants potentially infected with HIV if HIV testing is no longer included in the required medical examination for U.S. immigration. In response, HHS/CDC will continue to work closely with its state and local partners in protecting the public's health. HHS/CDC currently provides funding to State and local health departments and community-based organizations for outreach and HIV counseling and testing programs. Immigrants would be eligible for services under these programs.

Some commenters suggested alternatives such as listing HIV infection as a Class B health condition or another designation to justify testing for immigrant applicants. In response, HHS/CDC reiterates that Part 34 regulations do not specify testing unless the illness is defined as a *communicable disease of public health significance*.

In summary, CDC appreciates all the comments received on the proposed change. After considering these comments, CDC has determined that HIV testing will no longer be included in the scope of examinations since HIV has been removed from the definition of *communicable disease of public health significance*. Therefore, as stated above, it is no longer necessary or appropriate to maintain HIV in the scope of examinations.

C. Comments on the Economic Impact Analysis (EIA)

1. General Comments on the Cost Analysis

HHS/CDC received a number of comments from individuals and organizations on the NPRM regarding the cost estimates of admitting HIV-infected visitors and immigrants into the United States (approximately 100). Many of the commenters complimented the quality of the economic impact analysis and the level of transparency provided regarding the methods and assumptions.

A majority of the individuals and organizations that provided comments on the economic impact analysis supported the removal of HIV infection from the list of communicable diseases as defined in 42 CFR 34.2(b), but suggested that the estimates provided in the NPRM overestimate the cost of the proposed rule to the United States taxpayer. Specifically, these individuals and organizations expressed concerns that the NPRM estimates did not differentiate costs between public and private payers; they noted that some HIV-infected immigrants would secure private insurance, some would pay out-of-pocket, and some would go without care or treatment. These commenters also noted that there is no data available to support the assumptions that HIV-infected immigrants will seek public benefits. They stated that all immigrants entering the United States must document that they will not be a public charge and immigrants do not have access to entitlement benefits for five years.

Many of these commenters also noted that economic benefits of removing the HIV ban were not included in the cost analysis. Specifically, they noted that health care expenditures are a large portion of the United States economy. Health care expenditures for treatment of HIV infection contribute to the United States economy and the creation of jobs. Similarly, some of these individuals and organizations suggested that many HIV-infected immigrants will provide revenue for the United States through taxes, visa fees, and contributions to Social Security and that government-incurred expenses currently used to enforce bans would be reduced. Some commenters also noted that many immigrants would bring unique sets of skills and abilities, that can contribute greatly to the United States workforce and noted that these benefits were not captured in the analysis.

For these reasons, these individuals and organizations suggested that the cost estimates presented in the NPRM inflated the public costs of allowing HIV-infected immigrants into the United States. In other words, these commenters suggested that the cost estimates in the NPRM overestimate public sector expenditures resulting from this proposed rule. HHS/CDC acknowledges these comments on the health care expenditure estimates and recognizes that the estimates in the analysis do not consider all factors and that there are some limitations to the analysis.

Many of these individuals and organizations suggested that the cost estimates were high, but they also noted that the assumptions upon which the cost estimates were based were reasonable for this economic analysis.

In response to these comments, HHS/CDC notes that the analysis was not restricted to impacts to the U.S. Government. The HHS/CDC analysis is an analysis of the health care sector expenditures taken from a societal perspective. That is, all health care costs are included, regardless of who pays. However, HHS/CDC also acknowledges that the analysis is focused on the impact to the health care sector.

HHS/CDC acknowledges that the health care expenditures estimated in the economic analysis may be small relative to the total heath care sector in the U.S. Nonetheless, Office of Management and Budget (OMB)

Circular A–4 on ''Regulatory Analysis'' (available at: *http://www.whitehouse.gov/OMB/circulars/a004/a-4.pdf*) directs agencies to assess all relevant impacts whether they be benefits, costs or distributional (regardless of payer).

HHS/CDC also acknowledges that allowing immigrants to enter and settle in the United States benefits the economy resulting from a number of additional economic activities. However, we are unable to quantify those potential benefits directly related to this rule.

Many organizations and individuals also noted that immigrants infected with HIV may consume fewer health care resources than immigrants with other chronic medical conditions. As such, these commenters suggested that including the cost model in the NPRM reflected inconsistencies in United States immigration policy. Specifically, they noted that the costs of treating HIV are raised as a concern in the proposed rule, but the costs of treating immigrants with other chronic conditions are not considered when determining immigrant status. In summary, they note that if the costs of treating immigrants with other significant health concerns are not considered in determining immigration policy, then HIV status should not be a factor in setting immigration policy.

HHS/CDC appreciates these comments and acknowledges the points made by these individuals and organizations. However, HHS/CDC conducted this cost analysis in adherence to the Office of Management and Budget (OMB) Circular A–4 requirements (available at: *http://www.whitehouse.gov/OMB/circulars/a004/a-4.pdf*).

Many of the individuals and organizations in opposition to the proposed rule often cited concerns that the potential costs of the proposed rule would result in an unacceptable, increased burden to the United States tax payers and to the United States health care system.

HHS/CDC notes that the purpose of the rulemaking was to determine whether HIV infection should remain as a *communicable disease of public health significance.* Through this Final Rule, HHS/CDC notes that HIV infection will no longer be a *communicable disease of public health significance,* because scientific evidence suggests that it is not transmitted through casual contact. Furthermore, we found no evidence to support the assertion that the rule would impose an unacceptable, increased burden on tax payers or the U.S. health care system.

One commenter noted that a significant number of visa applicants are the immediate relatives of U.S. citizens, for whom there is no numerical restriction. HHS/CDC acknowledges this point, but also notes that most immediate relatives of U.S. citizens are eligible for waivers under existing regulations. Much will depend on the assumed age structure of family-related immigration (*i.e.,* immigrants who are granted landed immigrant status on the basis of uniting families) and how many would have received a waiver absent this regulatory change. However, HHS/CDC has no reliable data measuring existing demand (*i.e.,* from family members who are HIV-infected and who will wish to immigrate here due to the change in regulations).

Two reviewers noted CDC may have overstated the costs of the proposed rule through calculation or transcription errors in the NPRM. HHS/CDC thanks these reviewers for their careful review of the analysis. HHS/CDC acknowledges that there was a transcription error and made the necessary edits in the analysis for the final rule.

2. Comments on a Technical Review of the EIA

In addition to the general comments on the Economic Impact Analysis (EIA), HHS/CDC also received a detailed technical review of the EIA from commenters. The comments received on this review concluded that the HHS/CDC cost assumptions were reasonable, but possibly overstated. These reviewers also indicated that a 5-year time horizon for analysis was reasonable.

This technical review noted that many of the economic benefits of removing the HIV ban were not included in the cost analysis. These reviewers further noted that the costs identified by HHS/CDC are health care expenditures that may benefit rather than harm the economy and suggest using a multiplier to estimate these economic benefits. One reviewer also suggested that HHS/CDC wrongly assumes that there will be no added economic benefit from new HIV-infected immigrants. The reviewer also contented that these immigrants would contribute to the economy and so the added health care expenditures CDC outlined would in some part be offset.

Several reviewers also noted that the costs estimated by the HHS/CDC model were small in proportion to the overall health care sector.

HHS/CDC acknowledges that data on the average annual health care costs of HIV treatment for immigrants are limited and may be lower than the estimates used in our analysis. We have added language which indicates that the average annual medical costs for HIV treatment in the Ryan White and Medicaid Programs range from $15,738 to $17,790 per person. HHS/CDC also acknowledges that we did not include a quantitative estimate of the economic benefits of removing HIV as an inadmissible condition. We further acknowledge that the health care expenditures have a direct impact on the health of individuals. However, because no data exist to quantify these potential indirect effects on the economy, we have not estimated these effects, either through direct measurement or with the use of a multiplier.

HHS/CDC acknowledges that the health care expenditures estimated in the economic analysis may be small relative to the total heath care sector in the U.S. Nonetheless, OMB's Circular A–4 directs agencies to assess all relevant impacts whether they be benefits, costs, or distributional (regardless of payer).

One of the reviewers suggested that it would be helpful if HHS/CDC explicitly stated that the costs to be borne by the federal government are a fraction of the figure described as ''costs'' in the NPRM. The reviewer also felt that it would be helpful if HHS/CDC would highlight that the CBO analysis states that the government has already identified a mechanism for offsetting the costs through visa fees.

The reviewer also suggested that the assumption that the prevalence of HIV infection among those immigrating to the U.S. will be the same as the prevalence in the general population of a particular region is questionable. However, although the reviewer notes the lack of reliable data may make this assumption reasonable, the reviewer believes that the assumption is a likely overestimation.

This reviewer also suggested that the assumption that there are a fixed number of immigrants is a flawed assumption because 40–47% of all immigrants are not subject to numerical caps. Therefore, immediate relatives would not replace an immigrant who is HIV negative. The reviewer finally states that the assessment of the economic impact of lifting the ban should also take into account the economic benefits.

HHS/CDC thanks the reviewer for the thoughtful and thorough examination of the proposed rule and the economic model. The reviewer is correct in the statement that all of the costs are not those to the government. Consistent with OMB's Circular A–4, the HHS/CDC analysis is an analysis of the health care sector costs taken from a societal

perspective; that is, all health care costs are included, regardless of payer.

HHS/CDC acknowledges the uncertainty in the estimate of HIV prevalence among immigrants who change their status to legal permanent residents, and the argument can be made that the estimate of prevalence should be higher or lower. Thus HHS/CDC chose to use a range. Further, HHS/CDC acknowledges that the range is ''wide.'' However, HHS/CDC believes that the range provides an important understanding of the limitations of the available data.

The reviewer further commented that the model fails to account for the economic benefits that those immediate family member immigrants would bring to the U.S. economy. HHS/CDC notes that the purpose of the HHS/CDC model was to account for the direct impact to the changes in policy to the health care sector and not to account for ancillary economic benefits. HHS/CDC also notes that although it thoroughly and carefully examined the direct effects of the proposed rule change, there are limitations to the analysis. Finally, HHS/CDC points out that there is a limit on the number of immigrants allowed into the U.S. each year. Family-related immigration is usually outside those limits. Again, HHS/CDC acknowledges that it has no reliable data measuring the existing demand among families to reunite with their loved ones. In addition, HHS/CDC notes that this point is probably only valid for an initial period following the change in regulations, where there would be a catch-up phase.

D. Comments on Technical Correction

Two comments were received that provided the following technical correction: ''In section II, Background, part I (p. 31798), last sentence, the proposed rule should state that the grounds of inadmissibility for specific health related grounds also pertain to most aliens in the United States who are applying for adjustment of their status to that of lawful permanent resident. There are few exceptions, *e.g.,* applicants under INA 249, 8 U.S.C. 1259 (registry) or under INA 245, 8 U.S.C. 1255 (m) (U nonimmigrant status/U visa holders) are exempt from the health-related grounds of inadmissibility at INA 212(a)(1)(A), (8 U.S.C. 1182 (a)(1)(A))''. CDC has accepted this technical change and amended the preamble text to reflect this.

VI. Conclusions and the Final Rule

Therefore, HHS/CDC amends 42 CFR 34 as follows: HIV infection is removed from the definition of a *communicable disease of public health significance* as defined in 42 CFR 34.2(b), and references to HIV are removed from the scope of examinations in 42 CFR 34.3. As a result, beginning on the effective date of this rule, HIV infection will no longer be an inadmissible condition, and HIV testing will no longer be required for those aliens who are required to undergo a medical examination for U.S. immigration purposes.

HHS/CDC has considered the rationale for all the public comments on the proposed rule. The vast majority of comments support the NPRM as written, with less than 3% of all commenters opposed to the changes in the NPRM.

HHS/CDC believes that the positive benefits of this regulatory change outweigh the costs. After considering public comments, as well as the most recent scientific and public health data available, HHS/CDC has decided to promulgate the final regulation as proposed in the NPRM.

HHS/CDC will revise the Technical Instructions provided to panel physicians and civil surgeons, as needed, regarding the removal of required HIV testing, and this information will also be immediately available to the public on the HHS/CDC Division of Global Migration and Quarantine Web site, located at the following Internet address: *http://www.cdc.gov/ncidod/dq/technica.htm.* HHS/CDC will also work with DoS and DHS to ensure that panel physicians and civil surgeons respectively are aware of the revision to the Technical Instructions regarding the removal of required HIV testing.

VII. Required Regulatory Analyses Under Executive Order 12866

HHS/CDC has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is an economically significant action under the Executive Order.

In the analysis that follows, we assess the potential impacts of removing HIV infection from the list of specific *communicable disease of public health significance* and removing the HIV testing requirement in the medical examination for aliens who are applying for adjustment of their status to that of a lawful permanent resident.

A. Objectives and Basis for the Action

Prior to the enactment of the United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008, HHS/CDC was required by statute to list HIV infection as a ''communicable disease of public health significance.'' Now that the statute provides discretion, HHS/CDC is taking this action to reflect current scientific knowledge and public health best practices, and to reduce stigmatization of people who are HIV-infected. This final rule is not intended to correct any market failure, but to remove a government-imposed barrier that does not provide a significant public health benefit.

B. Alternatives

HHS/CDC examined three regulatory approaches.

1. The first approach is to maintain HIV infection on the list of *communicable disease of public health significance, i.e.,* to keep the disease as an inadmissible condition for entry into the U.S. This means that visa applicants seeking permanent residency would continue to undergo testing for HIV infection as part of the application process. Those applicants testing positive for HIV, if eligible, would still be required to apply for and obtain a waiver from DHS prior to coming to the U.S. There are several disadvantages to this approach. As stated previously, while HIV infection is a serious health condition, it does not represent a communicable disease that is a significant risk for introduction, transmission, and spread to the U.S. population through casual contact. Currently, there are already roughly 1 million persons in the United Stated living with HIV [1]. Thus, maintaining HIV infection on the list of inadmissible conditions for entry into the U.S. would not result in significant public health benefits. Further, this approach is not in line with current international public health practice. This approach contributes toward the stigmatization of HIV-infected persons. HHS/CDC did not select this approach.

2. The second approach is to remove HIV infection from the list of *communicable disease of public health significance, i.e.* remove it as a ground of inadmissibility into the U.S., but continue mandatory HIV testing for all immigrant applicants similar to an approach followed by some countries. Under this approach, all those aliens

who test positive for HIV infection could be informed of their HIV status, counseled regarding their condition, the need for appropriate treatment, and the steps that should be taken to minimize the risk of onward transmission.

There are potential public health benefits to a mandatory testing approach. The medical examination offers a unique opportunity to both inform immigrants of their HIV status and link them with care. Through screening, HIV-infected aliens who are potentially unaware of their HIV status would become aware of their status and could be linked with prevention, care and treatment options in the United States. Early diagnosis and treatment of HIV-infected persons can increase life expectancy and may improve the quality of life. Additionally, knowing one's HIV status decreases the likelihood of onward transmission [2, 3]. These public health benefits are the basis for the HHS/CDC's ''Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Health-Care Settings,'' which states that the characteristics of HIV infection are consistent with all generally accepted criteria that justify voluntary screening [4]. However, mandatory HIV testing is limited to certain infrequent cases such as blood and organ donors.

There are also disadvantages to continued mandatory testing if HIV infection is removed from the definition of *communicable disease of public health significance.* Mandatory testing for other serious health-related conditions that are not inadmissible health conditions, (*e.g.,* infectious diseases, such as hepatitis, malaria, and West Nile virus and chronic conditions such as diabetes and heart conditions), are not required as part of this medical examination. Thus, continued mandatory HIV testing would differentiate HIV infection from other serious health-related conditions. Second, although the purpose of the medical examination is to identify health conditions considered inadmissible on public health grounds, the results of examinations conducted by panel physicians in the immigrant's home country might not be kept confidential because of requirements in the country of origin making it necessary to report HIV results to local authorities. These results may be counter to HHS/CDC objectives of reflecting current scientific knowledge and public health best practices, and reducing stigmatization of people who are HIV-infected. Therefore, as discussed below in the third approach, HIV testing, consistent with CDC's recommendations for general screening, would be available.

3. The third approach is to remove HIV infection from the definition of *communicable disease of public health significance* and as a requirement in the medical examination. This means that mandatory testing for HIV infection would no longer be required and DHS would allow HIV-infected persons to enter into the U.S. (or to adjust to permanent resident status) if they meet all other conditions of admissibility. This is the regulatory approach that HHS/CDC selected. Along with this approach, all immigrants, refugees and status adjusters would still have the opportunity to receive information about HIV testing and to be tested in the United States as recommended by the CDC guidelines [4]. The discussion of the potential impacts of the rule that follow relate to this approach.

C. Baseline and Incremental Analysis

The baseline for this analysis assumes no change in the current regulation. In other words, all applicants for admission into the U.S. as legal permanent residents and those already within the U.S. seeking adjustment to permanent resident status are currently tested for HIV infection during the immigration medical examination. Those who are HIV-infected and are not granted a waiver by the Department of Homeland Security are refused lawful permanent resident status in the United States.

Currently, refugees who are HIV-infected must be granted a waiver by the Department of Homeland Security before entering the U.S. Subsequently, refugees infected with HIV who are present in the U.S. and apply for adjustment to permanent resident status must be re-examined and granted another waiver from DHS at that time (*i.e.,* the grant of waivers permits these individuals to obtain refugee status, and later, permanent resident status despite being HIV-infected, which would otherwise render them inadmissible). We have not explicitly included groups other than lawful permanent residents (*e.g.* refugees) in our analysis, however, because: (i) These persons, compared to the other immigrants, enter the U.S. under extraordinary circumstances; (ii) the numbers are relatively small; and, (iii) the proposed change in regulations is not likely to have a significant impact on the annual number of HIV-infected refugees admitted to the U.S. and who later become permanent residents because such persons generally receive a waiver of inadmissibility for HIV infection under current procedures. Thus, the numbers of admitted HIV-infected refugees who are subsequently granted permanent resident status are likely to stay the same, regardless of regulations in place. That is, the HIV-infected refugees-turned-permanent residents are part of the baseline scenario.

Furthermore, though this policy would increase the total number of people who may be eligible to be admitted, we assume that the total number of immigrants who are annually admitted into the United States is fixed over time. Thus, the incremental input to the rule is a calculation of the additional costs due to HIV-infected immigrants above the costs of non-HIV-infected immigrants. In general, given that the total number of immigrants is not likely to change and the share of HIV-infected immigrants is likely to be relatively small, the rule will not likely have an appreciable impact on the economy in terms of wages, productivity, or prices of goods and services.

D. Defining the Population Affected

The affected population is defined as the number of new HIV-infected lawful permanent residents entering the United States each year and those individuals already in the United States seeking to adjust their immigration status to that of a lawful permanent resident. The proposed changes in 42 CFR part 34: Medical Examination of Aliens affects all foreign nationals entering the U.S. who are infected with HIV. Although HIV testing is not routinely required for entrance into the U.S. except for those aliens who are seeking to become lawful permanent residents, visitors who are infected with HIV are currently required to request waivers to obtain entrance. With this final rule, the waiver process will no longer be necessary. Data on the number of waivers granted annually based on HIV status are not available. For example, in Fiscal Year 2007, the Department of State reported that its consular officers found 746 applicants for immigration ineligible for admission to the U.S. under the communicable disease grounds of INA 212(a)(1)(A)(i). The number of applicants who tested positive for HIV infection is unknown. This analysis is limited to aliens seeking to become lawful permanent residents who are required to have a medical examination to determine admissibility. Because applicants such as visitors and refugees have historically had the option of obtaining a waiver to enter and remain in the U.S., these groups are not included in this analysis.

Based on the estimated distribution of HIV/AIDS cases in each of the regions in the world and weighted by the

number of immigrants entering the United States from each region, we estimate that approximately 4.06 (range of 1.02 to 6.09) immigrants per 1,000 immigrants that would be likely to enter the U.S. under the proposed rule would be infected with HIV (see Table 1 for the summary of regional estimates and weights and Technical Appendix II, Table 1: Summary of Model, HIVEcon, Inputs and Assumptions for Primary, Lower and Upper Bound Analyses [5]).

TABLE 1—REGIONAL POPULATION, IMMIGRATION AND HIV ESTIMATES USED TO CALCULATE THE WEIGHTED REGIONAL RATE ESTIMATES

	Legal permanent residents (2007) [6]	Estimate of HIV rate per 1,000 (based on 2006 regional population estimates [7] and 2007 HIV regional estimates [8])			Estimated number of HIV-infected immigrants		
		Primary	Low	High	Primary	Low	High
Africa *	96,105	18.05	16.70	19.57	1,735	1,605	1,880
Asia	383,508	1.29	1.05	1.63	494	403	624
Europe	120,821	3.23	2.46	4.38	390	297	529
N. America	339,355	3.84	1.42	5.61	1,302	481	1,903
Oceania	6,101	2.19	1.55	3.50	13	9	21
S. America	106,525	3.20	2.81	3.79	341	300	404
Total	1,052,415	4.98	4.35	5.73	.....	.....	.....
HIV positive Rate per 1,000 U.S. immigrants †		4.06	‡ 2.94	‡ 5.09	4,275	3,096	5,361

* In this case, Africa includes North Africa, the Middle East and Unknowns.

** Total number of adults and children living with HIV in the region (*see Technical Appendix II for more detail [5]*).

† Based on weighted regional estimates. The assumption is that prevalence of HIV amongst immigrants to the U.S. mirrors that of the immigrant's native regions and is adjusted for the number of immigrants coming to the U.S. from each region.

‡ Note: these estimates represent the 5th and 95th percentiles based on regional weight estimates. Due to concern that immigrants may not be representative of the typical country level estimates and thus may be outside the confidence interval, for purposes of this analyses we expanded our confidence interval to 25% to 150% of the Primary estimate (i.e. 1.02 to 6.09 HIV+ immigrants per 1,000 immigrants).

The numbers of HIV/AIDS persons in each region of the world were taken from the *2007 AIDS Epidemic Update: Global Overview* issued by the Joint United Nations Programme on HIV/AIDS (UNAIDS)[8]. HHS/CDC used regional data and rates that were determined using the regional population data from 2006 published by the Population Division of the Department of Economic and Social Affairs of the United Nations Secretariat [7]. After examining the immigration data, by region, from the *Yearbook of Immigration Statistics: 2007 Immigrants [6],* we assigned regional weights according to the number of aliens coming to the United States from each region.

The 2007 Immigration Statistics [6, 9] indicate that 1,052,415 persons became permanent residents in 2007. Multiplying this number by our prevalence estimate of 4.06 (range of 1.02 to 6.09) HIV-infected immigrants per 1000 immigrants yields an estimated 4,275 (range of 1,073 to 6,409) HIV-infected immigrants who would enter into the United States each year.

However, we note that there are significant uncertainties in this estimate since no specific data exist on the HIV prevalence of persons seeking to immigrate to the United States. We do not have a basis to judge how these immigrants who qualify for permanent residence differ from the general regional population in terms of HIV prevalence; thus, for the purposes of this analysis we assumed that it would be equivalent to the regional HIV prevalence rates. We used regional HIV prevalence rates rather than HIV rates for specific countries to allow for year to year variations in the number of aliens entering the U.S. from specific countries.

There are several possible reasons as to why the proportion of HIV-infected immigrants could be less or more than the prevalence of HIV-infected persons in the region of origin. For example, the cost of adequate medical care in the U.S. may make HIV-infected individuals reluctant to immigrate to this country. With the increase in the availability of appropriate HIV treatments in many parts of the world, adequate treatment is often cheaper outside of the U.S. Conversely, in regions or specific countries where appropriate treatment is less readily available, the portion of HIV-infected immigrants from those regions could be higher than the prevalence of HIV-infected persons in that region.

We used a range of 1.02 to 6.09 HIV-infected persons per 1,000 immigrants based on 25% and 150% of the mean weighted average—4.06 per 1,000 immigrants of the number of estimated HIV-infected persons in each region but weighted by the number of lawful permanent residents who entered the U.S. in 2007. This range yields a lower bound estimate of 1,073 and an upper bound estimate of 6,409 HIV-infected persons entering the United States annually (see Technical Appendix II [5]).

E. Analysis of Impacts

In this final rule, HHS/CDC is removing HIV infection from the definition of *communicable disease of public health significance* contained in 42 CFR 34.2(b) and scope of examination, 42 CFR 34.3 because HIV infection does not represent a communicable disease that is a significant threat to the general U.S. population. The rationale for maintaining HIV infection as an inadmissible condition is no longer valid based on current medical knowledge and public health practice, scientific knowledge, and experience which has informed us on the characteristics of the virus, the modes of transmission of HIV, and the effective interventions to prevent further spread of the virus. To the extent the final rule will result in an increased number of HIV-infected immigrants to the U.S. each year, there will be quantifiable impacts. We have made our best attempt to capture the likely effects of the rule, but there are significant uncertainties in this estimation effort.

1. Potential Benefits

The benefits from this action are difficult to quantify. Based on the estimate above, this rule would allow perhaps roughly 4,275 (range of 1,073 to

6,409) persons to enter the United States annually who are otherwise admissible but are denied admission solely based on their HIV status. The rule will bring family members together who had been barred from entry, thus strengthening families. Also, HIV-infected immigrants with skills in high demand would be permitted to enter the U.S. to seek employment and contribute as productive members of U.S. society. Depending on the region of the world from which a person emigrates, admittance to the U.S. may afford greater opportunity, better health care, and education and training programs than those available in the immigrant's home country. These HIV-infected individuals, compared to those who do not receive appropriate multi-drug anti-retroviral therapy for HIV treatment, could survive an additional 13 years, with an average life expectancy of approximately 29 years (to age 49 years) [10]. This increased life expectancy allows the opportunity for longer and improved productivity.

Further, this final rule removing HIV infection from the definition of *communicable disease of public health significance* and from the scope of examinations will remove stigmatization of HIV-infected people who have long been denied entry into the U.S. based only on a treatable and preventable medical condition. This proposed rule will bring the U.S. in line with current science and international standards of public health.

Though this rule is assumed to not have an impact on the total number of immigrants annually admitted as legal permanent residents, we note that immigration, in general, produces net economic gains for the United States.[11].

2. Impact on Health Care Expenditures

As previously noted, we have made our best attempt to capture the likely effects of the rule, but there are significant uncertainties in this estimation effort. HHS/CDC notes that this analysis is an analysis of the health care sector costs taken from a societal perspective; that is, all health care costs are included, regardless of payer. The costs to be borne by the Federal government are only a part of the total costs described below.

As previously discussed, the incremental impacts of the rule should be a comparison between the arrival of an HIV-infected immigrant and the arrival of an HIV-negative immigrant. Presumably, HIV-related health care expenditures will be different, but there are a variety of health expenditures that the HIV-infected immigrant may not incur that other immigrants may incur (e.g., certain types of cancer, diabetes, heart disease). It is not clear that, over the course of a lifetime, on net an HIV-infected immigrant would consume more health care resources than other immigrants. Furthermore, HIV treatment yields benefits that off-set the expenditures, including increased life expectancy and productivity.

However, given that health care expenditures associated with treatment of HIV infection can be substantial and may result in some fiscal impacts (as discussed below), we developed a model (HIVEcon) to estimate these potential effects of the rule. A complete description of the model including assumptions, results and limitations is available for examination [5]. The spreadsheet model itself is also available for download so that the reader can determine the relative impact of altering almost any input value, individually or several simultaneously [12].

The model, HIVEcon, examines the treatment costs as estimated by *Schackman et al* [13] associated with newly identified persons infected with HIV regardless of payer, following the 2004 standards of care. The annual treatment cost is estimated to be $25,200 in 2004 dollars, with a range of $19,466 to $30,954. However, significant advances in the treatment of HIV have been made since 2004 [14], and are likely to continue to be made. Thus, the expenditure estimates could be underestimated since as treatment options increase, the benefits such as quality of life and lifespan will increase as will costs. However, these expenditures may be overestimated since it is not clear to what extent immigrants will seek and receive even the 2004 standard of care. Expenditures may also be overestimates if only including direct medical costs, as is done for the Ryan White Block Grant and Medicaid Programs, where average annual costs range from $15,738 to $17,790 per person.

The absolute lower bound estimate is $19 million in the first year (decreasing the prevalence rate to 1.02 HIV+ immigrants per 1,000 immigrants and the average annual medical expenditures to $19,466). The maximum upper bound estimate is $173 million (increasing the prevalence rate to 6.09 HIV-infected immigrants among 1,000 immigrants, and the average annual medical expenses to $30,954 per immigrant). In the HIVEcon model, in Year Two following the change in regulation, as the cumulative number of HIV-infected immigrants almost doubles, so will these annual health expenditures. Likewise in the third year, the expenditures will be equivalent to three years' worth of immigrants (excluding those who have passed away) and so on until the HIV-infected immigrants reach their life expectancy (e.g., in the model, an HIV-infected person at age 30 has an average life expectancy of 24.7 years).

3. Comparison With Congressional Budget Office Analysis

The Congressional Budget Office (CBO) estimated the cost to the federal government of Section 305 of PL 110–293 prior to the law's enactment. The analysis included increases in direct spending related to provision of health care and other benefits paid for by the federal government. Specifically, those benefits include Medicaid, Supplemental Security Income, Food Stamps, and nutritional programs. In total, CBO estimated that providing these benefits to HIV-infected immigrants and their citizen children will increase spending by less than $500,000 in 2010 and $83 million over the 2010–2018 period, primarily for Medicaid.

The CBO analysis was done for the purpose of estimating the impact of PL 110–293 on the federal budget. The analysis for this final rule was done to comply with Executive Order 12866, which directs agencies to assess all costs of available regulatory alternatives, including, but not limited to, those costs incurred by the federal government. The economic analysis for this regulation differs from the CBO analysis for PL 110–293 in four major areas: (1) The CBO analysis assumed that the HIV prevalence rate would be equal to half of the weighted-average HIV prevalence rate for the immigrants' country of origin, whereas this analysis assumed that the HIV prevalence rate would be equal to the weighted-average rate of the immigrants' region of origin; (2) the number of immigrants was increased by 5% each year in the CBO analysis while this analysis did not include growth in the annual number; (3) the CBO analysis only examined health care costs paid for by Medicaid whereas this analysis included all health care costs including those paid for by the Ryan White Program; and (4) the CBO analysis included costs of federal disability and nutrition benefits, whereas this analysis did not include those costs.

By the year 2013, the number of HIV-infected immigrants entering the U.S. projected by the CBO analysis is roughly equivalent to that projected by this analysis (analytical differences in prevalence and growth rates cancel out). By 2018, the number of HIV-infected

immigrants projected by the CBO analysis exceeds projections in this analysis. The health care costs in this analysis exceed that of CBO's analysis because the former included all federal and nonfederal costs including those costs paid for through the federally-funded Ryan White Program. This analysis did not include non-health care costs.

4. Potential Fiscal Impacts

As previously discussed, even if HIV-related health restrictions are removed as a barrier to admission for immigrants, all immigrants still must meet other admission requirements. In the United States, under the Federal Personal Responsibility Work and Opportunity Reconciliation Act (PRWORA) of 1996, most immigrants are not eligible to receive means-tested public benefits for five years after their entry into the U.S. [15, 16]. Federal means-tested public benefits include Supplemental Security Income (SSI), cash Temporary Assistance for Needy Families (TANF), Medicaid, and food stamps [15, 17]. State and local means-tested benefits are determined at the state or local level and vary by jurisdiction. We have no data to assume that HIV-infected immigrants will seek, five years after being admitted to the U.S., such benefits at rates different from non HIV-infected immigrants.

In addition, PRWORA placed other limitations on aliens' access to public benefits, making them more difficult for aliens to obtain. For example, the income and resources of the sponsor of a family-based immigrant or permanent resident are deemed to be available to that alien if he/she should apply for certain means-tested public benefits. *See* 8 U.S.C. 1631, 1632. Since a sponsor must first prove to DHS that he/she is able to provide support to the sponsored alien at an annual income that is at least 125% above the federal poverty level before the alien's immigration application will be approved, it is unlikely that the alien will be able to show that his/her available resources fall beneath the low income eligibility thresholds required for many means-tested public benefits. *See* INA section 213A(a)(1)(A).

However, some immigrants may be eligible for certain assistance through the Ryan White HIV/AIDS Program—a federally-funded program that provides HIV-related health services. Funds are awarded to agencies located around the country, which in turn deliver care to eligible individuals. Since the program is administered through different grantees using different eligibility criteria, it is difficult to assess the extent the HIV-infected immigrants will be eligible for assistance through this program. However, given that the estimated number of new HIV-infected immigrants entering the United States as a result of this rule is relatively small compared to the total number of persons currently assisted by the funding (roughly half a million), the overall impact on the program is likely small.

5. Onward Transmission

Though difficult to quantify with precision, there will likely be some additional cases of HIV infection due to onward transmission from HIV-infected immigrants to others in the United States who are not currently infected. The costs associated with onward transmission include:

- Shortened lifespan and reduction in quality of life even with treatment,
- The health care costs associated with treating HIV infection,
- The costs of social services when individuals are unable to fully support themselves because of their illness, and
- Decreased productivity when individuals become too sick to work.

Because health care costs are substantial and other costs listed above are difficult to quantify, the analysis in the HIVEcon model is limited to health care costs associated with treatment of HIV infection.

In the model, the number of estimated HIV-infected cases due to onward transmission (in Year t) is calculated as: [(Number of HIV-infected immigrants entering in Year t + Number of HIV-infected immigrants surviving from previous years that survive to Year t + additional persons previously infected by onward transmission from HIV-infected immigrants that survive to Year t) x onward transmission rate].

A 1.51% onward transmission rate was used in the HIVEcon model to represent the annual estimated number of new infections caused by HIV-infected immigrants to the U.S., or caused by U.S. person infected by HIV-infected immigrants (i.e., annually every 100 HIV-infected persons infect an additional 1.51 persons). The most recent estimate of average onward transmission, when limited to sexual transmission, in the United States is 3.02 per 100 HIV positive immigrants [18]. In 2006, the overall rate for onward transmission of HIV in the U.S. from all causes, was 5 new infections per 100 HIV-infected persons [19]. Results from published research indicate that immigrants to the United States, regardless of their race or ethnicity, often have an initial better health profile than native-born Americans across diverse health behaviors and outcomes; however, this health advantage declines as length of residence in the United States and degree of acculturation increase [20–26]. Specifically, studies of HIV risk behavior among immigrant populations, upon arrival in the U.S., indicate that these behaviors are influenced by a number of factors including the demographic characteristics of the migrants (especially sex, social class, relationship status and education); the purpose of immigration; the type and location of their receiving community and the existing supports; discrepancy between pre-immigration expectations and post-immigration experiences; and transnational movement between the U.S. and their home countries [27–31]. These multiple factors result in heterogeneity in HIV risk between migrant communities, with some being at lower, and others higher risk, than their U.S. counterparts. There is no evidence to suggest immigration to the U.S. significantly affects HIV incidence in this country in one direction or the other. Thus, it is not unreasonable to assume that onward transmission rates amongst HIV-infected immigrants will be lower than among HIV-infected persons born in the U.S.

For this analysis, we assumed that the onward transmission rate for immigrants, and those that they infect, would be fifty percent of the average U.S. rate for sexual transmission (i.e., rate of onward transmission from HIV-infected immigrants is assumed, in the baseline case, to be 1.51 per 100). Because data supporting this assumption are limited, this assumption was tested in sensitivity analysis. We used 0% transmission as our lower bound estimate and a transmission rate of 4.53 per 100 HIV-infected immigrants, and those that they infect, as our upper bound estimate. The upper bound transmission rate is a fifty percent increase in the average annual onward transmission rate of 3.02%.

Assuming 4,275 HIV-infected immigrants enter in the first year, there will be 65 new HIV infections due to onward transmission, assuming an onward transmission rate of 1.51 per 100 HIV, with a range of 0 to 261 (assuming onward transmission of 0 and 4.53 per 100 HIV-infected immigrants, respectively). These estimates imply treatment costs, for those infected via onward transmission only, in the first year of $1.6 million in the primary estimate and a range of $0 to $8.1 million [5].

For the purposes of calculating new HIV infections associated with HIV-infected immigrants in the U.S., HIVEcon adds persons infected by HIV-

infected immigrants to the cohort of projected HIV-infected immigrants. This modeling technique represents the chain of onward transmission after initial transmission from an HIV-infected immigrant. Thus, in the next year, though the cumulative number of HIV-infected immigrants essentially doubles, the number of new HIV cases (as well as the associated treatment costs) will be slightly more than double the previous year.

This modeling approach assumes that those people infected by HIV-infected immigrants would never have become infected with HIV were it not for the arrival in the U.S. of HIV-infected immigrants. This could be unrealistic since U.S. persons who are infected by HIV-infected immigrants may engage in behaviors that lead them to activities that expose them to HIV infections, regardless of the source of infection. An alternative interpretation may be that at least some of the additional infections are occurring earlier than they otherwise would have. Thus, these shifts in the timing of infection will increase the total number of new cases in any one year, but the true incremental impact may be the implications of becoming infected earlier.

Furthermore, the model treats the onward transmission rate as fixed over time. However, data show that onward transmission has declined over time[19]. If we assume that transmission rates will continue to decrease in the future, it is possible that the model may overestimate the number of HIV-infected individuals due to onward transmission as we project impacts into the future.

F. Summary of Impacts

We have made our best attempt to capture the likely effects of the rule, but there are significant uncertainties in this estimation effort. For example, the HIVEcon model projects potential impacts out to 50 years after the rules go into effect. However, many of the key inputs to the model may be significantly different even ten years from now given the rapid pace of change in HIV treatment, HIV prevalence in other countries, as well as potential changes in the overall immigration policy. It may not be inconceivable that there would be an HIV vaccine in the next decade or two. Given these and other uncertainties, Table 2 provides a summary of the potential effects of the rule five years after implementation.

TABLE 2—SUMMARY OF IMPACTS (YEAR FIVE AFTER IMPLEMENTATION), ASSUMING THE AVERAGE AGE OF ENTRY IS 30 YEARS AND THE ANNUAL DISCOUNT RATE IS 3%

Category	Primary estimate (4.06 HIV+ immigrants per 1,000 immigrants)	Low estimate (1.02 HIV+ immigrants per 1,000 immigrants)	High estimate (6.09 HIV+ immigrants per 1,000 immigrants)
BENEFITS			
Total number of HIV–Positive Immigrants present in the U.S. at year five who would not otherwise be able to immigrate.	15,755	3,956	23,622
Qualitative	1. Will reduce stigmatization of HIV-infected people. 2. Will bring family members together who had been barred from entry, thus strengthening families. 3. Will permit HIV-infected immigrants with skills in high demand would be permitted to enter the U.S. to seek employment and contribute as productive members of U.S. Society. 4. Compared to those who don't receive appropriate multi-drug anti-retroviral therapy, survive an additional 13 years, with an average life expectancy of approximately 29 years (to age 49 years) [10]. This increased life expectancy allows opportunity for longer and improved productivity.		
COSTS			
Total number of HIV–Positive cases due to 1.51% onward transmission connected with U.S. Immigrants.	676	170	1,014
Annualized Monetized Health care Expenditures from onward transmission.	$14 million	$4 million	$22 million.
Qualitative	1. Shortened lifespan and reduction in quality of life even with treatment. 2. Decreased productivity.		
TRANSFERS			
Annualized Monetized Health care Expenditures.	$342 million	$86 million	$513 million.
Share for Federal Payers	Depends upon assumptions of who pays annualized monetized medical costs; likely to be small given restrictions on Federal assistance to new immigrants.		

NOTES: Source of estimates see Figures 1, 3, and 4 in Technical Appendix II [5].

The primary benefit of this rule is that each year an additional 4,275 (range of 1,073 to 6,409) immigrants who otherwise qualify for entry but are denied based solely on HIV status will now be able to enter the country. Although we are unable to quantify all of the benefits of this change in policy, we believe it will help reduce stigmatization of HIV-infected people; bring family members together who had been barred from entry (thus

strengthening families); and allow HIV-infected immigrants with skills in high demand to enter the U.S. to seek employment and contribute as productive members of U.S. society, and if they are able to obtain better health care in the United States, to improve health outcomes and productivity. There are also ethical, humanitarian, distributional, and international benefits that are important but difficult to quantify. [We note the words of Executive Order 12866: ''Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider.''] We observe as well that in the context of the U.S. HIV/AIDS prevalence, currently estimated at roughly 1 million persons [1] the 3,956 to 23,622 HIV-infected immigrants in five years represents 0.4% to 2.4% of the national total of persons living with HIV/AIDS.

The main cost of this rule is the potential for onward transmission to U.S. residents who are not infected with HIV. As we noted in the previous discussion, however, our modeling approach assumes that those people infected by HIV-infected immigrants would never have become infected with HIV were it not for the arrival in the U.S. of HIV-infected immigrants. This assumption will in some cases be unrealistic, because U.S. persons who are infected by HIV-infected immigrants may engage in behaviors that expose them to HIV infections, regardless of the source of infection. It is possible, of course, that at least some of the additional infections are occurring earlier than they otherwise would have. To the extent that this is so, the shifts in the timing of infection will increase the total number of new cases in any one year, but the true incremental impact may be the implications of becoming infected earlier.

Furthermore, the model treats the onward transmission rate as fixed over time. However, data show that onward transmission has declined over time [19]. Even given these caveats, in the context of the new U.S. incidence of HIV, currently estimated at roughly 56,000 [32], the number of new onward transmission cases due to the rule change, 65 (ranging from 0 to 261) in year one represent 0.1% (ranging from 0 to 0.5%) of the total new annual cases of HIV in the U.S. (as described in Section 5. Onward Transmission). The monetized costs including the treatment cost of the onward transmission cases, are relatively modest. We add, however, that these monetized costs are incomplete, because they do not include the health costs in terms of reduction in quality of life and longevity even with treatment.

On the other hand, health care expenditures for immigrants, although a quantifiable and relevant impact of the rule, are not really ''costs'' of the rulemaking. Unlike in the case of onward transmission, these immigrants already have the disease and will now be purchasing healthcare in the U.S. that they would have purchased in their home country (similar to spending on other services such as housing or education). However, since the spending pattern may be systematically different for HIV immigrants, we quantify and report these effects as a ''transfer'' from the perspective of this rulemaking—payments from immigrants and/or their 3rd party payers to U.S. providers of care. We estimate the annual transfer payments to be $86 million to $513 million. The share of these payments by Federal payers is likely to be small given the restrictions on Federal benefits to new immigrants.

Given these potential impacts, we conclude that the benefits of the rule justify its costs, and that while we do not believe HIV is a ''communicable disease of public health significance'' for the purposes of admissibility determinations, the rule may be economically significant.

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VIII. Final Regulatory Flexibility Analysis

HHS/CDC has considered the final rule's effects on small entities, as required by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.,* Pub. L. 96–354) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121). The RFA establishes, as a principle of regulation, that agencies should tailor regulatory and informational requirements to the size of the entities, consistent with the objectives of a particular regulation and applicable statutes.

The objective of this analysis was to compare the benefits and the costs of a change in legislation that currently prohibits HIV-infected immigrants from entering the United States. HHS/CDC carefully considered several other alternatives, but they were either not logistically feasible or they were not compatible with current U.S. regulations. This analysis appears in the 'alternatives' section.

HHS/CDC certifies the rule will not have a significant impact on a substantial number of small entities as defined in the statute.

IX. Other Administrative Requirements

A. The Unfunded Mandates Reform Act

HHS/CDC evaluated the rule requirements for compliance with the Unfunded Mandates Reform Act (UMRA) of 1995. This rule does not contain Federal mandates under the regulatory provisions of Title II of the UMRA for State, local, or Tribal Governments, nor for the private sector. The rule's provisions will not affect small Governments.

B. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 requires HHS/CDC to determine whether the rule is economically significant. The Executive Order further requires HHS to determine whether the rule would create an environmental health or safety risk disproportionately affecting children. HHS/CDC has determined that this rule does not create an environmental health or safety risk.

C. Paperwork Reduction Act of 1995

The Paperwork Reduction Act applies to the data collection requirements found in 42 CFR part 34. Currently, aliens determined to have a communicable disease of public health significance may request a waiver from DHS to enter the United States under sections 212(d)(3)(a) and 212(g) of the INA (8 U.S.C. 1182(d)(3)(a) and 1182(g)). HHS/CDC has approval from the Office of Management and Budget (OMB) under OMB Control No. 0920–0006: Statements in Support of Application for Waiver of Inadmissibility under the Immigration and Nationality Act (expiration date December 31, 2011) to collect data pertaining to the waiver; CDC Form 4.422–1b. HHS/CDC will discontinue the use of this form, for a reduction of 67 burden hours for this approved data collection.

D. Environmental Assessment

HHS has determined that provisions to amend 42 CFR part 34.2(b) will not have a significant impact on the human environment.

E. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, September 9, 2000), requires agencies to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The Executive Order defines the phrase ''policies that have tribal implications'' to include regulations and other policy statements or actions that have ''substantial direct effects 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.''

HHS/CDC has determined that provisions to amend 42 CFR Part 34 will not have tribal implications.

F. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

Under Executive Order 12630, if the contemplated rule would require a Federal taking of private property, then a takings analysis is required. Since the rule does not require a Federal taking of private property, the provisions in the Executive Order are not applicable.

G. Executive Order 13132: Federalism

Under Executive Order 13132, if the rule would limit or preempt State authorities, then a Federalism analysis is required. The agency must consult with State and local officials to determine whether the rule would have a substantial direct effect on State or local Governments, as well as whether it would either preempt State law or impose a substantial direct cost of compliance on them.

HHS/CDC has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

H. Executive Order 13211: Energy Effects

Executive Order 13211 requires HHS/CDC to produce a statement of energy effects if the rule is significant or economically significant and likely to have a significant adverse effect on the supply, distribution, or use of energy. HHS/CDC has determined that this rule does not have that effect and that a statement of energy is not required.

I. National Technology Transfer and Advancement Act

This act, 15 U.S.C. 272, requires the adoption of technical standards developed or adopted by voluntary consensus standards bodies in rules promulgated by HHS. No voluntary consensus standards are applicable and feasible with regard to this rule.

J. Assessment of Federal Regulations and Policies on Families

Title 5 U.S.C.A. 601 (note) requires agencies to assess the impact of a regulatory action to determine whether such an action would affect family well-being. HHS/CDC has assessed the impact of this regulation and has determined that it would not negatively affect family well-being.

K. Executive Order 12988: Civil Justice Reform

HHS/CDC has reviewed this rule under Executive Order 12988, on Civil Justice Reform and determines that this rule meets the standard in the Executive Order.

L. Plain Language in Government Writing

Under 63 FR 31883 (June 10, 1998), Executive Departments and Agencies are required to use plain language in all proposed and final rules. HHS/CDC did not receive any comments seeking clarity on language used in the NPRM. HHS/CDC has attempted to use plain language in promulgating this Final Rule.

List of Subjects in 42 CFR Part 34

Aliens, Health care, Scope of examination, Passports and visas, Public health.

■ For the reasons stated in the preamble, the Centers for Disease Control and Prevention, within the U.S. Department of Health and Human Services, is amending 42 CFR part 34 as follows:

PART 34—MEDICAL EXAMINATION OF ALIENS

■ 1. The authority citation for Part 34 continues to read as follows:

Authority: 42 U.S.C. 252; 8 U.S.C. 1182 and 1222.

§ 34.2 [Amended]

■ 2. Amend § 34.2 by removing paragraph (b)(6) and redesignating paragraphs (b)(7) through (10) as paragraphs (6) through (9) respectively.

■ 3. Amend § 34.3 by revising paragraphs (b)(1)(i), (e)(1) introductory text, (e)(2)(iv), (e)(5), and (e)(6) to read as follows:

§ 34.3 Scope of examinations.

* * * * *

(b) * * *

(1) * * *

(i) A general physical examination and medical history, evaluation for tuberculosis, and serologic testing for syphilis.

* * * * *

(e) * * *

(1) As provided in paragraph (e)(2) of this section, a chest x-ray examination and serologic testing for syphilis shall be required as part of the examination of the following:

* * * * *

(2) * * *

(iv) *Exceptions.* Serologic testing for syphilis shall not be required if the alien is under the age of 15, unless there is reason to suspect infection with syphilis. An alien, regardless of age, in the United States, who applies for adjustment of status to lawful permanent resident shall not be required to have a chest x-ray examination unless their tuberculin skin test, or an equivalent test for showing an immune response to *Mycobacterium tuberculosis* antigens, is positive. HHS/CDC may authorize exceptions to the requirement for a tuberculin skin test, an equivalent test for showing an immune response to *M. tuberculosis* antigens, or chest x-ray examination for good cause, upon application approved by the Director.

* * * * *

(5) *How and where performed.* All chest x-ray images used in medical examinations performed under the regulations to this part shall be large enough to encompass the entire chest (approximately 14 x 17 inches; 35.6 x 32.2 cm).

(6) *Chest x-ray, laboratory, and treatment reports.* The chest radiograph reading and serologic test results for syphilis shall be included in the medical notification. When the medical examiner's conclusions are based on a study of more than one chest x-ray image, the medical notification shall include at least a summary statement of findings of the earlier images, followed by a complete reading of the last image, and dates and details of any laboratory tests and treatment for tuberculosis.

* * * * *

Dated: October 22, 2009.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. E9–26337 Filed 10–30–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0907281181–91369–02]

RIN 0648–AX93

Fisheries of the Northeastern United States; Modification to the Gulf of Maine/Georges Bank Herring Midwater Trawl Gear Letter of Authorization

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

ACTION: Final rule.

SUMMARY: NMFS implements modifications to the requirements for midwater trawl vessels issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit that fish in Northeast (NE) multispecies Closed Area I (CA I). When fishing in CA I, eligible midwater trawl vessels will be required to carry a NMFS-approved observer aboard the vessel and to bring the entire catch aboard, unless specific conditions are met, so that it is available to the observer for sampling. These changes to the Gulf of Maine/Georges Bank (GOM/GB) Herring Midwater Trawl Gear Letter of Authorization (LOA) are effective indefinitely, but may be superseded by monitoring measures currently under development as part of Amendment 5 to the Atlantic Herring Fishery Management Plan (FMP).

DATES: Effective November 2, 2009, with the following exception: §§ 648.14(r)(2)(vii) and 648.80(d)(7)(iii)(B), which contain information collection requirements that have not been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). Upon OMB approval of these requirements, the effective date will be announced in the **Federal Register**.

ADDRESSES: Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to the Regional Administrator, NMFS Northeast Region, 55 Great Republic Drive, Gloucester, MA 01930 and by e-mail to *David_Rostker@omb.eop.gov*, or fax to (202) 395–7285.

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

SUPPLEMENTARY INFORMATION: The New England Fishery Management Council (Council) voted at its April 8, 2009, Council meeting to request that the NMFS Northeast Regional Administrator modify the GOM/GB Herring Midwater Trawl Gear LOA to require midwater trawl vessels fishing in CA I to have 100–percent observer coverage; be prohibited from slipping codends; and be required to pump all fish aboard the vessel, to allow sampling by the observer.

A proposed rule was published on September 4, 2009 (74 FR 45798), and that proposed rule includes detailed information on the background of this action. Comments on the proposed rule were initially accepted through September 21, 2009. A notice published on September 24, 2009 (74 FR 48707), reopened the comment period through September 27, 2009. Comments received are summarized and responded to below.

Based on public comment received, NMFS is modifying the proposed measures to clarify, as well as to make measures more consistent with, the Council's April 8, 2009, motion. The Council motion used the term ''slipped codend'' to refer to the practice of opening the codend of the net and releasing the catch before all of the fish are brought on board the vessel. The proposed rule used this term, with that meaning. It has come to NMFS's attention that the term ''slipped'' in this context may suggest to some that the release is made with the intent of hiding the catch from the observer. Therefore, to reflect the fact that catch may be released for a wide range of reasons, and to make the rule clearer, the term ''released'' has been substituted for the term ''slipped'' throughout this final rule.

After careful consideration of public comment, many of the proposed rule measures have been modified in this final rule to more closely reflect the Council's request and to reduce negative economic impact on the commercial herring industry, while still achieving the intended goal of collecting better information on bycatch in the midwater trawl fishery. This final rule modifies the proposed measures to:

- Allow flexibility to fish outside of CA I (rather than end a trip), should a vessel release a codend due to safety or mechanical reasons.
- Limit the prohibition on codend releases to tows made in CA I.
- Include an exemption that allows the release of small amounts of fish that may remain in the net after pumping is complete.
- Remove the minimum 50–percent spiny dogfish threshold provision from the dogfish dumping exception.
- Require vessels that release a codend due to catches of spiny dogfish to leave CA I, consistent with the requirement to leave CA I if a codend is released due to safety or mechanical reasons.
- Broaden the mechanical failure exception to include all significant mechanical failures that prohibit pumping the catch.

Modifications to the proposed rule measures to allow vessels to continue fishing outside of CA I if they release their codend due to safety or mechanical reasons, and that restrict the prohibition on releasing non-exempt codends to only tows that fish inside CA I, have been made to more closely align this action with the Council's request. Many of the measures being modified were initially proposed in such a way as to ensure consistency of measures throughout a given fishing trip, and to assist in their enforceability. However, because tracking of potential violations is possible due to the vessel monitoring systems required onboard these vessels, NMFS concurs with many of the commenters that additional flexibility can be allowed. An explicit allowance for the release of fish that remain in the net after completion of pumping operations is made in the final rule to acknowledge that this is an unavoidable situation. Existing regulations require a vessel to assist the observer to view the codend prior to the release, allowing these fish to be documented. NMFS also acknowledges that differences in pumping capacity between vessels would likely make a firm minimum spiny dogfish threshold (as a proportion of the catch) problematic. The NMFS NE Fishery Observer Program (NEFOP), additionally, has expressed concern that this proposed minimum percentage could place the observer in an enforcement role. Based on these concerns, the final rule removes the minimum spiny dogfish threshold from the exception. To provide consistency across the exemptions for releasing catch, and to provide a disincentive to potential abuse, vessels that release a tow in CA I because of spiny dogfish will be required to exit CA I, but can continue to fish outside of CA I on the same trip. Finally, the final rule's regulatory text pertaining to the mechanical failure exception is broadened to include all significant mechanical failures that prevent pumping the catch, to expand the exception to reasons other than failure of the pump itself.

Approved Measures

This final rule requires vessels using midwater trawl gear in the directed herring fishery to indicate their intention to fish in CA I when scheduling an observer through the NEFOP. This notification allows NMFS to ensure an observer is deployed on all vessels that intend to fish in CA I with midwater trawl gear for all or any part of their trip. To ensure 100–percent observer coverage, midwater trawl vessels are not permitted to fish in CA I without an observer.

Midwater trawl vessels in the directed herring fishery that have been assigned a NMFS-approved at-sea observer and that are fishing in CA I are prohibited, unless specific conditions are met (see below), from releasing fish from the codend of the net, transferring fish to another vessel that is not carrying a NMFS-approved observer, or otherwise

discarding fish at sea, unless the fish have first been brought aboard the vessel and made available for sampling and inspection by the observer.

NMFS recognizes that there are certain conditions under which fish must be released from the codend without being sampled. Therefore, fish that have not been pumped aboard the vessel may be released if the vessel operator finds that: Pumping the catch could compromise the safety of the vessel; mechanical failure precludes bringing some or all of a catch aboard the vessel; or spiny dogfish have clogged the pump and consequently prevent pumping of the rest of the catch. If a net is released for any of these three reasons, the vessel operator must complete and sign a CA I Midwater Trawl Released Codend Affidavit detailing where, when, and why the net was released as well as a good-faith estimate of both the total weight of fish caught on that tow and the weight of fish released (if the tow had been partially pumped). The completed affidavit form must be submitted to NMFS within 48 hr of the completion of the trip.

Following the release of a net for one of the three exemptions specified above, the vessel is required to exit CA I. The vessel may continue to fish, but may not fish in CA I for the remainder of the trip.

Comments and Responses

A total of 535 comments were received on the proposed rule, from 10 representatives of commercial fishing groups, 1 community organization, 1 recreational fishing group, 2 coalitions of herring interest groups, 1 environmental organization (Conservation Law Foundation (CLF)), 1 state-elected official (MA State Representative Sarah K. Peake), 1 state resource management agency (the State of Maine Department of Marine Resources), 516 individuals, and the U.S. Small Business Administration (SBA) Office of Advocacy. A significant majority of comments (523 out of 535) supported the proposed measures, and many expressed concern that any change could compromise the bycatch information collected. Most of the supporting comments urged quick implementation of these measures to ensure regulations are in place before midwater trawl vessels fish in CA I (generally the month of October). One comment from a U.S. Congressman (Representative William Delahunt, MA) supporting the action as proposed was received after the close of the comment period. Seven commenters expressed concerns outside the scope of this action, including the bycatch of river herring and general opposition to trawling of any kind.

Observer Coverage and the Scope of the Action

Comment 1: One representative of the commercial herring industry (Kelly Drye and Warren LLP) stated that, by requiring an observer for an entire midwater trawl trip, i.e., both inside and outside the boundaries of CA I, and requiring vessels to terminate a trip early if fish are released, the proposed measures exceed the Council's requested action, as well as NMFS' authority as specified in the regulations, and represent a significant regulatory action that would preempt the regulatory authority of the Council in its drafting of Amendment 5 to the FMP.

Response: The regulations implementing Framework Adjustment 18 (FW 18) to the NE Multispecies FMP (63 FR 7727, February 17, 1998), at § 648.81(a)(2)(iii), give the Regional Administrator conditional authority to ''place restrictions and conditions in the letter of authorization for any or all individual fishing operations or, after consulting with the Council, suspend or prohibit any or all midwater trawl activities in the closed areas.'' The presentation of recent observer data at the April 8, 2009, Council meeting, and the Council's subsequent request for increased observer measures, constitute a consultation with the Council. Therefore, the authority to suspend access to CA I to midwater trawl vessels that are not carrying an observer, as specified in the proposed rule and implemented through this final rule, is consistent with the cited authority. Moreover, the Council indicated a general belief that additional information on bycatch in CA I would be beneficial for future revisions to the Atlantic Herring FMP. There is additional, independent authority specified in section 402(a) of the Magnuson-Stevens Act to promulgate regulations to improve the information collection program in the Atlantic herring fishery. This action does not preempt the Council's efforts in developing Amendment 5 to the FMP, but rather contributes to them. NMFS' proposal to apply a discard prohibition to the entire midwater trawl trip was intended to collect the most information possible about bycatch in this fishery, and to provide a clear set of rules that would apply consistently throughout the trip. However, based on public comment, and to more closely reflect the Council's requested action, this final rule is modified such that tows made entirely outside of CA I would not be subject to the more restrictive CA I regulations implemented through this action. This action also eliminates the proposed restriction that vessels must end their trip if they release a net when fishing in CA I, i.e., vessels may fish out the remainder of their trip outside of CA I. Further details about these two modifications to the proposed rule measures can be found in the responses to Comments 4 and 10.

Comment 2: Three representatives of the commercial herring industry (Kelly Drye and Warren LLP, Lunds' Fisheries, Inc., and Northern Pelagic Group LLC (NORPEL)) stated that the proposed measures should be implemented through modifications to the current LOA and not codified in the regulations, a violation of which could entail significant civil liability.

Response: All requirements of the LOA, both before and after this final rule, are codified in the regulations. NMFS codifies these requirements to ensure their enforceability. Additionally, as explained in the response to Comment 1, the measures are codified pursuant to NMFS' authority in section 402(a) of the Magnuson-Stevens Act.

Comment 3: Seven representatives of the herring industry (Kelly Drye and Warren LLP, Lund's Fisheries, NORPEL, Western Sea Fishing, Cape Seafoods, Small Pelagic Group, and Shafmaster Fishing) commented that access to CA I should not be denied to a midwater trawl vessel if an observer is not available. Sixty-three commenters specifically supported the prohibition on fishing in CA I without an observer, as specified in the proposed rule.

Response: The NEFOP has committed sufficient funding to provide observers for all CA I herring midwater trawl trips for the 2009 and 2010 fishing years. NMFS intends to continue to provide observer coverage for this program in subsequent years; however, under the Federal budgetary process, such funding cannot be assured at this time. NMFS expects that monitoring provisions currently under development in Amendment 5 to the FMP are likely to supersede these measures. Therefore, it is anticipated, although not guaranteed, that 100–percent observer coverage of herring midwater trawl trips in CA I will be provided without limiting CA I access for any vessels for the foreseeable future. In Amendment 5, the Council could consider other ways to address the potential problems that would arise if observers are not available when requested.

Comment 4: Seven representatives of the commercial herring industry commented that the Council's request to prohibit released codends and to require

all fish to be pumped aboard the vessel was specific to vessels fishing inside CA I, and to require these provisions for tows fished entirely outside of CA I would exceed the scope of the Council's request.

In contrast, three commercial fishing organizations (Cape Cod Commercial Fishermen's Association (CCCHFA), GB Cod Hook Gear Sector, and GB Cod Fixed Gear Sector), one environmental group (CLF), MA State Representative Sarah K. Peake, and eight individuals expressed support for the proposed measure to require vessels to comply with the prohibition on releasing nets and the requirement for all fish to be pumped aboard the vessel for the entire trip, regardless of whether the vessel also fished outside of CA I on that trip. These latter commenters believe that this provision would maximize the amount of bycatch information collected on midwater trawl trips and could insulate the observer from having to determine which tows could be released without an exemption.

Response: Since implementation of FW 18 in 1998, herring midwater trawl vessels have been able to operate freely within the management areas of the Atlantic Herring FMP without additional consideration for the boundaries of the NE multispecies closed areas. NMFS acknowledges that the Council's request for 100–percent observer coverage was specific to midwater trawl vessels fishing in CA I. However, the measures of the proposed rule were designed to allow herring midwater trawl vessels to continue to operate freely throughout the herring management areas by establishing a consistent set of regulations so that vessel operators and observers would not need to be constantly aware of where the vessel was, relative to CA I, in order to know what rules applied. Based on public comment, and to more closely reflect the Council's requested action, this final rule has been modified such that tows made entirely outside of CA I are subject to the same regulations as any other midwater trawl vessel that did not declare into CA I. NMFS is modifying these provisions also, in part, due to the fact that vessels issued an All Areas and/or an Areas 2 and 3 Limited Access Herring Permit are currently required to use a NMFS-approved Vessel Monitoring System (VMS), and VMS provides NOAA's Office of Law Enforcement with the ability to better enforce these provisions. Thus, VMS allows for effective enforcement of these measures without any involvement of the observer.

Comment 5: One coalition of herring interest groups (Herring Alliance) and 52 individuals supported applying the proposed measures to midwater trawl vessels fishing in all the NE multispecies closed areas.

Response: The Council's request was specific to CA I. An analysis of the observed bycatch of NE multispecies in the midwater trawl fishery from 2004 through 2008 indicates that CA I was the only closed area where the FW 18 threshold of 1–percent bycatch of regulated species had been reached on the trip level. Furthermore, CA I had more observed bycatch of NE multispecies by number of tows and by pounds of fish than any other closed area. Expanding this action to all of the NE multispecies closed areas could result in greater negative impact on the midwater trawl fishery, while providing limited additional benefits to NFMS in the form of information on bycatch. Therefore, this proposal was not considered.

Exemptions from the Prohibition on Released Codends

Comment 6: Six representatives of the commercial herring industry, and the SBA Office of Advocacy, commented that some fish inevitably remain in a net at the conclusion of pumping, either because they are too large for the pump grate or because they are floating and cannot be pumped. The commenters argued that, under a strict interpretation of the proposed regulations, release of these fish could constitute a civil violation, with significant fines, through no direct fault of the vessel operator.

Response: NMFS acknowledges that a small amount of fish may be unpumpable and remain in a net at the end of pumping operations and should not, therefore, constitute grounds for a violation. Observer protocols include documenting fish that remain in the net before they are released, and existing regulations require vessel operators to assist the observer in this process. Therefore, any loss of bycatch information should be minimal. NMFS has modified this final rule to clarify that the prohibition on releasing fish does not extend to fish that cannot be pumped and that remain in the net at the end of pumping operations.

Comment 7: One herring industry representative (Kelly Drye and Warren LLP) commented that the exception for mechanical failure should be expanded, since the fish pump is not the only mechanical system whose failure could prohibit the pumping of some or all of a tow.

Response: NMFS acknowledges that the fish pump is not the only gear problem that could prohibit pumping the catch, and has modified this final rule accordingly. A review of observer data between 2005 and 2007 indicates that less than 18 percent of the tows that were partially or fully released were released for generic ''gear problems.'' Therefore, expanding this exemption to include additional mechanical failures that prohibit pumping the catch would not undermine the intention of this action to maximize the collection of data on bycatch in CA I.

Comment 8: Two herring industry representatives requested that short duration tows, or ''test tows,'' generally lasting less than 1 hr, and used to check the abundance and condition of target species, should also be exempted from the requirements to pump all fish onboard.

Response: The proposed rule for this action explained that the intention of this action is to increase the understanding of the potential bycatch of this fishery in CA I and, as such, it is necessary to collect bycatch information on all tows made by midwater trawl vessels in CA I. Therefore, an exemption for test tows would be inconsistent with the intent of this action.

Comment 9: Seven representatives of the herring industry commented that the proposed exemption for spiny dogfish (i.e., spiny dogfish constitute at least 50 percent, by weight, of the observed portion of the catch) is unworkable as proposed, and asserted that spiny dogfish cannot be pumped, no matter what percentage of the overall catch they comprise.

Response: Observer data clearly show that some spiny dogfish can be successfully pumped from the net. However, NMFS acknowledges that the variation in pumps being used by different vessels and the way that spiny dogfish are arranged at the pump intake could have a dramatic effect on whether a given concentration of spiny dogfish would clog the pump and prevent the pumping of the remainder of the catch. The use of a specific percentage threshold of spiny dogfish could also put undue pressure on the observer. Therefore, the spiny dogfish exemption has been modified to remove the 50–percent threshold and, if spiny dogfish clog the pump intake, the vessel operator is required to take reasonable measures to remove all of the fish that can be pumped from the net prior to releasing the codend.

Comment 10: The seven representatives of the herring industry, the State of Maine Department of Marine Resources, and the SBA Office of Advocacy raised concerns that the requirement to end a trip if a net is released for safety or mechanical

reasons could place an undue financial burden on vessels because of the high cost of outfitting a trip. As an alternative consequence for releasing a net, six members of the commercial herring industry suggested that vessels should be required to leave CA I, but allowed to continue fishing.

Alternatively, 3 commercial fishing organizations (CCCHFA, GB Cod Hook Gear Sector, and GB Cod Fixed Gear Sector), 2 coalitions of herring interest groups (Herring Alliance, and CHOIR Coalition), 1 community organization (Penobscot East Resource Center), 1 environmental organization (CLF), MA State Representative Sarah K. Peake, U.S. Congressman William Delahunt, and 383 individuals expressed their support for the proposed requirement to end a trip if a net is released for safety or mechanical reasons.

Response: The frequency of released nets in the midwater trawl fishery is relatively low. Based on observer data from 2005–2007, only 8.7 percent of tows were fully or partially released, and only 3 percent were released for apparent safety or mechanical reasons. Combined with the relatively few trips into CA I, and the low number of tows made on each trip (three tows per trip, on average), it is expected that roughly one trip per year might be subject to this provision. However, NMFS acknowledges that the proposed requirement to end the trip after releasing a net might have negative economic ramifications for that vessel, without significantly contributing to the understanding of bycatch in this fishery, which is the purpose of this action. Therefore, NMFS has adopted in this final rule the herring industry's suggested alternative that allows vessels to continue fishing outside of CA I on the same trip. Midwater trawl herring vessels fish in CA I when they have a reasonable expectation of finding a high concentration of herring there. NMFS believes that the loss of access to this productive fishing ground for the remainder of the trip is a sufficient disincentive for vessels to prevent abuse of these exemptions.

Comment 11: One coalition of herring interest groups (Herring Alliance), 1 community organization (Penobscot East Resource Center), and 339 individuals requested that the consequence of releasing fish unobserved should be consistent across all three exemptions (vessel safety, mechanical failure, and spiny dogfish) including any requirement to end the trip and return to port.

Response: Unlike the exemptions for releasing fish unobserved for vessel safety and mechanical failure, the exemption for spiny dogfish, as proposed, contained a relatively high threshold of 50–percent dogfish as a disincentive to vessels that might use this exemption to avoid observer sampling of the catch. As described under the response to Comment 9, the 50–percent trigger was determined to be unworkable and has been removed from this final rule. The loss of access to the CA I fishing ground is a reasonable disincentive for abuse of all three exemptions and provides a consistent response to a released net. Therefore, this final rule incorporates the requirement to leave CA I for the remainder of the trip as a result of releasing the catch before it can be sampled by the observer, regardless of which exemption prompted the release. As detailed in the response to Comment 10, vessels would be able to continue to fish outside of CA I for the remainder of the trip.

Certification under the Regulatory Flexibility Act

Comment 12: The SBA Office of Advocacy and one representative of the commercial herring industry (Kelly Drye and Warren LLP) questioned NMFS' determination that the action would not impact a substantial number of small entities. The commenters stated that the information provided in the proposed rule in support of the certification was vague and insufficient.

Response: NMFS acknowledges that additional information in the proposed rule would have made this determination clearer to the public. All 46 vessels issued an All Areas and/or an Areas 2 and 3 Limited Access Herring Permit in fishing year 2009 are considered ''small entities'' and are already subject to a requirement to call the observer program prior to each trip. This action adds a question to that call-in requirement prompting a vessel operator to indicate whether or not the vessel intends to fish in CA I on that trip. The increased observer coverage and catch releasing requirements apply only to vessels that indicate they intend to fish in CA I. Over the last 4 yrs, on average, there have been fewer than 15 midwater trawl trips annually that fished in CA I. The number of potentially impacted vessels is further reduced because some vessels take multiple trips into CA I. Therefore, this action applies to fewer than 30 percent of the vessels issued an All Areas and/or an Areas 2 and 3 Limited Access Herring Permit. From 2004 through 2008, of a total of 2,875 midwater trawl trips, only 59 reported fishing in CA I. Therefore, this action is expected to impact approximately 2 percent of all midwater trawl trips, and thus would not impact a substantial number of small entities.

Comment 13: The SBA Office of Advocacy and one representative of the commercial herring industry (Kelly Drye and Warren LLP) raised a concern that small businesses could experience a significant adverse economic impact due to this action because lack of an observer would prohibit access to CA I, resulting in potentially lower catch rates outside of CA I.

Response: NMFS has allocated sufficient funds and observer sea days to provide an observer for all trips into CA I during the 2009 and 2010 fishing years, and will consider requesting that such funding be continued. It is expected that catch monitoring provisions currently being developed by the Council as part of Amendment 5 to the FMP will likely supersede the provisions in this action in the relatively near future. Even if Amendment 5's progress is delayed, NMFS intends to maintain sufficient observer funding to cover all herring midwater trawl trips into CA I. However, the availability of future funding cannot be guaranteed. If, in the future, funding is insufficient to support 100 percent observer coverage for vessels fishing in CA I, then NMFS has the ability to reassess this requirement at that time.

Additionally, NMFS notes that the density of herring and the resulting catch rate inside CA I fluctuate seasonally as schools of fish migrate across Georges Bank. Although some herring midwater trawl vessels fish seasonally in CA I, the majority of vessels in the directed herring fishery currently do not fish in this area and seemingly do not suffer significant adverse economic impact as a result of that choice. Given the transient nature of herring, NMFS cannot state with any certainty how the catch rate of herring inside versus outside CA I will differ in any given year. Therefore, NMFS cannot make a prediction of how a vessel with an All Areas and/or an Area 2 and 3 Limited Access Herring Permit may be economically impacted by fishing outside of CA I should there be insufficient observer sea days in the future.

Changes from the Proposed Rule

NMFS has made several changes to the proposed rule as a result of public comment and to make measures more consistent with the Council's April 8, 2009, motion. These changes are listed below in the order that they appear in the regulations.

In § 648.14, paragraph (r)(2)(vii) has been revised to reflect that the prohibition on releasing fish from the codend is limited to tows that occur inside CA I.

In § 648.80, paragraph (d)(7)(ii) has been revised to reflect that the prohibition on releasing fish from the codend is limited to tows that occur inside CA I.

In § 648.80, paragraph (d)(7)(ii)(B) has been revised to remove specific reference to the fish pump.

In § 648.80, paragraph (d)(7)(ii)(C) has been revised to remove the 50–percent spiny dogfish threshold and to add vessel operator requirements.

In § 648.80, paragraph (d)(7)(ii)(D) has been added to clarify that fish that cannot be pumped from the net and, thus, remain in the net at the end of pumping operations, may be released.

In § 648.80, paragraph (d)(7)(iii)(A) has been revised to reflect that vessels that release a net for safety or mechanical concerns, or due to spiny dogfish in the catch, must exit CA I, but may continue fishing outside of CA I for the remainder of the trip.

In § 648.80, paragraph (d)(7)(iii)(B) has been revised to provide additional details of the CA I Midwater Trawl Released Codend Affidavit which will become effective at a later date, pending OMB approval.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the Atlantic Herring and NE Multispecies FMPs, other provisions of the Magnuson-Stevens Act, and other applicable laws.

There is good cause under 5 U.S.C. § 553(d)(3) to waive the 30-day delay in effective date because of the annual seasonal nature of fishing in CA I. The industry has expected this rule, since the Council made its initial request on April 8, 2009. This final rule was delayed due to reopening the comment period for 6 days at the request of the public. Because commercial herring midwater trawl vessels pursue herring in CA I predominantly during the fall, as herring migrate across Georges Bank, a 30-day delay in effective date would increase observer coverage too late to observe the annual pulse of effort in CA I. This would delay the collection of bycatch information for up to a year. The Council has expressed an interested in using data collected under this program in the current development of Amendment 5 to the FMP.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the SBA during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. Two comments were received on the factual basis for the certification and are addressed under the Comments and Responses section of this preamble. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule contains two collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The modification to the observer program notification to include a vessel's intention to fish in CA I has been added to the information collection for the Herring Vessel Observer Program Notification, which has been approved by OMB under control number 0648–0202. The new collection-of-information requirement pertaining to the CA I Midwater Trawl Released Codend Affidavit has not yet been approved, but OMB approval is expected in the near future. NMFS will publish notification in the **Federal Register** when this requirement is cleared by OMB and is, therefore, effective. Public reporting burden for the CA I Midwater Trawl Released Codend Affidavit is estimated to average 5 min per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS at the **ADDRESSES** above, and e-mail to *David_Rostker@omb.eop.gov*, or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 27, 2009.

James W. Balsiger,

Acting Assistant Administrator For Fisheries, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.14, add paragraphs (r)(2)(v), (r)(2)(vi), and (r)(2)(vii) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(r) * * *

(2) * * *

(v) Fish with midwater trawl gear in Closed Area I, as specified at § 648.81(a), without a NMFS approved observer onboard, if the vessel holds an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit.

(vi) Release fish from the codend of the net, transfer fish to another vessel that is not carrying a NMFS-approved observer, or otherwise discard fish at sea before bringing the fish aboard and making it available to the observer for sampling, unless subject to one of the exemptions as defined at § 648.80(d)(7)(ii), if fishing any part of a tow inside Closed Area I, as defined at § 648.81(a).

(vii) Fail to complete, sign, and submit an affidavit if fish are released pursuant to the exemptions detailed at § 648.80(d)(7)(ii).

* * * * *

■ 3. In § 648.80, revise paragraph (d)(5) and add paragraph (d)(7) to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(d) * * *

(5) To fish for herring under this exemption, vessels issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit must provide notice of the following information to NMFS at least 72 hr prior to beginning any trip into these areas for the purposes of observer deployment: Vessel name; contact name for coordination of observer deployment; telephone number for contact; the date, time, and port of departure; and whether the vessel intends to engage in fishing in Closed

Area I, as defined in § 648.81(a), at any point in the trip; and

* * * * *

(7) *Fishing in Closed Area I.* (i) No vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit may fish in, or possess or land fish from, Closed Area I with pelagic midwater trawl gear unless it has declared its intent to fish in Closed Area I as required by paragraph (d)(5) of this section, and is carrying a NMFS-approved observer.

(ii) No vessel issued an All Areas Limited Access Herring Permit and/or an Areas 2 and 3 Limited Access Herring Permit when fishing any part of a midwater trawl tow in Closed Area I may release fish from the codend of the net, transfer fish to another vessel that is not carrying a NMFS-approved observer (e.g., an Atlantic herring at-sea processing vessel or an Atlantic herring carrier vessel), or otherwise discard fish at sea, unless the fish has first been brought aboard the vessel and made available for sampling and inspection by the observer, except in the following circumstances:

(A) The vessel operator has determined, and the preponderance of available evidence indicates that, there is a compelling safety reason; or

(B) A mechanical failure precludes bringing the fish aboard the vessel for inspection; or,

(C) After pumping of fish onto the vessel has begun, the vessel operator determines that pumping becomes impossible as a result of spiny dogfish clogging the pump intake. The vessel operator shall take reasonable measures (such as strapping and splitting the net) to remove all fish which can be pumped from the net prior to release; or

(D) When there are small amounts of fish that cannot be pumped and remain in the net at the completion of pumping operations.

(iii) If fish are released prior to being brought aboard the vessel due to any of the exceptions in paragraphs (d)(7)(ii)(A) through (C) of this section, the vessel operator must:

(A) Exit Closed Area I. Once the vessel has exited CA I, it may continue to fish, but may not fish inside Closed Area I for the remainder of that trip.

(B) Complete and sign a Closed Area I Midwater Trawl Released Codend Affidavit detailing the vessel name and permit number; the VTR serial number; where, when, and for what reason the catch was released; the total weight of fish caught on that tow; and the weight of fish released (if less than the full tow). A completed affidavit must be submitted to NMFS within 48 hr of the end of the trip.

* * * * *

[FR Doc. E9–26213 Filed 10–28–09; 11:15 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 210
Monday, November 2, 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

Rural Utilities Service

7 CFR Part 1710

RIN 0572–AC15

Electric Program: Definition of Rural Area

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) is amending its regulations to administer the Electric Program. This action implements the provision in the Food, Conservation, and Energy Act of 2008 hereinafter called the ''2008 Farm Bill,'' amending the definition of ''rural area.'' The 2008 Farm Bill revises the definition of rural to include any area other than a city, town, or unincorporated area that has a population of greater than 20,000 inhabitants. The 2008 Farm Bill also includes in the revised rural definition those service areas of borrowers having an outstanding loan under Title I through V of the Rural Electrification Act of 1936. The intended effect is to update agency regulations to reflect current statutory authority. No adverse comments are expected.

In the final rule section of the **Federal Register**, the Agency is publishing this action as a direct final rule without prior proposal because RUS views this as a non-controversial action and expects no adverse comments. If no adverse comments are received in response to the direct final rule, no further action will be taken on this proposed rule, and the action will become effective at the time specified in the direct final rule. If the Agency receives adverse comments, a timely document will be published withdrawing the direct final rule, and all public comments received will be addressed in a subsequent final rule based on this action.

DATES: Comments on this proposed action must be received by RUS or carry a postmark or equivalent no later than December 2, 2009.

ADDRESSES: Submit adverse comments or notice of intent to submit adverse comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. In the ''Search Documents'' box, enter RUS–09–Electric–0002, check the box under the Search box labeled ''Select to find documents accepting comments or submissions,'' and click on the GO>> key. To submit a comment, choose ''Send a comment or submission,'' under the Docket Title. In order to submit your comment, the information requested on the ''Public Comment and Submission Form,'' must be completed. (If you click on the hyperlink of the docket when the search returns it, you will see the docket details. Click on the yellow balloon to receive the ''Public Comment and Submission Form.'') Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''How to Use this Site'' link.
- *Postal Mail/Commercial Delivery:* Please send your comment addressed to Michele Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Development, STOP 1522, Room, 5159, 1400 Independence Avenue, SW., Washington, DC 20250–1522. Please state that your comment refers to Docket No. RUS–09–Electric–0002.

Other Information: Additional information about RUS and its programs is available at: *http://www.rurdev.usda.gov/index.html*.

FOR FURTHER INFORMATION CONTACT: Chris Tuttle, Economist, Electric Programs, Rural Utilities Service, USDA Rural Development, 1400 Independence Avenue, STOP 1570, Room 5038 South Building, Washington, DC 20250–1570. Telephone: (202) 205–3655; FAX: (202) 690–0717; e-mail: *chris.tuttle@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION: See the **SUPPLEMENTARY INFORMATION** provided in the direct final rule located in the Rules and Regulations direct final rule section of the **Federal Register** for the applicable **SUPPLEMENTARY INFORMATION** on this action.

Jonathan Adelstein,

Administrator, Rural Utilities Service.

[FR Doc. E9–26206 Filed 10–30–09; 8:45 am]

BILLING CODE 3410–15–P

Notices

Federal Register

Vol. 74, No. 210

Monday, November 2, 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

October 27, 2009.

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

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

Forest Service

Title: Application for Permit, Non-Federal Commercial Use of Roads Restricted by Order.

OMB Control Number: 0596–0016.

Summary of Collection: The Forest Service (FS) transportation system includes approximately 380,000 miles of roads. These roads are grouped into five maintenance levels. Level one includes roads, which are closed and maintained only to protect the environment. Level of maintenance increase to level five, which is maintained for safe passenger car use. The roads usually provide the only access to commercial products including timber and minerals found on both Federal and private lands within and adjacent to National Forests. Annual maintenance not performed becomes a backlog that creates a financial burden for the FS. To remedy the backlog and pay for needed maintenance the FS requires commercial users to apply and pay for a permit to use the FS Road System. Maintenance resulting from commercial use is accomplished through collection of funds or requiring the commercial users to perform the maintenance. The vehicle for this is the Road Use Permit. The authority for the Road Use Permit process comes from 36 CFR 212.5, 36 CFR 212.9 and 36 CFR 261.54 Section 212.9 authorizes the FS to develop a road system with private in holders that is mutually beneficial to both parties.

Need and Use of the Information: Persons wishing to haul commercial will use form, FS 7700–40. The form provides identifying information about the applicant such as, the name; address; and telephone number; description of mileage of roads; purpose of use; use schedule; and plans for future use. FS will use the information to prepare the applicant's permit, to identify the road maintenance that is the direct result of the applicant's traffic, to calculate any applicable collections for recovery of past Federal investments in roads and assure that the requirements are met. Without the Road Use Permit, the backlog of maintenance would increase and the FS would have great difficulty providing the transportation system necessary to meet our mission.

Description of Respondents: Business or other for-profit; Individuals or households; State, Local or Tribal Government; Not-for-profit institutions.

Number of Respondents: 2,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 500.

Forest Service

Title: Bid for Advertised Timber.

OMB Control Number: 0596–0066.

Summary of Collection: Individuals, large and small businesses, and corporations who wish to purchase timber or forest products from the National Forest must enter into a timber sale contract or Forest product contract with the Forest Service (FS). Information must be collected by FS in order to ensure that: National Forest System timber is sold at not less than appraised value; bidders meet specific criteria when submitting a bid; and anti-trust violations do not occur during the bidding process. Several statutes, regulations, and polices impose requirements on the Government and purchasers in the bidding process. The FS will collect information using several forms.

Need and Use of the Information: FS will collect information to determine bid responsiveness. The sale officer will ensure: the bidder has signed the bid form; provided a tax identification number; completed the unit rate, weighted average, or total sale value bid; entered the bid guarantee amount, type, and ensure the bid guarantee is enclosed with the bid, the bidder has provided the required information concerning Small Business Administration size and Equal Opportunity compliance on previous sales. The Timber Sale Contracting Officers will use the information to complete the contract prior to award to the highest bidder. Failure to include the required information may result in the bid being declared non-responsive or the Contracting Officer may be unable to make an affirmative finding of purchaser responsibility and not able to award the contract.

Description of Respondents: Business or other for-profit; Individuals or households.

Number of Respondents: 1,560.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 135,246.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–26295 Filed 10–30–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funding Availability for Refinance Assistance Under the American Recovery and Reinvestment Act of 2009—Section 502 Guaranteed Loan Program

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the Agency intent to prioritize $400 million in funding that was previously made available in the **Federal Register** on July 23, 2009, for the refinance program to achieve the maximum amount of debt relief to existing borrowers and keep the borrowers in their homes, thereby, achieving long-term financial stability consistent with the goals of the Recovery Act. Additional requirements for such refinancing will ensure that existing borrowers are achieving measureable financial savings in refinancing and that Recovery Act funds are spent wisely and have transparent results.

FOR FURTHER INFORMATION CONTACT: Debra Terrell, Senior Loan Specialist, Section 502 Guaranteed Loan Program—STOP 0784 (Room 2250), U.S. Department of Agriculture, Rural Housing Service, 1400 Independence Ave., SW., Washington, DC 20250–0784, telephone number 918–534–3254, or by e-mail at *debra.terrell@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The paperwork burden has been cleared by the Office of Management and Budget (OMB) under OMB control number 0575–0078.

Overview

The Rural Housing Service, an agency within the USDA Rural Development mission area, provides housing loan guarantees to lenders of rural residents through its Section 502 Guaranteed Loan Program. USDA Rural Development (hereinafter referred to as the ''Agency'') offers assistance to refinance existing Section 502 Direct and Guaranteed Loan Program borrowers with Section 502 Guaranteed Loans when restructuring achieves more favorable loan terms.

USDA Rural Development's Section 502 Guaranteed Loan Program is making $400 million available under the Recovery Act for refinancing Section 502 Direct and Guaranteed Loan Program borrowers with Section 502 Guaranteed Loans. Utilization of funds from the Recovery Act for refinancing existing Section 502 Guaranteed and/or Direct Loan Program borrowers can assist responsible homeowners reduce their overall monthly debt by achieving more favorable affordable terms, increasing household cash flow, lowering the cost of ownership and benefit the economy by employing mortgage partners associated with the mortgage loan process. These funds will be made available on a first-come-first-served basis for refinance requests meeting the existing application and approval procedures based upon Section 502(h)(14) of the Housing Act of 1949, as amended, with the addition of the policy changes noted in this. Existing procedures include those in 7 CFR part 1980, subpart D. To the extent of any inconsistency, the provisions of this notice will prevail.

USDA Rural Development intends to modify and clarify policy regarding the refinancing of existing Section 502 Direct or Guaranteed Loan Program borrowers (herein referred to as ''borrowers'') with Recovery Act funds. Refinancing, with Recovery Act funds, is intended to help those borrowers who are seeking to achieve more favorable loan terms by transferring the financing arrangement to another approved guaranteed lender, modifying the loan type, or restructuring the repayment obligation with the present guaranteed lender. Modification and clarification of policy is intended to strengthen and support USDA Rural Development's obligation to protect its existing Section 502 portfolio. The Agency is considering adopting these program improvements in its permanent refinance program (using annual appropriations) to address increased risk and costs to the Government.

Specifically, under this notice the agency will require the interest rate of the new loan to be 100 basis points below the rate of the existing loan to be refinanced. This change will ensure the monetary benefit of refinancing to low or moderate income borrowers served by the program and achieve the investment goals of the Recovery Act. Eligible closing costs and other fees charged by the lender have been identified specifically, rather than relying upon a ''reasonable and customary'' test. This is intended to reduce excessive closing costs and other fees charged the borrower that can eliminate the benefit of the refinance. To reduce risk to the Government the streamlined refinance feature has been modified to limit the new financing to the amount of the original loan. Streamlined refinance under this does not require obtaining a new appraisal, so homeowner recovery can begin more quickly as intended by the Recovery Act. This notice also expands upon and clarifies borrower qualification requirements when there is a change of borrower(s) and emphasizes the necessity of responsible homeownership in connection with repayment history. Existing borrowers seeking to refinance their Section 502 mortgage loan under this notice must have demonstrated their ability to meet payment demands by maintaining a current account for the 180 days prior to application.

Only approved lenders, as prescribed in 7 CFR 1980.309 are eligible to participate in the Section 502 Guaranteed Loan Program. Approved lenders may utilize the services of agents for processing refinance loans described in this notice. Approved lenders are responsible for loan underwriting and the action of any agent they may employ or hold a business relationship with. Rural Development will issue the conditional commitment to the approved lender if all eligibility requirements are met.

All funds appropriated in the Recovery Act are available for obligation no later than September 30, 2010. Funding provided through the Recovery Act is one-time funding. Under Section 1604 of the Recovery Act, none of the funds made available under the Recovery Act may be used for any casino or other gambling related establishment, aquarium, zoo, golf course or swimming pool. In implementing this prohibition, the Agency specifically will not finance dwellings with swimming pools.

General Description of Assistance

Under the Section 502 Guaranteed Loan Program's Refinance program, an approved lender may refinance an existing Section 502 Direct and/or Guaranteed Loan Program borrower with a Section 502 Guaranteed Loan. A refinance must achieve more favorable loan terms. The intent of the assistance is to give borrowers with satisfactory payment histories the opportunity to benefit from a lower interest rate and increase their ability to be successful homeowners. Two options for refinancing can be offered under this:

1. *Streamlined refinance.* Lenders may offer a streamlined refinance without obtaining a new appraisal. The lender will pay off the principal balance

of the existing Section 502 Guaranteed or Direct loan. The new loan amount cannot exceed the original loan amount and cannot include any accrued interest, closing costs or lender fees. The refinance guarantee fee (.5 percent of the loan amount) can be included in the loan to be refinanced only to the extent financing does not exceed the original loan amount. Except for the appraisal waiver, all other costs, documentation and underwriting requirements remain the same for guaranteed loan processing.

2. *Non-streamlined refinance.* Lenders may offer non-streamlined refinances (with an appraisal). The new loan may include the principal and interest of the existing Agency loan, closing costs, lender fees, and the guarantee fee (.5 percent of the loan amount) to the extent there is sufficient equity in the property, as determined by an appraisal.

Loan Purpose, Term and Limitations

In addition to 7 CFR part 1980, subpart D the following loan purpose, terms and limitations must be met to be eligible to refinance an existing Agency loan with a Section 502 Guaranteed Loan under this notice:

1. The rate of the new loan must be at least 100 basis points below the original rate of the loan refinanced.

2. No new appraisal is required for streamlined refinances described in this notice.

3. For non-streamlined refinances, a new and current appraisal is required when 12 months or greater from the original date of loan has expired or whenever the refinance loan exceeds the existing principal balance of the original loan.

4. Customary and reasonable closing costs and other fees may be collected from the borrower by the lender. Such charges may not exceed the cost paid by the lender or charged to the lender by the service provider. Excessive fees are not permitted. Examples of customary and reasonable fees and charges are: The actual cost of the appraisal, inspection, credit reports, imposed verification charges, title examination and title insurance fees, attorney fees, settlement fees, recording fees, taxes, test or treatment fees, and/or courier/wire/notary fees as long as the service provider is not an employee of the lender. Document preparation fees may only be charged if the documents are prepared by a third party not controlled by the lender. The lender may not charge document preparation fees if it prepares documents itself. An origination fee of up to 1 percent, based upon the combined total of the loan amount to be refinanced, can be charged to the borrower. Lock in/rate locks represent other fees and charges and may be assessed to the borrower, but are not considered closing costs. Discount points paid representing application processing fees or broker fees cannot be assessed to the borrower.

5. Discount points may be financed in connection with a non-streamlined refinancing when the existing borrower's adjusted household income is at or below low income adjusted income limits, as determined by 7 CFR part 1980, subpart D. Discount points financed will not exceed two percentage points of the loan amount. See *http://eligibility.sc.egov.usda.gov/to* electronically confirm the existing borrower's adjusted household income. Select Guaranteed from the navigation menu under Income Limits.

Borrower Qualifications

Borrowers must meet program requirements in 7 CFR part 1980, subpart D to be eligible for a refinance loan through the Section 502 Guaranteed Loan Program. In addition:

1. Borrower(s) on the existing promissory note must be identical to the borrower(s) on the new promissory note, except if one or more of the borrowers have died, or if the borrowers have divorced. If a borrower intends to relinquish their interest, the remaining borrower(s) must be eligible for the new loan and demonstrate repayment ability without assistance of the departing/departed borrower.

2. The borrower must have been current on their Section 502 loan for the 180 days prior to loan application. Any late payments in the past 36 months must be considered in the underwriting analysis. The permanent loan file for the new loan must contain documented evidence that the payment history requirements have been met according to 7 CFR 1980.345.

Dated: October 20, 2009.

Tammye Treviño,

Administrator, Rural Housing Service.

[FR Doc. E9–26269 Filed 10–30–09; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 0910011333–91334–01]

Annual Wholesale Trade Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of Determination.

SUMMARY: The Bureau of the Census (Census Bureau) publishes this notice to announce that the Director has determined the need to conduct the Annual Wholesale Trade Survey (AWTS). Through this survey, the Census Bureau will collect data on annual sales, e-commerce sales, purchases, total operating expenses, year-end inventories held both inside and outside the United States, commissions, total operating revenue, and gross selling value, for three components of wholesale activity: wholesale distributors; manufacturers' sales branches and offices and agents, brokers, and electronic markets.

ADDRESSES: The Census Bureau will furnish report forms to organizations included in the survey. Additional copies are available upon written request to the Director, U.S. Census Bureau, Washington, DC 20233–0101.

FOR FURTHER INFORMATION CONTACT: John Miller, Service Sector Statistics Division, on (301) 763–2758 or by e-mail on *john.p.miller@census.gov*.

SUPPLEMENTARY INFORMATION: The AWTS is conducted each year for three components of wholesale activity: Wholesale distributors; manufacturers' sales branches and offices; and agents, brokers, and electronic markets. This survey collects information on annual sales, e-commerce sales, purchases, total operating expenses, year-end inventories held both inside and outside the Unites States, commissions, total operating revenue, and gross selling value. For wholesale distributors, the Census Bureau will collect data covering sales, e-commerce sales, year-end inventories held inside and outside the United States, purchases, and total operating expenses. For manufacturers' sales branches and offices, the Census Bureau will collect data covering annual sales, e-commerce sales, year-end inventories held inside and outside the United States and total operating expenses. For agents, brokers, and electronic markets, the Census Bureau will collect data covering commissions, total operating revenue, gross selling value, and total operating expenses. For more information on the components of wholesale activity covered under this survey, please see the North American Industry Classification System Web site at *http://www.census.gov/eos/www/naics/index.html*. The Census Bureau has determined that the conduct of this survey is necessary as these data are not available publicly on a timely basis from non-governmental or other government sources.

The Census Bureau will require a selected sample of firms engaging in the three covered wholesale activities in the United States to report in the 2009

AWTS. Companies are selected for this survey using a stratified random sample based on annual sales size with a company's probability of selection increasing with their annual sales size. We will furnish report forms to the firms covered by this survey in January 2010 and will require their submissions within 30 days after receipt. The sample of firms selected will provide, with measurable reliability, statistics on annual sales, e-commerce sales, purchases, total operating expenses, year-end inventories held both inside and outside the Unites States, commissions, total operating revenue, and gross selling value, for 2009.

Sections 182, 224, and 225 of title 13 of the United States Code authorizes the Census Bureau to take surveys that are necessary to furnish current data on the subjects covered by the major censuses. As part of this authorization, the Census Bureau conducts the AWTS to provide continuing and timely national statistics data on wholesale trade activity for the period between economic censuses. For 2009, the survey will, as it has in the past, operate as a sample of wholesale distributors; manufacturers' sales branches and offices; and agent, brokers, and electronic markets. The data collected in this survey will be similar to that collected in the past and within the general scope and nature of those inquiries covered in the economic census. These data are collected to provide a sound statistical basis for the formation of policy by various government agencies. These data will be available for use for a variety of public and business needs such as economic and market analysis, company performance, and forecasting future demand.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 U.S.C. 3501–3521, OMB approved the AWTS under OMB control number 0607–0195.

Based upon the foregoing, I have directed that the annual survey be conducted for the purpose of collecting these data.

Dated: October 28, 2009.

Robert M. Groves,

Director, Bureau of the Census.

[FR Doc. E9–26285 Filed 10–30–09; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

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

ACTION: Notice of Upcoming Sunset Reviews.

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for December 2009

The following Sunset Reviews are scheduled for initiation in December 2009 and will appear in that month's Notice of Initiation of Five-year Sunset Reviews.

Antidumping Duty Proceedings	Department Contact
Crepe Paper Products from the PRC (A–570–895)	Jennifer Moats (202) 482–5047
Wooden Bedroom Furniture from the PRC (A–570–890)	Jennifer Moats (202) 482–5047
Countervailing Duty Proceedings	
No Sunset Review of countervailing duty orders are scheduled for initiation in December 2009.	
Suspended Investigations	
No Sunset Review of suspended investigations are scheduled for initiation in December 2009.	

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998). The Notice of Initiation of Five-year (''Sunset'') Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: October 20, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–26316 Filed 10–30–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

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

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4697.

SUPPLEMENTARY INFORMATION:

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (''the Act''), may request, in accordance with section 351.213, of the Department of Commerce's (''the Department's'') regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the

Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 20 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within 10 calendar days of publication of the initiation **Federal Register** notice.

Opportunity to Request a Review:

Not later than the last day of November 2009,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in November for the following periods:

Antidumping Duty Proceedings	Period
ARGENTINA: Barbed Wire & Barbless Wire Strand.	
A–357–405	11/1/08 - 9/19/09
BRAZIL: Certain Circular Welded Non-Alloy Steel Pipe.	
A–351–809	11/1/08 - 10/31/09
BRAZIL: Polyethylene Terephthalate (Pet) Film.	
A–351–841	11/6/08 - 10/31/09
GERMANY: Lightweight Thermal Paper.	
A–428–840	11/20/08 - 10/31/09
MEXICO: Certain Circular Welded Non-Alloy Steel Pipe.	
A–201–805	11/1/08 - 10/31/09
REPUBLIC OF KOREA: Certain Circular Welded Non-Alloy Steel Pipe.	
A–580–809	11/1/08 - 10/31/09
TAIWAN: Certain Hot-Rolled Carbon Steel Flat Products.	
A–583–835	11/1/08 - 10/31/09
TAIWAN: Certain Circular Welded Non-Alloy Steel Pipe.	
A–583–814	11/1/08 - 10/31/09
THAILAND: Certain Hot-Rolled Carbon Steel Flat Products.	
A–549–817	11/1/08 - 10/31/09
THE PEOPLE'S REPUBLIC OF CHINA: Certain Cut-to-Length Carbon Steel.	
A–570–849	11/1/08 - 10/31/09
THE PEOPLE'S REPUBLIC OF CHINA: Certain Hot-Rolled Carbon Steel Flat Products.	
A–570–865	11/1/08 - 10/31/09
THE PEOPLE'S REPUBLIC OF CHINA: Fresh Garlic.	
A–570–831	11/1/08 - 10/31/09
THE PEOPLE'S REPUBLIC OF CHINA: Lightweight Thermal Paper.	
A–570–920	11/20/08 - 10/31/09
THE PEOPLE'S REPUBLIC OF CHINA: Paper Clips.	
A–570–826	11/1/08 - 10/31/09
THE PEOPLE'S REPUBLIC OF CHINA: Polyethylene Terephthalate (Pet) Film.	
A–570–924	11/6/08 - 10/31/09
THE PEOPLE'S REPUBLIC OF CHINA: Pure Magnesium in Granular Form.	
A–570–864	11/1/08 - 10/31/09
THE PEOPLE'S REPUBLIC OF CHINA: Refined Brown Aluminum Oxide.	
A–570–882	11/1/08 - 10/31/09
UKRAINE: Certain Hot-Rolled Carbon Steel Flat Products.	
A–823–811	11/1/08 - 10/31/09
UNITED ARAB EMIRATES: Polyethylene Terephthalate (Pet) Film.	
A–520–803	11/6/08 - 10/31/09
Countervailing Duty Proceedings	
THE PEOPLE'S REPUBLIC OF CHINA: Lightweight Thermal Paper.	
C–570–921	11/20/08 - 12/31/08
Suspension Agreements	
UKRAINE: Certain Cut-to-Length Carbon Steel.	
A–823–808	11/1/08 - 10/31/09

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

In accordance with section 351.213(b) of the regulations, an interested party, as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters.[2] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order–by-order basis, which exporter(s) the request is intended to cover.

Please note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. *See also* the Import Administration web site at *http://www.trade.gov/ia.*

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Operations, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Orders, Findings, or Suspended Investigations'' for requests received by the last day of November 2009. If the Department does not receive, by the last day of November 2009, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period, of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

Dated: October 26, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–26345 Filed 10–30–09; 8:45 am]

BILLING CODE 3510–DS–S

[2] If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–912

New Pneumatic Off-the-Road Tires from the People's Republic of China: Initiation of New Shipper Review

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

EFFECTIVE DATE: November 2, 2009.

SUMMARY: The Department of Commerce (the ''Department'') has determined that a request for a new shipper review of the antidumping duty order on new pneumatic off-the-road tires from the People's Republic of China (''PRC''), received on September 30, 2009, meets the statutory and regulatory requirements for initiation. The period of review (''POR'') of this new shipper review is February 20, 2008, through August 31, 2009.

FOR FURTHER INFORMATION CONTACT: John Hollwitz or Charles Riggle, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2336 and (202) 482–0650, respectively.

SUPPLEMENTARY INFORMATION:

Background

The notice announcing the antidumping duty order on new pneumatic off-;the-road tires from the PRC was published in the **Federal Register** on September 4, 2008. *See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Notice of Amended Final Affirmative Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 73 FR 51624 (September 4, 2008). On September 30, 2009, we received a timely request for a new shipper review from Yituo Orient Good Friend Tyre Co., Ltd. (''Yituo'') in accordance with 19 CFR 351.214(c) and 351.214(d). Yituo has certified that it produced all of the new pneumatic off–the-road tires it exported which is the basis for its request for a new shipper review.

Pursuant to the requirements set forth in 19 CFR 351.214(b)(2)(i)(d), 19 CFR 351.214(b)(2)(ii) and 19CFR 351.214(b)2(iii), in its request for a new shipper review, Yituo, as an exporter and producer, certified that (1) it did not export new pneumatic off-the-road tires to the United States during the period of investigation (''POI''); (2) since the initiation of the investigation, Yituo has

never been affiliated with any company that exported subject merchandise to the United States during the POI; and (3) its export activities were not controlled by the central government of the PRC.

In accordance with 19 CFR 351.214(b)(2)(iv), Yituo submitted documentation establishing the following: (1) the date on which it first shipped new pneumatic off-;the-road tires for export to the United States and the date on which the new pneumatic off-the-road tires were first entered, or withdrawn from warehouse, for consumption; (2) the volume of its first shipment; and (3) the date of its first sale to an unaffiliated customer in the United States.

Initiation of New Shipper Review

Pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the ''Act'') and 19 CFR 351.214(d)(1), we find that the request submitted by Yituo meets the threshold requirements for initiation of a new shipper review for shipments of new pneumatic off-the-road tires from the PRC produced and exported by Yituo. *See* Memorandum to the File through Wendy Frankel, Office Director, New Shipper Initiation Checklist, dated concurrently with this notice. The POR is February 20, 2008, through August 31, 2009. See 19 CFR 351.214(g)(1)(i)(A). The Department will conduct this review according to the deadlines set forth in section 751(a)(2)(B)(iv) of the Act.

It is the Department's usual practice, in cases involving non-market economies, to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, we will issue questionnaires to Yituo, which will include separate rate sections. The review will proceed if the response provides sufficient indication that Yituo is not subject to either *de jure* or *de facto* government control with respect to its export of new pneumatic off-the-road tires.

We will instruct U.S. Customs and Border Protection to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from Yituo in accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e). Because Yituo certified that it both produced and exported the subject merchandise, the sale of which is the basis for this new shipper review request, we will apply the bonding privilege to Yituo only for subject merchandise which Yituo both produced and exported.

Interested parties requiring access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 19 CFR 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 19 CFR 351.221(c)(1)(i).

Dated: October 27, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–26292 Filed 10–30–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(C–570–946)

Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination

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

SUMMARY: The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of pre-stressed concrete steel wire strand (PC strand) from the People's Republic of China (PRC). For information on the estimated subsidy rates, see the ''Suspension of Liquidation'' section of this notice.

EFFECTIVE DATE: November 2, 2009.

FOR FURTHER INFORMATION CONTACT: Robert Copyak or Jolanta Lawska, AD/CVD Operations, Office 3, Operations, Import Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2209 and (202) 482–8362, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On May 27, 2009, the Department received a petition in proper form by the petitioners.[1] This investigation was initiated on June 16, 2009. *See Pre-Stressed Concrete Steel Wire Strand From the People's Republic of China: Initiation of Countervailing Duty Investigation*, 74 FR 29670 (June 23, 2009) (Initiation), and accompanying Initiation Checklist.[2] On August 12, 2009, we postponed the deadline for the preliminary determination by 65 days to no later than October 24, 2009.[3] *See Pre-Stressed Concrete Steel Wire Strand From the Peoples Republic of China: Notice of Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 74 FR 40567 (August 12, 2009).

Due to the large number of producers and exporters of PC strand in the PRC, we determined that it was not possible to investigate individually each producer or exporter and, therefore, selected two producers/exporters of PC strand to be mandatory respondents: Fasten Group Import & Export Co., Ltd. (Fasten I&E) and Xinhua Metal Products Company (Xinhua). *See* Memorandum through Melissa G. Skinner, Director, Operations, Office 3, to John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, regarding ''Respondent Selection,'' (July 2, 2009).[4]

On July 2, 2009, we issued the initial countervailing duty (CVD) questionnaire to the Government of the People's Republic of China (GOC) and the mandatory respondents. On August 4, 2009, Xinhua submitted its initial questionnaire response. On August 24, 2009, the GOC and Fasten I&E submitted its initial questionnaire responses.[5] Regarding the GOC, we issued supplemental questionnaires on September 2, 8, 15, 18, 22, and 29, 2009, to which the GOC submitted responses on September 29, 2009, and October 13, 15, and 19. Regarding the Fasten Companies, we issued supplemental questionnaires on September 11, and 14 2009, as well as October 1, 2, 9, and 16, 2009, to which the Fasten Companies responded on September 14, 22, 24, 2009, and October 13, 15, and 19, 2009. In the September 11, 2009, supplemental questionnaire the Department instructed the Fasten

[1] Petitioners are American Spring Wire Corp., Insteel Wire Products Company, and Sumiden Wire Products Corp.

[2] A public version of this and all public Departmental memoranda is on file in the Central Records Unit (CRU), room 1117 in the main building of the Commerce Department.

[3] October 24, 2009, falls on a weekend. Therefore the actual signature date is October 26, 2009.

[4] A public version of this memorandum is available in the CRU.

[5] Included with the initial questionnaire of Fasten I&E were questionnaire responses from the Fasten Group Corporation (Fasten Corp.), Jiangyin Fasten Steel (Fasten Steel), Jiangyin Hongyu Metal Products Co., Ltd. (Hongyu Metal), and Jiangyin Walsin Steel Cable Co., Ltd. (Walsin). In this preliminary determination, we refer to the aforementioned companies and Jiangyin Hongsheng Co., Ltd. (Hongsheng) as the Fasten Companies.

Companies to submit an initial questionnaire response on behalf of Hongsheng, to which Hongsheng responded on October 6, 2009. Regarding Xinhua, we issued a supplemental questionnaire on September 3 and 29, 2009, as well as October 6, 2009, to which Xinhua responded on September 21, 2009, and October 15, 2009. On August 14, 2009, we issued an initial CVD questionnaire to Xinhua's parent company, Xinyu Iron and Steel Joint Stock Limited Company (Xinyu), to which Xinyu responded on September 17, 2009. On September 1, 2009, we issued an initial CVD questionnaire to the parent of Xinyu, Xinyu Iron and Steel Limited Liability Company (Xingang), to which Xingang responded on September 17, 2009.

Scope of the Investigation

For purposes of this investigation, PC strand is steel wire strand, other than of stainless steel, which is suitable for use in, but not limited to, pre-stressed concrete (both pre-tensioned and post-tensioned) applications. The scope of this investigation encompasses all types and diameters of PC strand whether uncoated (uncovered) or coated (covered) by any substance, including but not limited to, grease, plastic sheath, or epoxy. This merchandise includes, but is not limited to, PC strand produced to the American Society for Testing and Materials (ASTM) A–416 specification, or comparable domestic or foreign specifications. PC strand made from galvanized wire is excluded from the scope if the zinc and/or zinc oxide coating meets or exceeds the 0.40 oz./ft^2 standard set forth in ASTM–A–475.

The PC strand subject to this investigation is currently classifiable under subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Scope Comments

In accordance with the *Preamble* to the Department's regulations (*see Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*)), in the *Initiation Notice*, we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*. The Department did not receive scope comments from any interested party.

Injury Test

Because the PRC is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the International Trade Commission (the ITC) is required to determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry. On June 3, 2008, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from the PRC of the subject merchandise. *See* Pre-Stressed Concrete Steel Wire Strand from China, Investigation Nos. 701–TA–464 and 731–TA–1160 (Preliminary), 74 FR 34782 (July 17, 2009).

Period of Investigation

The period of investigation (the POI) for which we are measuring subsidies is January 1, 2008, through December 31, 2008, which corresponds to the PRC's most recently completed fiscal year. *See* 19 CFR 351.204(b)(2).

Application of the Countervailing Duty Law to Imports from the PRC

On October 25, 2007, the Department published *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from the PRC*), and accompanying Issues and Decision Memorandum (CFS from the PRC Decision Memorandum). In *CFS from the PRC*, the Department found that:

> . . . given the substantial differences between the Soviet-style economies and the PRC's economy in recent years, the Department's previous decision not to apply the CVD law to these Soviet-style economies does not act as a bar to proceeding with a CVD investigation involving products from the PRC.

See CFS Decision Memorandum at Comment 6. The Department has affirmed its decision to apply the CVD law to the PRC in subsequent final determinations. *See, e.g., Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008) (*CWP from the PRC*), and accompanying Issues and Decision Memorandum (CWP from the PRC Decision Memorandum).

Additionally, for the reasons stated in the CWP Decision Memorandum, we are using the date of December 11, 2001, the date on which the PRC became a member of the World Trade Organization (WTO), as the date from which the Department will identify and measure subsidies in the PRC for purposes of this preliminary determination. *See* CWP from the PRC Decision Memorandum at Comment 2.

Attribution of Subsidies

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii) - (v) provides that the Department will attribute subsidies received by certain other companies to the combined sales of those companies when: (1) two or more corporations with cross-ownership produce the subject merchandise; (2) a firm that received a subsidy is a holding or parent company of the subject company; (3) a firm that produces an input that is primarily dedicated to the production of the downstream product; or (4) a corporation producing non-subject merchandise received a subsidy and transferred the subsidy to a corporation with cross-ownership with the subject company.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This regulation states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. *See also* the Preamble to the Department's regulations, which states ''{I}n certain circumstances, a large minority voting interest (for example, 40 percent) or a 'golden share' may also result in cross-ownership.'' *See Preamble*, 63 FR at 65401. The Court of International Trade (CIT) has further upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits. *See Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600–603 (CIT 2001) (*Fabrique*).

The Fasten Companies

Based on the initial questionnaire responses of the Fasten Companies, we have indentified Fasten Corp. as the parent of the Fasten Companies, Fasten I&E as the trading company that

exported subject merchandise during the POI, and Hongsheng as an input supplier. The Fasten Companies stated that Fasten Steel, Walsin, and Company X produced PC strand that was exported to the United States during the POI through Fasten I&E.[6] According to the Fasten Companies, Hongyu Metal, though it produced PC strand, did not supply Fasten I&E with PC strand during the POI.

Based on the ownership information contained in the Fasten Companies' questionnaire responses, we find for purposes of this preliminary determination that, in accordance with 19 CFR 351.525(b)(6)(vi), Fasten Corp. is cross-owned with Fasten I&E and Hongsheng. Our finding in this regard is based on the fact that Fasten I&E and Hongsheng are majority-owned by Fasten Corp.[7] We further find that pursuant to 19 CFR 351.525(b)(6)(vi), Hongyu Metal is cross-owned with Fasten Corp., Fasten I&E, and Hongsheng by virtue of Hongsheng's majority ownership of Hongyu Metal.

In addition, we find that Fasten Steel and Walsin are affiliated with Hongsheng and, thus Fasten Corp. and Fasten I&E as well, as defined under section 771(33)(E) of the Act.[8] As explained above, under 19 CFR 351.525(b)(6)(vi), cross-ownership is normally found where majority voting ownership interests between two corporations or through common ownership of two (or more) corporations exists. The *Preamble* goes on to explain that the Department may, nonetheless, find cross-ownership where the level of ownership is less than 50 percent if the Department finds that the interests of the firms in question have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other firm in essentially the same ways it can use its own assets (or subsidy benefits). *See Preamble*, 63 FR at 65401.

Based on Hongsheng's level of ownership of Fasten Steel, combined with the information in the Fasten Companies October 15, 2009, we preliminarily determine that Fasten Steel is cross-owned with Hongsheng and, thus, is cross-owned with the Fasten Companies. The Fasten Companies October 15, 2009, submission indicates that Hongsheng possesses a significant ability to control the operations of Fasten Steel. Hongsheng appointed three out of seven of directors in Fasten Steel's board of directors. One of the individuals appointed to the board of Fasten Steel serves as the board chairman. The other two board members of appointed by Hongsheng serve Fasten Steel's as director and general manager. *See* the Fasten Companies October 15, 2009, submission at 1 through 4. In addition, the October 15, 2009, submission indicates that Hongsheng served as the guarantor on several of Fasten Steel's loans. Also, the October 15, 2009, submission indicates a degree of cooperation with respect to the wire rod that Hongsheng acquired from wire rod suppliers during the POI. As the Fasten Companies explain, ''during Hongsheng's negotiations with rod suppliers, Fasten Steel did play an import role because, as a producer of the subject merchandise, Fasten Steel had a better understanding of the wire rod market and prices.'' *See* October 19, 2009, submission as 3. Lastly, information supplied by Hongyu Metal indicates that during the POI, Hongyu Metal paid its electricity expenses to Fasten Steel thereby further indicating the degree to which Fasten Steel inter-connected with subsidiaries of Hongsheng. *See* Hongyu Metal's August 26, 2009, submission at 22. Therefore, based on this information, we preliminarily determine that Fasten Steel is cross-owned with Hongsheng as well as Fasten Corp., Hongyu Metal, and Fasten I&E. Consequently, as explained further below, measurement of any subsidy benefits received by Fasten I&E, Hongyu Metal or Fasten Steel are subject to the cross-ownership regulations under 19 CFR 351.525(b), as applicable.

Regarding Walsin, we have not reached any conclusions with respect to cross-ownership. However, as a producer of subject merchandise whose goods were exported by Fasten I&E to the United States during the POI, we find that any subsidies to Walsin are attributable to the subject merchandise pursuant to the Department's trading company regulation at 19 CFR 351.525(c). Therefore, we find it unnecessary to reach any conclusions with respect to cross-ownership.

Regarding Company X, we find that affiliation and cross-ownership do not exist with regard to Fasten Corp., Fasten I&E, Hongsheng, Fasten Steel, or Hongyu Metal. However, measurement of any subsidy benefits received by Company X remains subject to our trading company regulation within the meaning of 19 CFR 351.525(c).

Regardless of cross-ownership, under 19 CFR 351.525(c), benefits from subsidies provided to a trading company which exports subject merchandise shall be cumulated with benefits from subsidies provided to the firm which is producing subject merchandise that is sold through the trading company. However, when investigating or reviewing companies, the Department, has, in some instances, limited the number of producers it examines under 19 CFR 351.525(c). For example, in *Pasta from Italy*, one of the mandatory respondents selected was a trading company that exported pasta produced by multiple pasta manufacturers. In accordance with 19 CFR 351.525(c), the Department cumulated the benefits received by the trading company and its pasta producers, but, limited its analysis to the two major pasta manufacturers that supplied the trading company during the period of review (POR). *See Certain Pasta from Italy: Final Results of the Fourth Countervailing Duty Administrative Review*, 66 FR 64214 (December 12, 2001) (*Pasta from Italy*), and accompanying Issues and Decision Memorandum (Pasta from Italy Decision Memorandum) at ''Attribution.''

Similarly, in light of the circumstances of the instant case, we preliminarily determine that it is appropriate to limit our examination of possible subsidies to PC strand producers to the following companies, all of whom are affiliated in some manner with the Fasten Corp.: Fasten Steel, Hongyu Metal, and Walsin. We note that, when compared with Company X, Walsin accounted for a larger share of PC strand exported to the United States by Fasten I&E during the POI. *See* the Memorandum to the File from Eric B. Greynolds, Program Manager, Office 3, ''Analysis of Fasten Group Import & Export Co., Ltd.'s (Fasten I&E) Suppliers of Subject Merchandise'' (October 26, 2009), of which the public version is on file in the CRU of the Commerce Building.

In consideration of the foregoing, in accordance with 19 CFR 351.525(b)(6)(iii), we have attributed subsidies received by the Fasten Corp. to the consolidated sales of the Fasten Corp., which include Fasten I&E. In accordance with 19 CFR 351.525(b)(6)(i), we have attributed subsidies received by Fasten I&E to the sales of Fasten I&E.

In accordance with 19 CFR 351.525(c), we have cumulated the subsidies received by Walsin with benefits from subsidies attributable to Fasten I&E. Specifically, for each countervailable subsidy received by Walsin, we derived the benefit and calculated a program subsidy rate. We then multiplied the total subsidy rate

[6] The identity of Company X is proprietary. *See* Preliminary Calculation Memo for Fasten Companies.

[7] The exact level of ownership is proprietary.

[8] The level of ownership of Fasten Steel and Walsin held by Hongsheng is proprietary.

calculated for Walsin by Walsin's share of PC strand that was exported to the United States during the POI by Fasten I&E.[9] Lastly, we added the apportioned subsidy rate to the other subsidy rates attributable to Fasten I&E.

Concerning Hongyu Metal and Fasten Steel, we are attributing subsidies received those firms by the sum of the firms' respective total sales and the sales of Fasten I&E. *See* 19 C.F.R. 351.525(b)(6)(ii). As noted above, Hongyu Metal did not produce PC strand that was exported to the United States by Fasten I&E during the POI. Nonetheless, our decision to examine subsidies received by Hongyu Metal is consistent with the Department's prior practice, which was affirmed by the Court of International Trade. *See Cut-to-Length Carbon Steel Plate From Belgium; Final Results of Countervailing Duty Administrative Review*, 64 FR 12982, 12984 (March 16, 1999); *see also Fabrique*, 166 F. Supp. 2d 593, 603–604.

As explained in the ''Analysis of Programs'' section below, we are examining whether Hongsheng purchased wire rod for LTAR.[10] Hongsheng did not produce the wire rod that it sold to Fasten Steel and Hongyu Metal during the POI. Rather, Hongsheng acquired the inputs from other producers. Therefore, in conducting our subsidy analysis of the provision of wire rod for LTAR program, we limited our benefit calculations to Hongsheng's wire rod suppliers that we have determined are government authorities capable of providing a financial contribution as described under 771(5)(D)(iv) of the Act. In accordance with 19 CFR 351.525(b)(6)(iii), we are attributing subsidies received by Hongsheng to sales of Hongsheng, Hongyu Metal, Fasten Steel, and Fasten I&E.

Further, we are attributing any benefits received by Walsin in connection with the purchase of wire rod for LTAR produced by government authorities to the total sales of Walsin. In addition, we are cumulating the subsidies received by Walsin with those subsidies received by Fasten I&E in the manner described above.

Xinhua, Xinyu, and Xingang (Collectively the Xinhua Companies)

In its initial questionnaire response, Xinhua reported that it is wholly-owned by Xinyu and that Xinyu, in turn, is wholly-owned by Xingang. In accordance with 19 CFR 351.525(b)(6)(vi), we preliminarily determine that Xinhua, Xinyu, and Xingang are cross-owned. Further, pursuant to 19 CFR 351.525(b)(6)(iii), we are attributing the subsidies received by Xingang to the consolidated sales of Xingang, which include Xinyu and Xinhua. Similarly, we are attributing the subsidies received by Xinyu to the consolidated sales of Xinyu, which include Xinhua. And, in accordance with 19 CFR 351.525(b)(6)(i), we are attributing subsidies received by Xinhua to the sales of Xinhua. Lastly, pursuant to 19 CFR 351.525(b)(6)(v), we are attributing subsidies transferred to Xinhua from a cross-owned firm to the sales of Xinhua.

Xinhua reported that it acquired a relatively small quantity of wire rod inputs from Xinyu during the POI. For purposes of the preliminary determination, we are treating Xinhua's purchases of wire rod from Xinyu as an internal transaction that does not constitute a financial contribution from a government authority. Therefore, we have not included such transactions in our subsidy analysis.

Allocation Period

Under 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the average useful life (AUL) of the renewable physical assets used to produce the subject merchandise. Pursuant to 19 CFR 351.524(d)(2), there is a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (IRS Tables), as updated by the Department of Treasury. For the subject merchandise, the IRS Tables prescribe an AUL of 12 years. As no interested party has claimed that the AUL of 12 years is unreasonable, we will allocate non-recurring subsidies over a period of 12 years.

Further, for non-recurring subsidies, we have applied the ''0.5 percent expense test'' described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the sales (total sales or total export sales, as appropriate) for the same year. If the amount of subsidies is less than 0.5 percent of the relevant sales, then the benefits are allocated to the year of receipt rather than allocated over the AUL period.

Additionally, in accordance with the Department's practice we have determined that we will identify and measure subsidies in China beginning on the date of the country's accession to the World Trade Organization (WTO), December 11, 2001. *See*, *e.g.*, *Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 70961 (November 24, 2008) (*Line Pipe from the PRC*), and accompanying Issues and Decision Memorandum (Line Pipe from the PRC Decision Memorandum) at ''Allocation Period'' section and Comment 18.

Adverse Facts Available

Provision of Electricity for LTAR

On July 2, 2009, the Department issued its initial questionnaire to the GOC. In the questionnaire, the Department asked the GOC several questions regarding its alleged provision of electricity to the mandatory respondents for LTAR. *See* Appendix 7 of the Department's initial questionnaire. The GOC failed to respond to these questions. *See* the GOC's August 24, 2009, questionnaire response at 52 through 55. The Department issued a supplemental questionnaire in which it asked the GOC once again to submit the requested information concerning the provision of electricity for LTAR program. *See* the Department's September 2, 2009, supplemental questionnaire. Again, the GOC failed to provide all of the requested information with regard to several of the Department's questions. *See* the GOC's September 29, 2009, supplemental questionnaire response at 12 through 14.

Section 776(a)(2)(A) of the Act states that the Department shall use facts available when a party withholds information that has been requested by the Department. Further, section 776(b) of the Act states that if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available.

As summarized above, the GOC did not provide the information requested by the Department as it pertains to the provision of electricity for LTAR program. We find that in failing to provide the requested information the GOC did not act to the best of its ability. Accordingly, in selecting from among the facts available, we are drawing an adverse inference with respect to the provision of electricity in the PRC and determine that the GOC is providing a financial contribution that is specific within the meaning of section 771(5A)(D)(iv) of the Act. See the ''Federal Provision of Electricity for

[9] In deriving the share of PC strand produced by Fasten Steel and Walsin that was exported by Fasten Steel I&E during the POI, we did not include the sales volume of Company X.

[10] Concerning Walsin, during the POI it purchased its wire rod inputs from suppliers other than Hongsheng.

LTAR'' section of this preliminary determination for a discussion of the Department's derivation of the benefit.

Various Grant Programs

The Fasten Companies and the Xinhua Companies reported receiving grants under various central, provincial, and municipal level programs. We sent out supplemental questionnaires to the GOC regarding these grant programs. In certain instances, the GOC failed to provide the information necessary for the Department to conduct its subsidy analysis as it pertains to the issue of *de facto* specificity, as described under section 771(5A)(D)(iii) of the Act. Namely, the GOC failed to provide, as requested, information concerning the manner in which the various grants were distributed across firms and industries.

We preliminarily determine that by failing to provide the requested information, the use of facts available, as described under 776(a)(2)(A) of the Act, is warranted. We further preliminarily determine that the GOC has failed to act to the best of its ability concerning these grant programs and that the application of AFA, described under section 776(b) of the Act, is warranted. Therefore, we are finding that the grant programs are specific under section 771(5A)(D)(iii) of the Act. The grant programs for which we are applying AFA in this regard are discussed below in the ''Analysis of Programs'' section.

Status of Wire Rod Suppliers

The Department is investigating the extent to which firms, acting as government authorities, sold wire rod to the respondents for LTAR. As discussed in further detail below in the ''Provision of Wire Rod for LTAR'' section, the Department sought information from the mandatory respondents and the GOC concerning the identity of the firms that produced the wire rod ultimately sold to the mandatory respondents during the POI. In other words, the Department sought information that would enable it to determine whether the input suppliers acted either as producers of the input or as trading companies that resold the input that was produced by other firms. Without being able to confirm the identity of the ultimate producer of the wire rod, the Department is unable to determine whether the wire rod was supplied by government authorities. In some instances, the GOC and the mandatory respondents failed to provide the requested information. We preliminarily determine that the GOC and the mandatory respondents have not provided the requested information and that the use of facts available, as described under section 776(a)(2)(A) of the Act is warranted. We further preliminarily determine that the GOC and the mandatory respondents did not act to the best of their ability, as described under section 776(b) of the Act, when failing to respond to the Department's requests for information concerning the status of the mandatory respondents' input suppliers. Therefore, as AFA in this preliminary determination, we are making the following assumptions:

1. In instances in which a mandatory respondent identified an input supplier as a private company but failed to indicate whether the supplier was an input producer or a trading company, we are assuming that the supplier acted as a trading company, and;
2. In instances in which the mandatory respondent indentified an input supplier as a state-owned company but failed to indicate whether the supplier was an input producer or a trading company, we are assuming that the supplier acted as a producer.

These adverse assumptions have the effect of increasing the amount of benefits attributed to the mandatory respondent in question.

Subsidies Valuation Information

Benchmarks and Discount Rates

Benchmarks for Short-Term RMB Denominated Loan

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the ''difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.'' Normally, the Department uses comparable commercial loans reported by the company for benchmarking purposes. *See* 19 CFR 351.505(a)(3)(i). If the firm did not have any comparable commercial loans during the period, the Department's regulations provide that we ''may use a national interest rate for comparable commercial loans.'' *See* 19 CFR 351.505(a)(3)(ii).

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. For the reasons explained in *CFS from the PRC*, loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market. *See* CFS from the PRC Decision Memorandum at Comment 10. Because of this, any loans received by respondents from private Chinese or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). Similarly, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, the Department is selecting an external market-based benchmark interest rate. The use of an external benchmark is consistent with the Department's practice. For example, in *Softwood Lumber from Canada*, the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada. *See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada*, 67 FR 15545 (April 2, 2002) (*Softwood Lumber from Canada*), and accompanying Issues and Decision Memorandum (Softwood Lumber from Canada Decision Memorandum) at ''Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit.''

We are calculating the external benchmark using the regression-based methodology first developed in *CFS from the PRC* and more recently updated in *LWTP from the PRC*. *See* CFS from the PRC Decision Memorandum at Comment 10; *see also* LWTP from the PRC Decision Memorandum at ''Benchmarks and Discount Rates'' section. This benchmark interest rate is based on the inflation-adjusted interest rates of countries with per capita GNIs similar to the PRC, and takes into account a key factor involved in interest rate formation, that of the quality of a country's institutions, that is not directly tied to the state-imposed distortions in the banking sector discussed above.

Following the methodology developed in *CFS from the PRC*, we first determined which countries are similar to the PRC in terms of gross national income (GNI), based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. The PRC falls in the lower-middle income category, a group that includes 55 countries as of July 2007. As explained in *CFS from the PRC*, this pool of countries captures the broad inverse relationship between income and interest rates.

Many of these countries reported lending and inflation rates to the International Monetary Fund and they

are included in that agency's international financial statistics (IFS). With the exceptions noted below, we have used the interest and inflation rates reported in the IFS for the countries identified as ''low middle income'' by the World Bank. First, we did not include those economies that the Department considered to be non-market economies for antidumping (AD) purposes for any part of the years in question (Armenia, Azerbaijan, Belarus, Georgia, Moldova, Turkmenistan). Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments. Specifically, Jordan reported a deposit rate, not a lending rate, and the rates reported by Ecuador and Timor L'Este are dollar-denominated rates; therefore, the rates for these three countries have been excluded. Finally, for each year the Department calculated an inflation-adjusted short-term benchmark rate, we have also excluded any countries with aberrational or negative real interest rates for the year in question.

The resulting inflation-adjusted benchmark lending rates are provided in the respondents' preliminary calculation memoranda. Because these are inflation-adjusted benchmarks, it is necessary to adjust the respondents' interest payments for inflation. This was done using the PRC inflation figure as reported in the IFS.

Benchmarks for Long-Term Loans

The lending rates reported in the IFS represent short- and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, the Department has developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates. *See Light-Walled Rectangular Pipe and Tube From the People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination*, 73 FR 35642 (June 24, 2008) (*LWRP from the PRC*), and accompanying Issues and Decision Memorandum (LWRP from the PRC Decision Memorandum) at ''Discount Rates'' section. In *Citric Acid from the PRC*, this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where n equals or approximates the number of years of the term of the loan in question. *See Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) (*Citric Acid from the PRC*), and accompanying Issues and Decision Memorandum (Citric Acid from the PRC Decision Memorandum) at Comment 14. Finally, because these long-term rates are net of inflation as noted above, we adjusted the PRC respondents' payments to remove inflation.

Benchmarks for Foreign Currency-Denominated Loans

For foreign currency-denominated short-term loans, the Department used as a benchmark the one-year dollar interest rates for the London Interbank Offering Rate (LIBOR), plus the average spread between LIBOR and the one-year corporate bond rates for companies with a BB rating. *See LWTP from the PRC Decision Memorandum* at ''Benchmarks and Discount Rates'' section. For long-term foreign currency-denominated loans, the Department added the applicable short-;term LIBOR rate to a spread which is calculated as the difference between the one-year BB bond rate and the n-year BB bond rate, where n equals or approximates the number of years of the term of the loan in question.

Discount Rates

Consistent with 19 CFR 351.524(d)(3)(i)(A), we have used as our discount rate the long-term interest rate calculated according to the methodology described above for the year in which the government agreed to provide the subsidy.

Analysis of Programs

I. Programs Preliminarily Determined To Be Countervailable

A. Provision of Wire Rod from LTAR

The Department is investigating whether producers and suppliers, acting as Chinese government authorities, sold wire rod to the mandatory respondents for LTAR. The Xinhua Companies and the Fasten Companies reported obtaining wire rod during the POI from trading companies as well as directly from wire rod producers.

In *Tires from the PRC*, the Department determined that majority government ownership of an input producer is sufficient to qualify it as an ''authority.'' *See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances*, 73 FR 40480 (July 15, 2008) (*Tires from the PRC*), and accompanying Issues and Decision Memorandum (Tires from the PRC Decision Memorandum) at ''Government Provision of Rubber for Less than Adequate Remuneration.'' Based on the record in the instant investigation, we determine that wire rod producers that supply respondents and that are majority-government owned are ''authorities.'' As a result, we determine that wire rod supplied by companies deemed to be government authorities constitute a financial contribution to respondents in the form of a governmental provision of a good and that the respondents received a subsidy to the extent that the price they paid for wire rod produced by these suppliers was sold for LTAR. *See* sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act.

The Fasten Companies and the Xinhua Companies reported acquiring certain quantities of wire rod from trading companies. In prior CVD proceedings involving the PRC, the Department has determined that when a respondent purchases an input from a trading company or non-producing supplier, a subsidy is conferred if the producer of the input is an ''authority'' within the meaning of section 771(5)(B) of the Act and the price paid by the respondent for the input was sold for LTAR. *See* CWP from the PRC Decision Memorandum at ''Hot-Rolled Steel for Less Than Adequate Remuneration'' section; *see also Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012 (July 27, 2009) (*Racks from the PRC*), and accompanying Issues and Decision Memorandum (Racks from the PRC Decision Memorandum) at ''Provision of Wire Rod for Less than Adequate Remuneration'' section, and CWASPP from the PRC Decision Memorandum at ''Provision of SSC for LTAR.'' Therefore, in our initial questionnaire, we requested that the respondent companies and the GOC work together in order to identify the producers from whom the trading companies acquired the wire rod that was subsequently sold to respondents during the POI and to provide information that would allow the Department to determine whether those producers were government authorities. In several instances, the GOC and the mandatory respondents were able to supply the requested information.

However, in some instances, although the GOC and the mandatory respondents properly indicated whether

the wire rod suppliers were trading companies in the business of reselling wire rod they were, nonetheless, unable to identify the producers that supplied the trading companies. Because the respondent companies and the GOC have not been able to supply the requested information, we find that the necessary information is not on the record and, as a result, we are resorting to the use of facts available (FA) within the meaning of sections 776(a)(1) and (2) of the Act. In its response, the GOC provided information on the amount of wire rod produced by state-owned enterprises (SOEs) and private producers in the PRC. Using these data, we derived the ratio of wire rod produced by SOEs during the POI. Thus, pursuant to sections 776(a)(1) and (2) of the Act, we have resorted to the use of FA with regard to the wire rod sold to the Fasten Companies and Xinhua Companies by certain domestic trading companies. Specifically, we assumed that the percentage of wire rod supplied by these domestic trading companies that is produced by government authorities is equal to the ratio of wire rod produced by SOEs during the POI.[11] *See* Preliminary Calculation Memoranda for the Fasten Companies and the Xinhua Companies. The approach is consistent with the Department's practice. *See*, *e.g.*, CWP from the PRC Decision Memorandum at ''Hot-Rolled Steel for Less Than Adequate Remuneration;'' *see also* LWRP from the PRC Decision Memorandum at ''Hot-Rolled Steel for Less Than Adequate Remuneration.''

In other instances, the GOC and the mandatory respondents failed to indicate, as instructed, whether their wire rod suppliers were producers or trading companies. This lack of information impedes our ability to determine whether the wire sold by these wire rod suppliers was, in fact, produced by a government authority. *See* section 776(a)(2)(A) and (C) of the Act. Therefore, as discussed in the ''Adverse Facts Available'' section, we are resorting to the use of AFA as described under section 776(b) of the Act. Specifically, we are making the following adverse assumptions:

1. In instances in which a mandatory respondent identified an input supplier as a private company but failed to indicate whether the supplier was an input producer or a trading company, we are assuming that the supplier acted as a trading company, and;
2. In instances in which the mandatory respondent indentified an input supplier as a state-owned company but failed to indicate whether the supplier was an input producer or a trading company, we are assuming that the supplier acted as a producer.

These adverse assumptions have the effect of increasing the amount of benefits attributed to the mandatory respondent in question.

Having addressed the issue of financial contribution, we must next analyze whether the sale of wire rod to the mandatory respondents by suppliers designated as government authorities conferred a benefit within the meaning of section 771(5)(iv) of the Act. The Department's regulations at 19 CFR 351.511(a)(2) set forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As we explained in *Softwood Lumber from Canada*, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation. *See* Softwood Lumber from Canada Decision Memorandum at ''Market-Based Benchmark'' section.

Beginning with tier-one, we must determine whether the prices from actual sales transactions involving Chinese buyers and sellers are significantly distorted. As explained in the Preamble:

> Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative {tier two} in the hierarchy.

See Preamble to Countervailing Duty Regulations, 63 FR 65377, (November 25, 1998) (Preamble). The Preamble further recognizes that distortion can occur when the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market. *Id*.

In the instant investigation, the GOC reported the total wire rod production by state-owned entities during the POI. The number of these state-owned entities (SOEs and COEs) accounted for approximately the same percentage of the wire rod production in the PRC as was recently found in *Shelving and Racks from the PRC*, in which the Department determined that the GOC had direct ownership or control of wire rod production. *See* Shelving and Racks Decision Memorandum, at Comment 4. Because the GOC has not provided any information that would lead the Department to reconsider the determination in *Shelving and Racks from the PRC*, we find that the substantial market share held by SOEs shows that the government plays a predominant role in the this market. *See* Shelving and Racks Decision Memorandum at 15. The government's predominant position is further demonstrated by the low level of imports, which accounted for only 0.91 percent of the volume of wire rod available in the Chinese market during the POI. *See* GOC's September 15, 2009, questionnaire response at 23. Because the share of imports of wire rod into the PRC is small relative to Chinese domestic production of wire rod, it would be inappropriate to use import values to calculate a benchmark. This is consistent with the Department's approach discussed in *LWRP Decision Memorandum*, at Comment 7.

In addition to the government's predominant role in the market, we found in *Shelving and Racks from the PRC* that the 10 percent export tariff and export licensing requirement instituted by the GOC contributed to the distortion of the domestic market in the PRC for wire rod. Such export restraints can discourage exports and increase the supply of wire rod in the domestic market, with the result that domestic prices are lower than they would otherwise be. *See* Shelving and Racks Decision Memorandum at 15. Consequently, we determine that there are no appropriate tier one benchmark prices available for wire rod.

We note that Fasten I&E reported that it imported wire rod during the POI. *See* Exhibit 1 of Fasten I&E's September 22, 2009, supplemental questionnaire response. As noted above, imports of wire rod accounted for a small percent of the volume of wire rod available in the Chinese market during the POI. As explained above, we have determined that there are no appropriate tier-one

[11] In other words, in instances where we are applying FA, we are assuming that the percentage of wire rod purchased by domestic trading companies during the POI was equal to the ratio of wire rod produced by SOEs during the POI, as indicated by the aggregate data supplied in the questionnaire responses of the GOC.

benchmark prices on the record, including import prices. This is consistent with the Department's approach in prior CVD proceedings involving the PRC. *See* LWRP from the PRC Decision Memorandum at Comment 7; *see also* Racks from the PRC Decision Memorandum at ''Provision of Wire Rod for Less Than Adequate Remuneration'' section. Consequently, because we determine that there are no available tier-one benchmark prices, we have turned to tier-two, *i.e.*, world market prices available to purchasers in the PRC.

We next examined whether the record contained data that could be used as a tier-two wire rod benchmark under 19 CFR 351.511(a)(2)(ii). The Department has on the record of the investigation prices for SWRH 82B wire rod (or high carbon wire rod), as sourced from the American Metals Market (AMA). *See* petitioners' October 6, 2009, submission at Exhibit 4. The benchmark prices are reported on a monthly basis in U.S. dollars per metric ton (MT). Petitioners provide information indicating that one of the producers of subject merchandise, Walsin, uses SWRH 82B to produce subject merchandise. No other interested party submitted tier-two wire prices on the record of the investigation.

Therefore, for purposes of the preliminary determination, we find that the data from AMA should be used to derive a tier-two, world market price for wire rod that would be available to purchasers of wire rod in the PRC. We note that the Department has relied on pricing data from industry publications in recent CVD proceedings involving the PRC. *See*, *e.g.*, CWP from the PRC Decision Memorandum at ''Hot-Rolled Steel for Less Than Adequate Remuneration'' section; *see also* LWRP from the PRC Decision Memorandum at ''Hot-Rolled Steel for Less Than Adequate Remuneration'' section. We find that, for purposes of the preliminary determination, prices from the AMA to be sufficiently reliable and representative.

To determine whether wire rod suppliers, acting as government authorities, sold wire rod to respondents for LTAR, we compared the prices the respondents paid to the suppliers to our wire rod benchmark price. We conducted our comparison on a monthly basis. When conducting the price comparison, we converted the benchmark to the same currency and unit of measure as reported by the mandatory respondents for their purchases of wire rod.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Regarding delivery charges, at this time we lack information and, therefore, have not adjusted the benchmark in this regard, but will continue to seek the relevant information for the final determination. However, we have added import duties, as reported by the GOC, and the VAT applicable to imports of wire rod into the PRC. With respect to the three percent insurance charge on imports noted by the petitioner, consistent with *Racks from the PRC*, while the Department will consider in future determinations the propriety of including insurance as a delivery charge, the existing record of this investigation does not support such an adjustment. *See* Racks from the PRC Decision Memorandum.

Comparing the benchmark unit prices to the unit prices paid by respondents for wire rod, we determine that wire rod was provided for LTAR and that a benefit exists in the amount of the difference between the benchmark and what the respondent paid. *See* section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a). In the case of the Xinhua Companies, we compared the wire rod benchmarks prices to the prices the Xinhua Companies paid to their wire rod suppliers. Xinhua purchased some of its wire rod from Xinyu. As explained in the ''Attribution'' section above, we are not including Xinhua's purchases of wire rod from Xinyu in our subsidy calculations. In the case of Hongsheng, we compared the wire rod benchmark prices to the prices Hongsheng paid to its wire rod suppliers. In the case of Walsin, it purchased its wire rod from suppliers other than Hongsheng. Thus, we compared the wire rod benchmark prices to the prices Walsin paid to its suppliers.

Finally, with respect to specificity, the third subsidy element specified under the Act, the GOC has provided information on end uses for wire rod. *See* Exhibit 58 of the GOC's August 26, 2009, questionnaire response. The GOC stated that the end uses of wire rod relate to the type of industry involved as a direct purchaser of the input. The GOC further stated that the consumption of wire rod occurs across a broad range of industries. While numerous companies may comprise the listed industries, section 771(5A)(D)(iii)(I) of the Act clearly directs the Department to conduct its analysis on an industry or enterprise basis. Based on our review of the data and consistent with our past practice, we determine that the industries named by the GOC are limited in number and, hence, the subsidy is specific. *See* section 771(5A)(D)(iii)(I) of the Act. See LWRP from the PRC Decision Memorandum at Comment 7; *see also* Racks from the PRC Decision Memorandum at ''Provision of Wire Rod from Less Than Adequate Remuneration.''

We find that the GOC's provision of wire rod for LTAR to be a domestic subsidy as described under 19 CFR 351.525(b)(3). Therefore, to calculate the net subsidy rate, we divided the benefit by a denominator comprised of total sales. Regarding the Xinhua companies, for wire rod sold to Xinhua for LTAR, we divided Xinhua's benefit by Xinhua's total sales. Regarding the Fasten Companies, for wire rod sold to Hongsheng for LTAR, we divided Hongsheng's benefit by combined total sales of Hongsheng, Fasten Steel, Hongyu Metal, and Fasten I&E. Regarding wire rod sold to Walsin for LTAR, we divided Walsin's benefit by its total sales. We then cumulated the benefits Walsin received under the program using the methodology described in the ''Attribution'' section of this preliminary determination. Specifically, we multiplied the total subsidy rate for Walsin by its share of PC strand that was exported to the United States during the POI by Fasten I&E. We then added the resulting apportioned rate to the total subsidy rate calculated for Fasten I&E. On this basis, we calculated a total net subsidy rate of 9.78 percent *ad valorem* for the Xinhua Companies and 5.57 percent *ad valorem* for the Fasten Companies.

B. Provision of Land Use Rights for LTAR to FIEs in Jiangxi and the City of Xinyu

As explained in the Initiation Checklist that accompanied the *Initiation*, we are investigating the extent to which Jiangxi Province has industrial plans in place that support the provision of land to the members of the steel industry for LTAR and whether the City of Xinyu provides land to FIEs for LTAR. *See* Initiation Checklist at 13, of which a public version is available in room 1117 of the CRU of the Commerce Building. The Xinhua Companies are located in Jiangxi Province and the City of Xinyu. The Fasten Companies are not located in Jiangxi Province or the City of Xinyu. Therefore, we are not examining the Fasten Companies under this program. On this basis, we preliminarily determine that the Fasten Companies did not use this program during the POI.

The Xinhua Companies reported that Xinyu acquired three parcels of land from government authorities located in the City of Xinyu. Two purchases occurred in 1996. The other purchase occurred in 2004. As explained above, we are limiting our analysis of subsidies beginning after December 11, 2001, which is the date of the PRC's accession to the WTO. Thus, we are not examining the land Xinyu acquired from government authorities in 1996. Regarding the land Xinyu acquired in 2004, information supplied by the Xinhua Companies indicates that Xinyu acquired the land from the Xinyu Hi-Tech Economic Development Zone Committee, which we find is controlled by City of Xinyu, and that the land purchased is located in a development zone.

The Department determined in *LWS from the PRC* that the provision of land-use rights constitutes the provision of a good within the meaning of section 771(5)(D)(iii) of the Act. *See Laminated Woven Sacks from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) (*LWS from the PRC*), and accompanying Issues and Decision Memorandum (LWS from the PRC Decision Memorandum) at Comment 8. The Department also found that when the provision of land-use rights in an industrial park is limited to a designated geographical region within the seller's (*e.g.*, county's or municipality's) jurisdiction, the provision of the land-use rights is regionally specific under section 771(5A)(D)(iv) of the Act. Id. at Comment 9. In the instant investigation, the Xinyu Hi-Tech Economic Development Zone is a designated area within the area under the jurisdiction of the City of Xinyu. Therefore, consistent with *LWS from the PRC*, we preliminarily determine that Xinyu's purchase of granted land-use rights located within the Xinyu Hi-Tech Economic Development Zone in 2004 gives rise to countervailable subsidies to the extent that the purchases conferred a benefit.

To determine whether the Xinhua Companies received a benefit, we have analyzed potential benchmarks in accordance with 19 CFR 351.511(a). First, we look to whether there are market-determined prices (referred to as tier-one prices in the LTAR regulation) within the country. *See* 19 CFR 351.511(a)(2)(i). In *LWS from the PRC*, the Department determined that ''Chinese land prices are distorted by the significant government role in the market'' and, hence, that tier-one benchmarks do not exist. *See* LWS from the PRC Decision Memorandum at Comment 10. The Department also found that tier-two benchmarks (world market prices that would be available to purchasers in China) are not appropriate. *Id.* at ''Analysis of Programs-Government Provision of Land for Less Than Adequate Remuneration''; *see also* 19 CFR 351.511(a)(2)(ii). Therefore, the Department determined the adequacy of remuneration by reference to tier-three and found that the sale of land-use rights in China was not consistent with market principles because of the overwhelming presence of the government in the land-use rights market and the widespread and documented deviation from the authorized methods of pricing and allocating land. *See* LWS from the PRC Decision Memorandum at Comment 10; *see also* 19 CFR 351.511(a)(2)(iii). We preliminarily determine that in the instant investigation the GOC has not submitted any information that rebuts the conclusions reached by the Department in LWS from the PRC.

For these reasons, we are not able to use Chinese or world market prices as a benchmark. Therefore, we are preliminarily comparing the price that the Xinyu paid for its granted land-use rights with comparable market-based prices for land purchases in a country at a comparable level of economic development that is reasonably proximate to, but outside of, China. Specifically, we are preliminarily comparing the price Xinyu paid to the City of Xinyu in 2004 to the price of certain industrial land in industrial estates, parks, and zones in Thailand in 2004. *See* LWS from the PRC Decision Memorandum at ''Analysis of Programs Government Provision of Land for Less Than Adequate Remuneration.''

To calculate the benefit, we computed the amount that Xinyu would have paid for its granted land-use rights and subtracted the amount Xinyu actually paid for its 2004 purchase. Our comparison indicates that the price Xinyu paid to the government authority in 2004 was less than our land benchmark price and, thus, that Xinyu received a benefit under section 771(5)(E)(iv) of the Act. Next, in accordance with 19 CFR 351.524(b)(2), we examined whether the subsidy amount exceeded 0.5 percent of Xinyu's total consolidated sales in the year of purchase. Our analysis indicates that the subsidy amount exceeded the 0.5 percent threshold. Therefore, we used the discount rate described under the ''Benchmarks and Discount Rates'' section of this preliminary determination to allocate the benefit over the life of the land-use rights contract, which is 50 years.

To calculate the net subsidy rate, we divided the benefit by Xinyu's consolidated sales for the POI. On this basis, we calculated a net subsidy rate of 0.01 percent *ad valorem*.

C. Import Tariff and Value Added Tax Exemptions for FIES and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries

Enacted in 1997, the State Council's Circular on Adjusting Tax Policies on Imported Equipment (Guofa No. 37) (Circular No. 37) exempts both foreign invested enterprises (FIEs) and certain domestic enterprises from the value-added tax (VAT) and tariffs on imported equipment used in their production. The National Development and Reform Commission (NDRC) and the General Administration of Customs are the government agencies responsible for administering this program. The objective of the program is to encourage foreign investment and to introduce foreign advanced technology equipment and industry technology upgrades. Under the program, companies are authorized to receive the exemptions based on their FIE status and the list of assets approved by the GOC at the time their FIE status was approved. Domestic enterprises eligible for the VAT and duty exemptions must have government-approved projects that are in line with the current ''Catalog of Key Industries, Products, and Technologies the Development of Which is Encouraged by the State.'' Whether an FIE or domestic enterprise, only equipment that is not listed in the Catalog on Non-Duty Exemptible Article for Importation is eligible for the VAT and duty exemptions. Different catalogs are prepared for FIEs and domestic enterprises. To receive the exemptions, a qualified enterprise has to show a certificate provided by the NDRC, or its provincial branch, to the customs officials upon importation of the equipment.

Xinhua, Xinyu, and Xingang reported receiving VAT and duty exemptions under this program due to its status as a qualified domestic enterprise. Walsin and Hongyu Metal also reported using this program due to their status as FIEs.

We preliminarily determine that the VAT and duty exemptions received under the program constitute a financial contribution in the form of revenue forgone by the GOC, which provide a benefit to the recipients in the amount of the VAT and tariff savings. *See*

sections 771(5)(D)(ii) and 771(5)(E) of the Act, as well as 19 CFR 351.510(a)(1).

We acknowledge that the pool of companies eligible for benefits is larger than FIEs because some domestic companies may also qualify for the exemptions. However, as explained above and in past CVD proceedings, the domestic enterprises must have government-approved projects which are in line with the current ''Catalog of Key Industries, Products, and Technologies the Development of Which Is Encouraged by the State,'' and must be approved by the State Council, NDRC, or another agency to which authority has been delegated. Therefore, we determine that the addition of certain domestic enterprises as eligible users does not broaden the reach or variety of users sufficiently to render the program non-specific. On this basis, we continue to find the program is specific under section 771(5A)(D)(iii)(I) of the Act. Our determination to countervail this program is consistent with the Department's treatment of this program in past CVD proceedings involving the PRC. *See*, *e.g.*, CFS from the PRC Decision Memorandum at ''VAT and Tariff Exemptions on Imported Equipment'' and Comment 16; *see also* Tires from the PRC Decision Memorandum at ''VAT and Tariff Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment on Encouraged Industries.''

Normally, we treat exemptions from indirect taxes and import charges, such as the VAT and tariff exemptions, as recurring benefits, consistent with 19 CFR 351.524(c)(1) and allocate these benefits only in the year that they were received. However, when an indirect tax or import charge exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department may treat it as a non-recurring benefit and allocate the benefit to the firm over the AUL. *See* 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2). Therefore, we are examining the VAT and tariff exemptions Xinhua received under the program during the POI and prior years.

To calculate the amount of import duties exempted under the program, we multiplied the value of the imported equipment by the import duty rate that would have been levied absent the program. To calculate the amount of VAT exempted under the program, we multiplied the value of the imported equipment (inclusive of import duties) by the VAT rate that would have been levied absent the program. Our derivation of VAT in this calculation is consistent with the Department's approach. *See*, *e.g.*, Line Pipe from the PRC Decision Memorandum at Comment 8: ''. . . we agree with petitioners that VAT is levied on the value of the product inclusive of delivery charges and import duties.'' Next, we summed the amount of duty and VAT exemptions received in each year. For each year, we divided the total grant amount by the corresponding total sales of the respondent for the year in question. Pursuant to 19 CFR 351.524(b)(2), we expensed the grant amounts to the year of receipt for those years in which the grant amount was less than 0.5 percent of the total sales of Xinhua. For those years in which the grant amounts were greater than 0.5 percent of respondent's total sales, we allocated the benefit to the POI using the methodology described under 19 CFR 351.524(d). We derived the long-term discount rate using the methodology described in the ''Subsidies Valuation Information'' section of this memorandum. We then calculated the total benefit under the program by summing all of the benefit amounts allocated to the POI.

To calculate the net subsidy rate for Xinhua, we divided the total benefit by Xinhua's total sales for the POI. To calculate the total net subsidy rate for Xinyu, we divided the total benefit by Xinyu's consolidated sales for the POI. To calculate the total net subsidy rate for Xingang, we divided the total benefit by Xingang's consolidated sales for the POI. On this basis, we calculated a total net subsidy rate of 0.41 percent *ad valorem* for the Xinhua Companies.

Regarding Walsin, we divided the total benefit it received under the program by its total sales. As explained in the ''Attribution'' section, we then cumulated the subsidies received by Walsin under the program with benefits from subsidies received by Fasten I&E. Specifically, we multiplied the total subsidy rate for Walsin by Walsin's share of PC strand that was exported to the United States during the POI by Fasten I&E. We then added the resulting apportioned rate to the total subsidy rate calculated for Fasten I&E. Concerning Hongyu Metal, we divided the benefits it received under the program by the combined total sales of Hongyu Metal and Fasten I&E. On this basis, we calculated a total net subsidy rate of 0.44 percent *ad valorem* for the Fasten Companies.

D. Subsidies for Development of Famous Export Brands and China World Top Brands at Central and Sub-Central Level

The Famous Brand program is administered at the central, provincial, and municipal government level. During the POI, Xinhua reported receiving a grant under the Famous Brand program from the City of Xinyu. Fasten Corp. reported receiving a grant from the Jiangsu Province.

The Notice of Xinyu People's Government on Issuing Administration Rules for Xinyu City Famous Brand Products (Administration Rules) states that firms with the famous brand designation are eligible to receive grants from the City of Xinyu. The Administration Rules state that they were drafted in accordance with the Strategic Work Plan for Industries in Jiangxi Province, as issued by the Jiangxi Provincial Government (1995), document number #86 (Strategic Work Plan). *See* Xinhua's August 4, 2009, questionnaire response at Annex 16. The Strategic Work Plan lists the requirements that applicants must meet in order to receive the famous brand designation. Among those requirements is the following:

> The product should have high market share, high economic benefits, high economic driving force or high ability to earn foreign exchange through export.

Id. Xinhua reported applying for and receiving a grant from the City of Xinyu during the POI pursuant to the Administration Rules.

Based on the information available on the record of the investigation, we preliminarily determine that grants Xinhua received from the City of Xinyu under the famous brand program constitute a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, section 771(5A)(B) of the Act states that an export subsidy is a subsidy that is, in law or in fact, contingent upon export performance, alone or as one of two or more conditions. Based on the information contained in the Strategic Work Plan, we preliminarily determine that grants provided by the City of Xinyu under the famous brands program are contingent on export activity. Therefore, we find that the program is specific under section 771(5A)(B) of the Act.

Concerning Fasten Corp., information in its questionnaire response indicates that it received a grant from Jiangsu Province during the POI that was contingent upon export performance. *See* Fasten Corp.'s August 26, 2009, questionnaire response at 50. Therefore, we find the grant Fasten Corp. received under the Famous Brand program of Jiangsu Province to be countervailable for the same reasons as discussed above.

The grant that Xinhua and Fasten Corp. received during the POI was less than 0.5 percent of their respective total

export sales during the POI.[12] Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI (year of receipt). On this basis, we calculated a total net subsidy rate of 0.03 percent *ad valorem* for the Xinhua Companies and a total net subsidy rate of 0.01 percent *ad valorem* for the Fasten Companies.

E. Implementing Measures on the Supporting Fund for Foreign Trade & Economic Development of Jiangxi Province (Implementing Measures)

Under the Implementing Measures, the Government of Jiangxi Province provides grants to firms with positive growth rates that export between $10 million and $20 million worth of high-tech mechanical or electrical products. *See* Xinhua Questionnaire response at page 104 and Annex 17. Xinhua reported applying for and receiving a grant pursuant to the Implementing Measures during the POI.

Based on the information available on the record of the investigation, we preliminarily determine that the grant Xinhua received from the Government of Jiangxi Province under the Implementing Measures constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, section 771(5A)(B) of the Act states that an export subsidy is a subsidy that is, in law or in fact, contingent upon export performance, alone or as one of two or more conditions. We preliminarily determine that the grant provided by the Government of Jiangxi Province under the Implementing Measures program is contingent on export performance. Therefore, we find that the program is specific under section 771(5A)(B) of the Act.

The grant that Xinhua received during the POI was less than 0.5 percent of its total export sales during the POI. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI. On this basis, we calculated a total net subsidy rate of 0.06 percent *ad valorem* for the Xinhua Companies.

F. Circular on Issuance of Management Methods for Foreign Trade Development Support Fund (Support Fund)

Under the Support Fund, firms with an annual export value of $1,000,000 to $5,000,000 are eligible to receive grants from the Ministry of Foreign Trade and Economic Cooperation. *See* Xinhua Questionnaire response at page 112 and Annex 18. Xinhua reported applying for and receiving a grant pursuant to the Support Fund during the POI.

Based on the information available on the record of the investigation, we preliminarily determine that the grant Xinhua received from the GOC under the Support Fund constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, section 771(5A)(B) of the Act states that an export subsidy is a subsidy that is, in law or in fact, contingent upon export performance, alone or as one of two or more conditions. We preliminarily determine that the grant provided by the GOC under the Support Fund is contingent on export activity. Therefore, we find that the program is specific under section 771(5A)(B) of the Act.

The grant that Xinhua received during the POI was less than 0.5 percent of its total export sales during the POI. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI. On this basis, we calculated a total net subsidy rate of 0.05 percent *ad valorem* for the Xinhua Companies.

G. Export Grants Under Regulations for Export Product Research and Development Fund Management

In its questionnaire response, Xinhua indicated that in 2007 it received a grant from the Ministry of Finance pursuant to the Notice on Publishing Management Fund Used in Research and Development of Export Mechanical and Electrical Products (WJMJCF (2007) (Document Number 527). The legislation indicates that receipt of the grant was contingent upon export performance.

We preliminarily determine that the grant constitutes a financial contribution in the form of a direct transfer of funds and confers a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. We further preliminarily determine that the grant program is specific under section 771(5A)(B) of the Act because receipt of the grant is contingent upon exports.

Because Xinhua received the grant in 2007, we conducted the ''0.5 percent expense test'' as described under 19 CFR 351.524(b)(2). Because the grant that Xinhua received in 2007 was greater than 0.5 percent of its total export sales for 2007, we have allocated the grant over the AUL established for this proceeding. *See* 19 CFR 351.524(b)(1). We allocated the grant to the POI using the methodology described under 19 CFR 351.524(d)(1). We divided the benefit allocated to the POI by Xinhua's total export sales for the POI. On this basis, we calculated a total net subsidy rate of 0.03 percent *ad valorem* for the Xinhua Companies.

H. Rebates for Export and Credit Insurance Fee

In its questionnaire response, Fasten I&E reported that it received grants during the POI from the GOC in connection with export and credit insurance fees it incurred.

We preliminary determine that the grants received by Fasten I&E constitute a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Regarding specificity, we preliminarily determine that the program is contingent upon export activity and therefore is specific under section 771(5A)(B) of the Act.

The grants that Fasten I&E received under the program during the POI were less than 0.5 percent of its total export sales during the POI. Therefore, pursuant to 19 CFR 351.524(b)(2), we expensed the grant amount to the POI (year of receipt). Specifically, we divided the grants amounts received by Fasten I&E by the company's total export sales during the POI. On this basis, we calculated a total net subsidy rate of 0.04 percent *ad valorem* for the Fasten Companies.

I. Income Tax Benefits for FIEs Based on Geographic Location

This program provides tax incentives for enterprises located in special zones. The GOC states that the program was first enacted on June 15, 1988, pursuant to the Provisional Rules on Exemption and Reduction of Corporate Income Tax and Business Tax of FIEs in Coastal Economic Zones, as issued by the Ministry of Finance. The GOC states that the program was continued on July 1, 1991, pursuant to Article 30 of the FIE Tax Law. Specifically, pursuant to Article 7 of the FIE Tax Law for productive FIEs established in a coastal economic development zone, special economic zone, or economic technology development zone, the applicable enterprise income tax rate is 15 or 24 percent, depending on the zones in which productive FIE are located, as opposed to the standard 30 percent income tax rate.

We preliminarily determine that this program constitutes a financial contribution in the form of revenue forgone and confers a benefit equal to the amount of tax savings within the meaning of sections 771(5)(D)(ii) and 771(5)(E) of the Act. Because eligibility under this program is limited to firms located within designated geographical

[12] As explained in the ''Attribution'' section, we used the total consolidated export sales of Fasten Corp. when conducting the 0.5 percent test described under 19 CFR 351.524(b)(2).

regions, we preliminarily determine that the program is specific within the meaning of section 771(5A)(D)(iv) of the Act. We note that the Department has found this program countervailable in previous CVD proceedings. *See*, *e.g.*, CFS from the PRC Decision Memorandum at ''Reduced Income Tax Rates for FIEs Based on Location.''

Under 19 CFR 351.509(b), in the case of an income tax reduction program, the Department normally will consider the benefit as having been received on the date on which the recipient firm would otherwise have had to pay the taxes associated with the reduction. Normally, this date is the date on which the firm in question filed its tax return.

Fasten Steel, Walsin, and Hongyu Metal received an income tax reduction under the program with respect to the tax returns they filed during the POI. Therefore, we determine that these companies received countervailable benefits under this program during the POI. No other mandatory respondent reported receiving benefits under this program during the POI.

In accordance with 19 CFR 351.509(a), to calculate the benefit, we subtracted the income tax rates the companies paid under the program from the income tax rate that the firms would have paid absent the program and multiplied the difference by the firms' taxable income.

To calculate the net subsidy rate for Fasten Steel, we divided the benefit by the combined total sales of Fasten Steel and Fasten I&E for the POI. To calculate the net subsidy rate for Walsin, we divided the total benefit by Walsin's total sales for the POI. Next, as explained in the ''Attribution'' section, we multiplied the total subsidy rate for Walsin by its respective share of PC strand that was exported to the United States during the POI by Fasten I&E. We then added the resulting apportioned rate to the total subsidy rate calculated for Fasten I&E. Regarding Hongyu Metal, we divided the benefit it received under the program by the combined total sales of Hongyu Metal and Fasten I&E. On this basis, we calculated a total net subsidy rate of 0.09 percent *ad valorem* for the Fasten Companies.

The Fasten Companies claim in their September 22, 2009 supplemental questionnaire response that the GOC terminated the Tax Benefits for FIEs Based on Geographic Location program. We find that we currently do not have sufficient information to determination whether this program was terminated. We will continue to examine the Fasten Companies' claim that this program has been terminated.

J. Two Free, Three Half Tax Exemptions for FIEs

The Foreign Invested Enterprise and Foreign Enterprise Income Tax Law (FIE Tax Law), enacted in 1991, established the tax guidelines and regulations for FIEs in the PRC. The intent of this law is to attract foreign businesses to the PRC. According to Article 8 of the FIE Tax Law, FIEs that are ''productive'' and scheduled to operate not less than 10 years are exempt from income tax in their first two profitable years and pay half of their applicable tax rate for the following three years. FIEs are deemed ''productive'' if they qualify under Article 72 of the Detailed Implementation Rules of the Income Tax Law of the People's Republic of China of Foreign Investment Enterprises and Foreign Enterprises. Hongyu Metal received benefits under this program that are attributable to the POI.

We determine that the exemption or reduction in the income tax paid by ''productive'' FIEs under this program confers a countervailable subsidy. The exemption/reduction is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipients in the amount of the tax savings. *See* sections 771(5)(D)(ii) and 771(5)(E) of the Act and 19 CFR 351.509(a)(1). We further determine that the exemption/reduction afforded by this program is limited as a matter of law to certain enterprises, ''productive'' FIEs, and, hence, is specific under section 71(5A)(D)(i) of the Act. Our approach in this regard is consistent with the Department's practice. *See* CFS from the PRC Decision Memorandum at ''Two Free/Free Half Program.''

To calculate the benefit from this program, we compared the tax rate paid to the rate that otherwise would have been paid by Hongyu Metal and multiplied the difference by Hongyu Metal's taxable income. We attributed the benefit received to the combined total sales of Hongyu Metal and Fasten I&E. On this basis, we preliminarily determine a countervailable subsidy of 0.03 percent *ad valorem* for the Fasten Companies.

K. Local Tax Exemptions and Reduction Programs for ''Productive:'' FIEs

Pursuant to Article 9 of the FIE Tax Law and Article 71 of Decree 85 of the Council of 1991, local provinces can establish eligibility criteria and administer the application process for local income tax reductions or exemptions for FIEs, effectively extending the tax exemptions or reductions that are allowed to FIEs by the national Two Free, Three Half program. In its questionnaire response, Hongyu Metal indicated that it received benefits under this program and its tax return filed during the POI confirms it benefitted from this program.

We preliminarily determine that the exemption or reduction in the local income tax paid by ''productive'' FIEs under this program confers a countervailable subsidy. The exemption/reduction is a financial contribution in the form of revenue forgone by the government and it provides a benefit to the recipients in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also preliminarily determine that the exemption/reduction afforded by this program is limited as a matter of law to certain enterprises, ''productive'' FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act. The Department has also found this program to be countervailable in prior CVD proceedings involving the PRC. *See* Tires from the PRC Decision Memorandum at ''Tax Subsidies to FIEs in Specially Designated Geographic Areas, and Local Income Tax Exemption and Reduction Programs for Productive' FIEs''; *see also* CFS from the PRC Decision Memorandum at ''Local Income Tax Exemption and Reduction Program for ''Productive'' FIEs.''

To calculate the benefit to Hongyu Metal from this program, we treated the income tax exemption claimed by Hongyu Metal as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of tax savings, we compared the tax rate paid to the rate that otherwise would have been paid by Hongyu Metal (the standard local rate is 3 percent) and multiplied the difference by Hongyu Metal's taxable income. We attributed the benefit received to the combined total sales of Hongyu Metal and Fasten I&E. On this basis, we preliminarily determine a countervailable subsidy of 0.01 percent *ad valorem* for the Fasten Companies.

L. Federal Provision of Electricity for LTAR[13]

For the reasons explained, supra, at ''Adverse Facts Available,'' we are basing our determination regarding the government's provision of electricity programs on AFA. Section 776(b) of the Act authorizes the Department to use as AFA information derived from the

[13] Our preliminary findings regarding the federal provision of electricity for LTAR encompasses other electricity for LTAR programs referenced in the *Initiation*.

petition, the final determination, a previous administrative review, or other information placed on the record. In a CVD case, the Department requires information from both the government of the country whose merchandise is under the order and the foreign producers and exporters. When the government fails to provide requested information concerning alleged subsidy programs, the Department, as AFA, typically finds that a financial contribution exists under the alleged program and that the program is specific. For example in *CTL Plate from Korea*, the Department, relying on adverse inferences, determined that the Government of Korea directed credit to the steel industry in a manner that constituted a financial contribution and was specific to the steel industry within the meaning of sections 771(5)(D)(i) and 771(5A)(D)(iii) of the Act, respectively. *See Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 71 FR 11397, 11399 (March 7, 2006) (*Preliminary Results of CTL Plate from Korea*) (unchanged in the *Notice of Final Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 71 FR 38861 (July 10, 2006) (*CTL Plate from Korea*). Similarly, in this instance, because the GOC failed to provide certain information concerning the Provision of Electricity for Less than Adequate Remuneration program, the Department, as AFA, determines that the program confers a financial contribution and is specific pursuant to sections 771(5)(D) and 771(5A) of the Act, respectively.

Where possible, the Department will normally rely on the responsive producer's or exporter's records to determine the existence and amount of the benefit to the extent that those records are useable and verifiable. For example, in prior investigations including *LWTP from the PRC* and *Racks from the PRC*, the Department determined the existence and amount of the benefit attributable to the provision of electricity for LTAR by comparing the rates paid by the mandatory respondents for electricity to the higher, benchmark electricity rates. In this investigation, however, while respondents provided some information with respect to their electricity usage and payments, we do not have on the record information that could meaningfully be compared to the appropriate benchmarks. Therefore, we are relying on the highest subsidy rate calculated for the same or similar program in a China CVD investigation. Specifically, we have determined that, for the purposes of this preliminary determination, the rate found for the provision of electricity for LTAR in the *LWTP from the PRC* of 0.07 percent *ad valorem* is appropriate. We find that this rate is both reliable and relevant as it was calculated in prior final CVD determination for a program of the same type.

On this basis, we calculated a net subsidy rate of 0.07 percent *ad valorem* for the Xinhua Companies and a net subsidy rate of 0.07 percent *ad valorem* for the Fasten Companies.

M. Grants Under the Science and Technology Program of Jiangsu Province

The Fasten Companies reported that Fasten Corp. received a grant during the POI under the science and technology program of Jiangsu province. The Jiangsu Department of Science and Technology and the Jiangsu Science Federation administer the program pursuant to the Administrative Measures on Jiangsu Sci-Tech Public Service Platform (SUKEJI (2006) No. 102; SUCAIJIAO (2006) (No. 22)).

We find that the grant received by Fasten Corp. constitutes a financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. The information in the legislation indicates that the program is not limited to a particular enterprise or industry. Therefore, we find that the program is not *de jure* specific as described under section 771(5A)(D)(i) of the Act. We further find that the legislation governing the program does not make eligibility contingent on export activity as discussed under section 771(5A)(B) of the Act. However, as discussed in the ''Adverse Facts Available'' section, the GOC failed to provide information for this program that is necessary for the Department to conduct its subsidy analysis as it pertains to the issue of *de facto* specificity, as described under section 771(5A)(D)(iii) of the Act. Namely, the GOC failed to provide, as requested, information concerning the manner in which the various grants were distributed across firms and industries. Therefore, we are assuming that the grant programs are specific under section 771(5A)(D)(iii) of the Act.

We conducted the ''0.5 percent expense test'' as described under 19 CFR 351.524(b)(2). Because the grant amount was less than 0.5 percent of the total consolidated sales of the Fasten Corp., we expense the grant to the year of receipt, which is the POI. On this basis, we calculated a net subsidy rate of 0.01 percent *ad valorem* for the Fasten Companies.

N. Federal, Provincial, and Municipal Level Policy Lending to Producers of PC Strand

The Department is examining whether PC strand producers receive preferential lending through state-owned commercial or policy banks. Record evidence demonstrates that the GOC, particularly at the provincial and municipal levels of government, has highlighted and advocated the development of the PC strand industry and the mandatory respondents in this investigation. Moreover, GOC directives in this regard include financing support. Thus, we preliminarily determine that loans received by the PC strand industry from state-owned commercial banks (SOCBs) and policy banks were made pursuant to government directives. The Fasten Companies and the Xinhua Companies had loans outstanding during the POI.

At the national level, in the Steel and Iron Industry Development Policy (July 2005) at Article 16, the GOC states that it will '' enhance the R&D, design, and manufacture level in relation to the key technology, equipment and facilities for the Chinese steel industry.'' To accomplish this, the GOC states it will provide support to key steel projects relying on domestically produced and newly developed equipment and facilities, through tax and interest assistance, and scientific research expenditures. *See* GOC's August 26, 2009, questionnaire response at Exhibit 5, page 6.

Turning to the provincial and municipal levels, the excerpts below demonstrate the support these governments have shown for the PC strand industry and the respondents in this investigation.

Outline of Eleventh Five-year Program (Guihua) for Industrial Structural Adjustment in Jiangsu: ''Emphasize the development of fine metal products such as high-strength pc strand, automobile tire steel cords, and non-ferrous deep processed products.'' *See* GOC's August 26, 2009, questionnaire response at Exhibit 16, page 9.

Outline of the Development Program (Guihua) for Metallurgical Industries within the Eleventh Five-year Period in Jiangsu: ''In the metal product industry of our province, a large set of metal products enterprises have been formed with Fasten Group as vanguard and with Jinyang Group Co. Ltd., Jiangsu Xingda Steel Tyre Cord Co., Ltd., and Nantong Steel Rope Factory etc. as backbone enterprises.'' *See* GOC's

August 26, 2009, questionnaire response at Exhibit 22, at page 2.

Special Program (Guihua) on Adjustment & Development of Iron and Steel Industries during the Eleventh Five-year Period in Jiangsu: ''We shall strengthen the guidance of industrial policies, the support from credit policy and the regulation by fiscal and taxation policies to guide the direction of investments.'' *See* GOC's August 26, 2009, questionnaire response at Exhibit 23 pages 4–5.

Special Program (Guihua) on Adjustment & Development of Iron and Steel Industries during the Eleventh Five-year Period in Jiangsu: ''Improve the funding ability and enlarge the capital accumulation by the ways of enlarging credit granting, increasing loans,...'' *See* GOC's August 26, 2009, questionnaire response at Exhibit 23, page 13.

Eleventh Five-year Plan (Guihua) for Structural Adjustjment and Development of the Jiangxi Metallurgical (Iron & Steel) Industries: ''We shall vigorously boost the construction of competitive sheet material and wire rod relied on Xinyu Iron and Steel '' GOC's August 26, 2009, questionnaire response at Exhibit 18, page 9.

Outline of the Tenth Five-year Plan (Jihua) of Social and Economic Development on Xinyu Municipality: ''For the iron and steel industry, we should, by taking Xinyu Iron & Steel Co., Ltd., as the flagship, focus on improving the conditions of key equipments, optimizing the process and technological structure, reinforcing the basic management, adjusting the product structure, and expanding the production capacity.'' *See* GOC's August 26, 2009, questionnaire response at Exhibit 14, page 14.

Development Program (Guihua) of Xinyu Metallurgical (Iron & Steel) Industries (2008–2012): '' exerting the efforts to support Xinyu Iron & Steel Co., Ltd. to increase capital stock and raise funds for project construction '' See GOC's August 26, 2009, questionnaire response at Exhibit 20, page 13.

Development Program (Guihua) of Xinyu Metallurgical (Iron & Steel) Industries (2008–2012): '' fourthly, suggesting the provincial government to carry out the favorable policies concerning finance and tax revenue for the metallurgy (steel and iron) enterprises . . .'' *See* GOC's August 26, 2009, questionnaire response at Exhibit 20, page 16.

In addition, in *Tires from the PRC* and the *Preliminary Determination of OCTG from the PRC*, the Department found that in 2005, the GOC implemented the Decision of the State Council on Promulgating the ''Interim Provisions on Promoting Industrial Structure Adjustment'' for Implementation (No. 40 (2005)) (Decision 40) in order to achieve the objectives of the Eleventh Five-Year Plan. Decision 40 references the Directory Catalogue on Readjustment of Industrial Structure (Industrial Catalogue), which outlines the projects which the GOC deems ''encouraged,'' ''restricted,'' and ''eliminated,'' and describes how these projects will be considered under government policies. For ''encouraged'' projects, Decision 40 outlines several support options available to the government, including financing. *See* Tires from the PRC Decision Memorandum at Comment E.1; *see also Certain Oil Country Tubular Goods From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination*, 74 FR 47210, 47217 (September 15, 2009) (*Preliminary Determination of OCTG from the PRC*). We are placing these additional documents on the record of this investigation for further consideration and comment. Memorandum to File from Eric B. Greynolds, Program Manager, Office 3, Operations, ''Additional Documents Placed on the Record,'' (October 26, 2009).

Finally, we examined the loan documentation provided by the GOC and noted language for certain loans which also reflects the banks' conclusions that lending to this industry is consistent with the GOC's industrial policy goals. As this information is business proprietary, it is discussed in a separate memorandum. *See* Memorandum to the File from Eric B. Greynolds, Program Manager, Office 3, Operations, ''Excerpts from Internal Loan Documents of Mandatory Respondents,'' (October 26, 2009), of which the public version is on file in the CRU of the Commerce Building.

In response to our questions about the above-cited excerpts, the GOC has stated that the language does not specify a particular government action to achieve the particular goal or that the statement reflects only a proposal. However, taken together, these plans clearly indicate state support and, specifically, credit or financing support for the producers of PC strand. In these circumstances, it is the Department's policy to find a policy lending program that is specific to the industry and, moreover, based on the analysis developed in *CFS from the PRC*, that national and local government control over the SOCBs results in the loans being a financial contribution by the GOC. *See* Citric Acid from the PRC Decision Memorandum at Comment 5; *see also* CFS from the PRC Decision Memorandum at Comment 8.

Therefore, on the basis of the record information described above, we preliminarily determine that the GOC has a policy in place to encourage the development of production of PC strand through policy lending. Therefore, the loans to PC strand producers from Policy Banks and SOCBs in the PRC constitute a direct financial contribution from the government, pursuant to section 771(5)(D)(i) of the Act, and they provide a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans (*see* section 771(5)(e)(2)). Finally, we determine that the loans are *de jure* specific because of the GOC's policy, as illustrated in the government plans and directives, to encourage and support the growth and development of the PC strand industry.

To calculate the benefit under the policy lending program, we compared the amount of interest the mandatory respondents paid on their outstanding loans to the amount they would have paid on comparable commercial loans. *See* 19 CFR 351.505(c). In conducting this comparison, we used the interest rates described in the ''Subsidies Valuation - Benchmarks and Discount Rates'' section above.

We have attributed benefits under this program to total sales. In calculating the net subsidy rate for the mandatory respondents, we followed the methodology described in the attribution sections. Specifically, for the Fasten Companies, we attributed subsidies received by the Fasten Corp. to its total consolidated sales. We attributed subsidies received by Fasten I&E to its total sales. We attributed subsidies received by Hongsheng to the combined total sales of Hongsheng, Fasten Steel and Hongyu Metal. We attributed subsidies received by Fasten Steel to the combined total sales of Fasten Steel and Fasten I&E. We attributed subsidies received by Hongyu Metal to the combined sales of Hongyu Metal and Fasten I&E. We attributed subsidies received by Walsin by its total sales. We then apportioned the resulting subsidy rate by Walsin's share of PC strand that was exported to the United States during the POI by Fasten I&E.[14] For the Xinhua Companies, we

[14] In deriving the share of PC strand produced by Fasten Steel and Walsin that was exported by Fasten Steel I&E during the POI, we did not include the sales volume of Company X.

attributed subsidies received by Xingang to its total consolidated sales. We attributed subsidies received by Xinyu to its total consolidated sales. We attributed subsidies received by Xinhua to its total sales. On this basis, we calculated a total net subsidy rate of 1.26 percent ad valorem for the Fasten Companies and 0.58 percent ad valorem for the Xinhua Companies.

O. Income Tax Credits for Purchases of Domestically-Produced Equipment by Domestically Owned Firms

Xingang reported receiving an income tax deduction on the tax return it filed during the POI under the Income Tax Credits on Purchases of Domestically Produced Equipment by Domestically Owned Companies program. According to the GOC, this program was established on July 1, 1999 pursuant to ''Provisional Measures on Enterprise Income Tax Credit for Investment in Domestically Produced Equipment for Technology Renovation Projects.'' The GOC states that under the program a domestically invested company may claim tax credits on the purchase of domestic equipment if the project is compatible with the industrial policies of the GOC. Specifically, a tax credit up to 40 percent of the purchase price of the domestic equipment may apply to the incremental increase in tax liability from the previous year. The GOC further states that pursuant to the ''Circular on Relevant Issues with Respect to Ceasing Implementing of Income Tax Credit to Purchase of Domestically Produced Equipment by Enterprises,'' the program was terminated effective January 1, 2008.

We determine that the income tax deductions provided under the program constitute a financial contribution, in the form of revenue forgone, and a benefit, in an amount equal to the tax savings, under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. We further find that this program is specific under section 771(5A)(A) of the Act because the receipt of the tax savings is contingent upon the use of domestic over imported goods. We note that the Department found this program countervailable in *Line Pipe from* the PRC. *See* Line Pipe from the PRC Decision Memorandum at ''Income Tax Credits on Purchases of Domestically-Produced Equipment by Domestically Owned Companies.''

To calculate the net subsidy rate, we divided the benefit by the combined 2008 sales of Xingang. On this basis, we calculated a net countervailable subsidy rate of 0.41 percent ad valorem for the Xingang Companies.

II. Programs Preliminarily Determined Not To Provide Benefits During the POI

Based on our analysis of the programs listed below, the benefits to respondents during the POI under the programs listed below are less than 0.005 percent *ad valorem* and are not considered numerically significant, are not allocable to the POI, or have been found to be tied to non-subject merchandise. Consistent with our past practice, we therefore have not included these programs in our preliminary net countervailing duty rate calculations. *See*, *e.g.*, CFS from the PRC Decision Memorandum at ''Analysis of Programs, Programs Determined Not To Have Been Used or Not To Have Provided Benefits During the POI for GE,'' and *Final Results of Countervailing Duty Administrative Review: Low Enriched Uranium from France*, 70 FR 39998 (July 12, 2005), and accompanying Issues and Decision Memorandum at ''Purchases at Prices that Constitute More than Adequate Remuneration,'' (''*Uranium from France*'') (citing *Notice of Final Results of Countervailing Duty Administrative Review and Rescission of Certain Company-Specific Reviews: Certain Softwood Lumber Products From Canada*, 69 FR 75917 (December 20, 2004), and accompanying Issues and Decision Memorandum at ''Other Programs Determined to Confer Subsidies''). For information concerning the programs we have preliminarily determined to be tied to non-subject merchandise, *see* the Memorandum to the File from Eric B. Greynolds, Program Manager, Office 3, Operations (October 26, 2009), a public document on file in the CRU of the Commerce building.

A. Programs Used by Xinyu

1. Jiangxi Provincial Special Science Fund: Heavy Plate Production Line & Research on Technical Application
2. Jiangxi Provincial Special Science Fund: Gas desulfurization of coke oven, development and application of tar purificaiton technology
3. Xinyu Municipal Science Planning Program, 3-Items Funds: Research and development of steel products, process and technology
4. Xinyu Municipal Science Planning Program, 3-Items Funds: Development and application of power generation process with residual heat from boiler
5. Jiangxi Provincial Science and Technology Awards: Technology Advancement Award
6. Xinyu Municipal Science and Technology Awards: Technology Advancement Award
7. Xinyu Municipal Science and Technology Awards: Technology Progress Award for BOF-quality hard-line 35–75.65 steel
8. Xinyu City Intellectual Property Research Program: Strategic Research Council for Intellectual Property of Xinyu Iron and Steel Industry
9. 2008 National Science and Technology Support Fund: Research on Controlled Cooling after Rolling Production Technology of High-Strength Electricity Power Use Special Angle Steel
10. Jiangxi Provincial Science And Technology Support Fund: Development And Application For The Comprehensive Utilization Of Industrial Waste In Metallurgical Industry
11. Jiangxi Provincial Wall Material Renovation Special Fund: Special Subsidies For New Wall Materials
l2. Jiangzi Provincial Bulk Cement Special Fund: Transformation Of Bulk Cement Facilities And Equipment
13. Xinyu City ''Final Battle to Complete Industry GGP 50 Billion Award''
14. Jiangxi Provincial Environmental Protection Special Fund: Transformation Grant HPF Gas Desulfurization System
15. Jiangxi Provincial Environmental Protection Special Fund: Reconstruction project grants for transportation system of good mine and tailings
16. Jiangxi Provincial Environmental Protection Special Fund: Project Grants For Desulfuration By Wet Process Of HPF Coal Oven Gas
17. Jiangxi Provincial Environmental Protection Special Fund: Grant To Converter One-Time De-Dusting
18. Tertiary Technological Renovation Grants For Discounts
19. Xinyu Municipal Environmental Protection Special Fund: Grants For Pollution Control Facilities And Construction
20. National Environmental Protection And Resource Saving Program: Grants For The Optimization Of Energy Systems
21. Jiangxi Provincial Energy Saving Special Fund Program: Grants For Energy-Saving And Emissions-Reducing Coke Oven 1580mm Sheet Items
22. Treasury Bond Fund Grant (Also referred to as Resource Saving and Environmental Protection Program)
23. Interest Subsidy Grant Under Fund for Technology Renovation Project Loans (Also referred to as

Discount Fund Provided In Accordance With Cai Qi (2006) No. 426 Decree Issued By The Ministry Of Finance)
24. Measures Regarding the Management of the Interest Subsidy Fund for Technology Renovation Project Loans
25. Fenyi County Government Incentives

B. Programs Used by Xingang

1. Stamp Exemption on Share Transfers Under Non-Tradable Share Reform
2. Various Tax Benefits
3. Various VAT Deductions

C. Programs Used by Fasten Corp.

1. Assistance for Technology Innovation - R&D Project
2. Assistance for Optimizing the Structure of Import/Export of High-Tech Products
3. Assistance for the Development of Company Owned Brand
4. Wuxi Tengfei Award
5. Award for Provincial R&D Platform - Famous Brands
6. Award for Provincial R&D Platform
7. National Science & Technology Assistance Program
8. Award for Wuxi Municipal Level R&D Center
9. Intellectual Property Fund of Jiangsu Province
10. Natural Science Fund of Jiangsu Province
11. Important Structural Adjustment Program of Jiangsu Province
12. Technology Innovation Program of Wuxi

D. Fasten I&E

1. Subsidy on VAT Tax Refund for Exports
2. Rebates of Antidumping Legal fees

E. Various Firms

1. Provision of Water for LTAR
2. Export Incentive Payments Characterized as ''VAT Rebates''

The Department's regulations state that in the case of an exemption upon export of indirect taxes, a benefit exists only to the extent that the Department determines that the amount exempted ''exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption.'' *See* 19 CFR 351.517(a); *see also* 19 CFR 351.102 (for a definition of ''indirect tax''). To determine whether the GOC provided a benefit under this program, we compared the VAT exemption upon export to the VAT levied with respect to the production and distribution of like products when sold for domestic consumption. Information from the GOC indicates that the VAT levied on PC strand sales in the domestic market (17 percent) exceeded the amount of VAT exempted upon the export of PC strand (5 percent). Thus, we preliminarily determine that the VAT exempted upon the export of PC strand did not confer a countervailable benefit.

III. Programs Preliminarily Determined To Be Not Used

A. Treasury Bond Loans
B. Provision of Electricity and Water at LTAR for FIEs and ''Technologically Advanced'' Enterprises by Jiangsu Province
C. Import Tariff and VAT Refunds to Promote the Development of Equipment Manufacturing in China
D. State Key Technology Fund
E. Exemptions for SOEs from Distributing Dividends to the State
F. Grants to Loss-Making SOEs
G. Income Tax Exemptions for Export-Oriented FIEs
H. Local Income Tax Exemption and Reduction Programs for ''Productive FIEs
I. Preferential Tax Programs for Foreign-Invested Enterprises Recognized as High or New Technology Enterprises
J. VAT Refunds for FIE's Purchasing Domestically-Produced Equipment
K. Honorable Enterprise Program
L. Preferential Loans for Key Projects and Technologies
M. Reduction in or exemption from Fixed Assets Investment Orientation Regulatory Tax
N. Preferential Loans for SOEs

IV. Programs Preliminarily Determined Not To Exist

A. Income Tax Exemption for Investment in Domestic Technological Renovation

V. Programs for Which We Need More Information

A. Deed Tax Exemption for SOEs Undergoing Mergers or Restructurings
B. Elimination of Backward Production Capacity Award Fund
C. Heavy and Middle Plate Project Loan Program
D. Reward for Export Program
E. Pollution Charge Refund Program
F. Tax Revenue Return Program

Verification

In accordance with section 782(i)(1) of the Act, we intend to verify the information submitted by the Xinhua and Fasten Companies, and the GOC prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated individual rates for subject merchandise produced and exported by the entities identified below. We preliminarily determine the total estimated net countervailable subsidy rate to be:

Producer/Exporter	Net Subsidy Rate
Xinhua Metal Products Company (Xinhua), Xinyu Iron and Steel Joint Stock Limited Company (Xinyu), and Xinyu Iron and Steel Limited Liability Company (Xingang) (Collectively the Xinhua Companies)	12.06 percent *ad valorem*
Fasten Group Corporation (Fasten Corp.), Fasten Group Import & Export Co., Ltd. (Fasten I&E), Jiangyin Hongsheng Co. Ltd. (Hongsheng), Jiangyin Fasten Steel (Fasten Steel), Jiangyin Hongyu Metal Products Co., Ltd. (Hongyu Metal), and Jiangyin Walsin Steel Cable Co., Ltd. (Walsin) (Collectively, the Fasten Companies)	7.53 percent *ad valorem*
All Others	9.80 percent *ad valorem*

Sections 703(d) and 705(c)(5)(A) of the Act state that for companies not investigated, we will determine an all-others rate by weighting the individual company subsidy rate of each of the companies investigated by each company's exports of the subject merchandise to the United States. However, the all-others rate may not include zero and *de minimis* net subsidy rates, or any rates based solely on the facts available.

Notwithstanding the language of section 705(c)(1)(B)(i)(I) of the Act, we have not calculated the all-others rate by weight averaging the rates of the Xinhua and Fasten Companies because doing so risks disclosure of proprietary information. Therefore, for the all-others rate, we have calculated a simple average of the two responding firms' rates.

In accordance with sections 703(d) (1)(B) and (2) of the Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all

entries of the subject merchandise from the PRC that are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated above.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b) (2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Disclosure and Public Comment

In accordance with 19 CFR 351.224(b), the Department will disclose to the parties the calculations for this preliminary determination within five days of its announcement. Case briefs for this investigation must be submitted no later than one week after the issuance of the last verification report. *See* 19 CFR 351.309(c) (for a further discussion of case briefs). Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the deadline for submission of case briefs. *See* 19 CFR 351.309(d). A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

In accordance with 19 CFR 351.310(c), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties will be notified of the schedule for the hearing and parties should confirm the time, date, and place of the hearing 48 hours before the scheduled time. Requests for a public hearing should contain: (1) party's name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.221(b)(4).

Dated: October 26, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing and Duty Operations.

[FR Doc. E9–26322 Filed 10–30–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB47

Fishing Capacity Reduction Program for the Longline Catcher Processor Subsector of the Bering Sea and Aleutian Islands Non-Pollock Groundfish Fishery

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

ACTION: Notice of fee rate adjustment.

SUMMARY: NMFS issues this notice to decrease the fee rate for the non-pollock groundfish fishery to repay the $35,000,000 reduction loan to finance the Non-Pollock groundfish fishing capacity reduction program.

DATES: The non-pollock groundfish program fee rate decrease will begin on January 1, 2010.

ADDRESSES: Send questions about this notice to Leo Erwin, Chief, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3282.

FOR FURTHER INFORMATION CONTACT: Leo Erwin, (301) 713–2390.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 312(b)–(e) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(b)through (e)) generally authorizes fishing capacity reduction programs. In particular, section 312(d) authorizes industry fee systems for repaying reduction loans which finance reduction program costs.

Subpart L of 50 CFR part 600 is the framework rule generally implementing section 312(b)–(e).

Sections 1111 and 1112 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1279f and 1279g) generally authorizes reduction loans.

Enacted on December 8, 2004, section 219, Title II, of FY 2005 Appropriations Act, Public Law 104–447 (Act) authorizes a fishing capacity reduction program implementing capacity reduction plans submitted to NMFS by catcher processor subsectors of the Bering Sea and Aleutian Islands (''BSAI'') non-pollock groundfish fishery (''reduction fishery'')as set forth in the Act.

The longline catcher processor subsector (the ''Longline Subsector'') is among the catcher processor subsectors eligible to submit to NMFS a capacity reduction plan under the terms of the Act.

The longline subsector non-pollock groundfish reduction program's objective was to reduce the number of vessels and permits endorsed for longline subsector of the non-pollock groundfish fishery.

All post-reduction fish landings from the reduction fishery are subject to the longline subsector non-pollock groundfish program's fee.

NMFS proposed the implementing notice on August 11, 2006 (71 FR 46364)and published the final notice on September 29, 2006 (71 FR 57696).

NMFS allocated the $35,000,000 reduction loan to the reduction fishery and is repayable by fees from the fishery.

NMFS published in the **Federal Register** on September 24, 2007 (72 FR 54219), the final rule to implement the industry fee system for repaying the non-pollock groundfish program's reduction loan and established October 24, 2007 as the effective date when fee collection and loan repayment began. The regulations implementing the program are located at § 600.1012 of 50 CFR part 600's subpart M.

II. Purpose

The purpose of this notice is to adjust, in accordance with the framework rule's § 600.1013(b), the fee rate for the reduction fishery. Section 600.1013(b) directs NMFS to recalculate the fee rate that will be reasonably necessary to ensure reduction loan repayment within the specified 30 year term.

NMFS has determined for the reduction fishery that the current fee rate of $0.02 per pound is more than needed to service the loan. Therefore,

NMFS is decreasing the fee rate to $0.016 per pound which NMFS has determined is sufficient to ensure timely loan repayment.

To provide more accessible services, streamline collections, and save taxpayer dollars, subsector members may disburse collected fee deposits to NMFS by using a secure Federal system on the Internet known as *Pay.gov*. *Pay.gov* enables subsector members to use their checking accounts to electronically disburse their collected fee deposits to NMFS. Subsector members who have access to the Internet should consider using this quick and easy collected fee disbursement method. Subsector members may access *Pay.gov* by going directly to Pay.gov's Federal website at: *http://www.pay.gov/paygov/*.

Subsector members who do not have access to the Internet or who simply do not wish to use the *Pay.gov* electronic system, may continue to disburse their collected fee deposits to us by sending their checks to our lockbox. Our lockbox's address is:

NOAA Fisheries Longline Catcher Processor Non-pollock Buyback

P. O. Box 979028

St. Louis, MO 63197—9000

Subsector members must not forget to include with their disbursements the fee collection report applicable to each disbursement. The fee collection report tells NMFS how much of the disbursement it must apply to the reduction fishery loan. Subsector members using *Pay.gov* will find an electronic fee collection report form to receive information and accompany electronic disbursements. Subsector members who do not use *Pay.gov* must include a hard copy fee collection report with each of their disbursements. Subsector members not using *Pay.gov* may also access the NMFS website for an Excel spreadsheet version of the fee collection report at: *http://www.nmfs.noaa.gov/mb/financial__services/buyback.htm.*

III. Notice

The new fee rate for the Non-Pollock Groundfish fishery will begin on January 1, 2010.

From and after this date, all subsector members paying fees on the non-pollock groundfish fishery shall begin paying non-pollock groundfish fishery program fees at the revised rate.

Fee collection and submission shall follow previously established methods in § 600.1013 of the framework rule and in the final fee rule published in the **Federal Register** on September 24, 2007 (72 FR 54219).

The revised fees applicable to the non-pollock groundfish program's reduction fishery is as follows:

FISHERY	CURRENT FEE RATE	NEW FEE RATE
Non-Pollock Groundfish	$0.02 per pound	$0.016 per pound

Authority: The authority for this action is Pub. L. 108–447, 16 U.S.C. 1861a (b-e), and 50 CFR 600.1000 *et seq.*

Dated: October 27, 2009

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. E9–26306 Filed 10–30–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (''Sunset'') Review

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

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating a five-year review (''Sunset Review'') of the antidumping and countervailing duty orders listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers the same orders.

DATES: *Effective Date:* November 2, 2009.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission, at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998).

Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating the Sunset Review of the following antidumping and countervailing duty orders:

DOC case No.	ITC case No.	Country	Product	Department contact
A–533–838	731–TA–1061	India	Carbazole Violet Pigment 23	Dana Mermelstein (202) 482–1391
A–570–892	731–TA–1060	PRC	Carbazole Violet Pigment 23	Dana Mermelstein (202) 482–1391
A–570–891	731–TA–1059	PRC	Hand Trucks	Dana Mermelstein (202) 482–1391
A–570–501	731–TA–244	PRC	Natural Bristle Paint Brushes & Brush Heads (3rd Review).	Jennifer Moats (202) 482–5047
C–533–839	701–TA–437	India	Carbazole Violet Pigment 23	Dana Mermelstein (202) 482–1391

Filing Information

As a courtesy, we are making information related to Sunset proceedings, including copies of the pertinent statute and the Department's regulations, the Department schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's Internet Web site at the following address: *http://ia.ita.doc.gov/sunset/.* All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303.

Pursuant to 19 CFR 351.103 (c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties defined in section 771(9)(C), (D), (E), (F), and (G) of the Tariff Act of 1930, as amended (the ''Act''), and 19 CFR 351.102(b)) wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review. *See* 19 CFR 351.218(d)(1)(iii).

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in the Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews.[1] Please consult the Department's regulations at 19 CFR Part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218 (c).

Dated: October 21, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–26346 Filed 10–30–09; 8:45 am]

BILLING CODE 3510–DS–P

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests to extend that five-day deadline based upon a showing of good cause.

DEPARTMENT OF COMMERCE

International Trade Administration

Subsidy Programs Provided by Countries Exporting Softwood Lumber and Softwood Lumber Products to the United States; Request for Comment

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

SUMMARY: The Department of Commerce (Department) seeks public comment on any subsidies, including stumpage subsidies, provided by certain countries exporting softwood lumber or softwood lumber products to the United States during the period January 1 through June 30, 2009.

DATES: Comments must be submitted within thirty days after publication of this notice.

ADDRESSES: Written comments (original and six copies) should be sent to the Secretary of Commerce, Attn: James Terpstra, Import Administration, APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Ave., NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: James Terpstra, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3965.

SUPPLEMENTARY INFORMATION:

Background

On June 18, 2008, Section 805 of Title VIII of the Tariff Act of 1930 (the Softwood Lumber Act of 2008) was enacted into law. Under this provision, the Secretary of Commerce is mandated to submit to the appropriate Congressional committees a report every 180 days on any subsidies provided by countries exporting softwood lumber or softwood lumber products to the United States, including stumpage subsidies.

The Department submitted its first subsidy report to Congress on December 15, 2008, and its second subsidy report on June 15, 2009. As part of its newest report, the Department intends to include a list of subsidy programs identified with sufficient clarity by the public in response to this notice.

Request for Comment

Given the large number of countries that export softwood lumber and softwood lumber products to the United States, we are soliciting public comment only on subsidies provided by countries whose exports accounted for at least one percent of total U.S. imports of softwood lumber by quantity, as classified under Harmonized Tariff Schedule code 4407.1001 (which accounts for the vast majority of imports), during the period January 1 through June 30, 2009. Official U.S. import data published by the United States International Trade Commission Tariff and Trade DataWeb indicate that exports of softwood lumber from Canada, Chile, Germany, Sweden and Brazil each account for at least one percent of U.S. imports of softwood lumber products during that time period. We intend to rely on similar previous six-month periods to identify the countries subject to future reports on softwood lumber subsidies. For example, we will rely on U.S. imports of softwood lumber and softwood lumber products during the period July 1 through December 31, 2009, to select the countries subject to the next report.

Under U.S. trade law, a subsidy exists where a government authority: (i) Provides a financial contribution; (ii) provides any form of income or price support within the meaning of Article XVI of the GATT 1994; or (iii) makes a payment to a funding mechanism to provide a financial contribution to a person, or entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments, and a benefit is thereby conferred. *See* section

771(5)(B) of the of the Tariff Act of 1930, as amended.

Parties should include in their comments: (1) The country which provided the subsidy; (2) the name of the subsidy program; (3) a brief (3–4 sentence) description of the subsidy program; and (4) the government body or authority that provided the subsidy.

Submission of Comment

Persons wishing to comment should file a signed original and six copies of each set of comments by the date specified above. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially due to business proprietary concerns or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not include them in its report on softwood lumber subsidies. The Department also requests submission of comments in electronic form to accompany the required paper copies. Comments filed in electronic form should be submitted on CD–ROM with the paper copies or by e-mail to the Webmaster below.

Comments received in electronic form will be made available to the public in Portable Document Format (PDF) on the Import Administration Web site at the following address: *http://ia.ita.doc.gov*. Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482–0866, e-mail address: *webmaster-support@ita.doc.gov*.

All comments and submissions should be mailed to James Terpstra, Import Administration; Subject: Softwood Lumber Subsidies Bi-Annual Report: Request for Comment; Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, by no later than 5 p.m., on the above-referenced deadline date.

Dated: October 23, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–26323 Filed 10–30–09; 8:45 am]

BILLING CODE 3510–DS–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 2009–2]

Los Alamos National Laboratory Plutonium Facility Seismic Safety

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice, recommendation.

SUMMARY: The Defense Nuclear Facilities Safety Board has made a recommendation to the Secretary of Energy pursuant to 42 U.S.C. 2286a(a)(5) which identifies the need to execute both immediate and long-term actions that can reduce the risk posed by a seismic event at the Plutonium Facility at Los Alamos National Laboratory.

DATES: Comments, data, views, or arguments concerning the recommendation are due on or before December 2, 2009.

ADDRESSES: Send comments, data, views, or arguments concerning this recommendation to: Defense Nuclear Faculties Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2001.

FOR FURTHER INFORMATION CONTACT: Brian Grosner or Andrew L. Thibadeau at the address above or telephone number (202–694–7000).

John E. Mansfield,

Vice Chairman.

[FR Doc. E9–26304 Filed 10–30–09; 8:45 am]

BILLING CODE 3670–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: Proposed collection; comment request.

SUMMARY: The EIA is soliciting comments on the proposed revisions and three year extension to the Petroleum Supply Forms. In particular, changes are proposed for forms EIA–810, ''Monthly Refinery Report;'' EIA–812, ''Monthly Product Pipeline Report;'' EIA–813, ''Monthly Crude Oil Report;'' EIA–815, ''Monthly Bulk Terminal and Blender Report;'' Form EIA–816, ''Monthly Natural Gas Liquids Report;'' and Form EIA–819, ''Monthly Oxygenate Report.''

DATES: Comments must be filed by January 4, 2010. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Sylvia Norris and Jacob Bournazian. To ensure receipt of the comments by the due date, submission by FAX (202–586–1076) or e-mail (*sylvia.norris@eia.doe.gov* and *jacob.bournazian@eia.doe.gov*) is recommended. The mailing address is Petroleum Division, EI–42, Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Alternatively, Sylvia Norris may be contacted by telephone at 202–586–6106; Jacob Bournazian may be contacted by telephone at 202–586–5562.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to Sylvia Norris at the address listed above. The proposed forms and changes in definitions and instructions are also available on the Internet at: *http://www.eia.doe.gov/oil_gas/petroleum/survey_forms/pet_survey_forms.html*

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974, specifically 15 U.S.C. 790a, and the DOE Organization Act, specifically 42 U.S.C. 7135, require EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands and to promote sound policymaking, efficient markets, and public understanding of petroleum supply and delivery systems.

EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with EIA. Any comments received help EIA prepare data requests that maximize the utility of the information collected, and assess the impact of collection requirements on the public. Also, EIA will later seek approval for this collection by the Office of Management and Budget (OMB)

under Section 3507(a) of the Paperwork Reduction Act of 1995.

The monthly petroleum supply surveys are designed to provide statistically reliable and comprehensive information not available from other sources to EIA, other Federal agencies, and the private sector for use in forecasting, policy making, planning, and analysis activities. The information appears in the publications listed below and is also available electronically through the Internet at: *http://www.eia.doe.gov/oil_gas/petroleum/info_glance/petroleum.html*

Publications: Internet-only publications are the *Petroleum Supply Monthly, Petroleum Supply Annual,* and *Short-Term Energy Outlook.* Hardcopy and Internet publications are the *Monthly Energy Review* (DOE/EIA–0035), the *Annual Energy Review* (DOE/EIA–0384), and the *Annual Energy Outlook* (DOE/EIA–0383).

II. Current Actions

In order to improve market transparency and more effectively analyze petroleum markets, EIA proposes to collect working and shell storage capacity for crude oil and petroleum products semi-annually in March and September. Inventories are an important source of supply in meeting regional and local demand. Industry treats inventories strategically as an economic means of helping to meet their market requirements and opportunities. Furthermore, as regulatory requirements change, there is a need to monitor whether or not capacity to store both crude oil and products is being either temporarily or permanently idled. Data regarding capacity to hold inventories is therefore of great interest. This information is also needed to inform responses to energy emergencies.

Storage capacity reported on EIA surveys will include aboveground and underground storage for only those facilities and tanks for which inventory levels are currently reported on the surveys. Therefore, bonded storage capacity and storage capacity in secondary and tertiary sectors will be excluded because stocks held in these storage sectors are out of scope for existing petroleum supply surveys. The information requested will be added to the existing survey forms. The first collection period will be for March 2010, due April 20, 2010.

The ''Monthly Refinery Report,'' form, EIA–810—Collect working and shell storage capacity (in operation, idle, and total) by refinery site for the following products: Crude oil, fuel ethanol, natural gas plant liquids and liquefied refinery gases (including mixes and pentanes plus), storage dedicated to propane and propylene, motor gasoline (including gasoline blending components), distillate fuel oil, kerosene and kerosene-type jet fuel, residual fuel oil, asphalt and road oil, other products, and total product storage capacity.

The ''Monthly Product Pipeline Report,'' form EIA–812—Collect working and shell storage capacity (in operation, idle, and total) by Petroleum Administration for Defense Districts (PADD) for the following products: Fuel ethanol, natural gas plant liquids and liquefied refinery gases (including mixes and pentanes plus), storage dedicated to propane and propylene, motor gasoline (including gasoline blending components), distillate fuel oil, kerosene and kerosene-type jet fuel, residual fuel oil, asphalt and road oil, other products, and total product storage capacity. In addition, information is being requested on whether pipeline and storage tank access is used exclusively by the reporting company or whether tanks may be used by other companies.

The ''Monthly Crude Oil Report,'' form EIA–813—Collect crude oil working and shell storage capacity (in operation, idle, and total) by PADD. Working and shell storage capacity is also being requested for the Cushing, Oklahoma area. Storage capacity will only be collected for tank farms facilities. Storage in pipelines and on leases will be excluded. Information is also being requested on whether tank storage is used exclusively by the reporting company or whether tanks may be used by other companies.

The ''Monthly Terminal Blenders Report,'' EIA–815—Collect working and shell storage capacity (in operation, idle, and total) by terminal site for the following products: Fuel ethanol, natural gas plant liquids and liquefied refinery gases (including mixes and pentanes plus), storage dedicated to propane and propylene, motor gasoline (including blending components), kerosene, kerosene-type jet fuel, distillate fuel oil, residual fuel oil, asphalt and road oil, other products, and total product storage capacity. Information is also being requested on whether tank storage is used exclusively by the reporting company or whether tanks may be used by other companies and whether any tanks at the terminal are used for transshipment of products by pipeline or other modes of transportation.

The ''Monthly Natural Gas Liquids Report,'' form EIA–816—Collect working and shell storage capacity (in operation, idle, and total) by gas processing or fractionation plant site for natural gas plant liquids (including mixes of liquefied petroleum gases and pentanes plus). In addition, storage dedicated to propane is being requested.

The ''Monthly Oxygenate Report,'' form EIA–819—Collect working and shell storage capacity (in operation, idle, total) by producer site for fuel ethanol.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments. Please indicate to which form(s) your comments apply.

As a Potential Respondent to the Request for Information

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility?

B. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

C. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

D. Can the information be submitted by the respondent by the due date?

E. Public reporting burden for this collection is estimated to average:

Estimated hours per response are: EIA–800, ''Weekly Refinery and Fractionator Report,''—1.58 hours; EIA–801, ''Weekly Bulk Terminal Report,''—0.95 hours; EIA–802, ''Weekly Product Pipeline Report,''—0.95 hours; EIA–803, ''Weekly Crude Oil Stocks Report,''—0.50 hours; EIA–804, ''Weekly Imports Report,''—1.75 hours; EIA–805, ''Weekly Terminal Blenders Report,''—1.50 hours; EIA–809, ''Weekly Oxygenate Report,''—1.00 hours; EIA–810, ''Monthly Refinery Report,''—5.30 hours; EIA–812, ''Monthly Product Pipeline Report,''—3.30 hours; EIA–813, ''Monthly Crude Oil Report,''—2.00 hours; EIA–814, ''Monthly Imports Report,''—2.55 hours; EIA–815, ''Monthly Terminal Blenders Report,''—4.30 hours; EIA–816, ''Monthly Natural Gas Liquids Report,''—1.30 hours; EIA–817, ''Monthly Tanker and Barge Movement Report,''—2.25 hours; EIA–819, ''Monthly Oxygenate Report,''—2.00 hours; EIA–820, ''Annual Refinery Report''—2.40 hours. The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

F. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

G. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

H. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User of the Information To Be Collected

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility?

B. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

C. Is the information useful at the levels of detail to be collected?

D. March and September reporting periods are being requested to capture indicators of storage capacity in advance of both the summer driving season and the winter heating season. Are the time periods requested adequate to capture key seasonal information?

E. For what purpose(s) would the information be used? Be specific.

F. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

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

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, Public Law 93–275, codified at 15 U.S.C. 772(b).

Issued in Washington, DC, October 26, 2009.

Stephanie Brown,

Director, Statistics and Methods Group, Energy Information Administration.

[FR Doc. E9–26319 Filed 10–30–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13438–000]

FFP Iowa 1, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

October 23, 2009.

On April 28, 2009, FFP Iowa 1, LLC filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Mississippi River Lock and Dam No. 12 Water Power Project (Lock & Dam 12 Project), to be located at River Mile 556.7 on the Mississippi River in Jackson County, Iowa, and Jo Daviess County, Illinois, and in the town of Bellevue, Iowa.

The proposed Lock & Dam 12 Project would be located at the existing U.S. Army Corps of Engineers Lock & Dam No. 12. The proposed project would consist of: (1) 21 640-kilowatt (kW) Very Low Head (VHL) generating units to be installed integral with the dam and 80 35-kW hydrokinetic generating units to be installed in the Mississippi River in an area just downstream of the dam with a total capacity of about 16,200 megawatts; and (2) a new 3.5-mile-long, 69-kilovolt (or greater) transmission line connected to an existing above-ground local distribution system. The project would have an estimated average annual generation of 79,500 megawatt-hours.

Applicant Contact: Mr. Daniel R. Irvin, Free Flow Power Corporation, 33 Commercial Street, Gloucester, MA 01930, phone (978) 252–7631.

FERC Contact: Patrick Murphy, (202) 502–8755.

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–13438) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–26242 Filed 10–30–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13226–001; Project No. 13368–001]

Blue Heron Hydro, LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approval of Use of the Traditional Licensing Process

October 23, 2009.

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project Nos.:* 13226–001 and 13368–001.

c. *Dated Filed:* July 10, 2009.

d. *Submitted by:* Blue Heron Hydro, LLC.

e. *Name of Projects:* Ball Mountain Dam Hydroelectric Project; Townshend Dam Hydroelectric Project.

f. *Location:* The Ball Mountain Dam Hydrolectric Project would be located on the U.S. Army Corps of Engineers Ball Mountain Dam on the West River, northwest of the Town of Jamaica, Windham County, Vermont. The project will occupy less than an acre of federal land. The Townshend Dam Hydroelectric Project would be located on the U.S. Army Corps of Engineers Townshend Dam on the West River in the Town of Townshend, Windham County, Vermont. The project will occupy less than an acre of Federal land.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Applicant Contact:* Lori Barg, Blue Heron Hydro, LLC, 113 Bartlett Road, Plainfield, VT 05667, (802) 454–1874.

i. *FERC Contact:* Dr. Nicholas Palso, (202) 502–68854 or *nicholas.palso@ferc.gov.*

j. Blue Heron Hydro, LLC filed its requests to use the Traditional Licensing Process on July 10, 2009. Blue Heron Hydro, LLC filed public notice of its requests on August 10, 2009. In a letter

dated October 22, 2009, the Director of the Office of Energy Projects approved Blue Heron Hydro, LLC's request to use the Traditional Licensing Process.

k. With this notice, we are approving Blue Heron Hydro, LLC's requests to be designated as the non-Federal representative for section 7 of the Endangered Species Act and its request to initiate consultation under section 106 of the National Historic Preservation Act; and recommending that it begin informal consultation with: (a) The U.S. Fish and Wildlife Service; and (b) the Vermont State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. Blue Heron Hydro, LLC filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

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

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

Kimberly D. Bose,

Secretary.

[FR Doc. E9–26241 Filed 10–30–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12683–002]

Three Guys Hydroelectric Company, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

October 23, 2009.

On September 1, 2009, Three Guys Hydroelectric Company, LLC filed an application for a successive preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the R. D. Bailey Dam Hydroelectric Project No. 12683, to be located at the existing R. D. Bailey Dam, on the Guyandotte River, in Mingo County, West Virginia. 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 existing R. D. Bailey Dam is owned and operated by the U.S. Corps of Engineers, and includes the existing reservoir, dam, outlet works, and tailrace. The proposed project would consist of: (1) A new 60-foot-long by 40-foot-wide powerhouse to be located on the downstream side of R. D. Bailey dam below the outlet works; (2) a new bifurcating steel structure consisting of a 100-foot-long gated bypassed outlet and a 150-foot-long, 11-foot-diameter penstock; (3) two new turbine generator units for a total installed capacity of 7.8 megawatts; (4) a new 6.5-mile-long, 14.7-kilovolt transmission line; and (5) appurtenant facilities. The proposed project would operate in run-of-river mode and generate an estimated average annual generation of 30,000 megawatt-hours.

Applicant Contact: Mr. M. Clifford Phillips, Advanced Hydro Solutions LLC, 150 North Miller Road, Suite 450C, Fairlawn, OH 44333.

FERC Contact: Michael Watts, (202) 502–6123.

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 ''eFiling'' 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–12683) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–26240 Filed 10–30–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12661–001; Project No. 13599–000]

Green Power Development, LLC; Alaska Power & Telephone Company; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

October 23, 2009.

On October 1, 2009, at 8:01 a.m. 12:01 p.m., respectively, Alaska Power & Telephone Company (AP&T) and Green Power Development, LLC (Green Power) filed preliminary permit applications, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the 3160 Water Power Project and Lace Hydroelectric Project, respectively, to be located on an unnamed lake designated by the applicants as Lake 3160 in an unorganized Borough near Juneau, Alaska. The project would be located within the Tongass National Forest. 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.

AP&T's proposed 3160 Water Power Project would consist of: (1) A new siphon intake, directional bore, or a 20-foot-high timber buttress dam with either intakes at the exit of the Lake 3160; (2) an existing reservoir, Lake 3160, with surface area of 384 acres, storage capacity of 7,600 acre-feet, and normal water surface elevation of 3,160 feet mean sea level (msl); (3) a new 7,600-foot-long, 21-inch diameter penstock; (4) a new powerhouse containing 1–2 generating units with a total installed capacity of 4.9 megawatts (MW); (5) an open channel tailrace discharging flows to Evelyn Lake; (6) a 6-mile-long, 14.4 kilovolt (kV) overhead,

or 24.9 kV underground transmission line; and (7) appurtenant facilities. The proposed 3160 Water Power Project would have an average annual generation of 34.1 gigawatt-hours (GWh).

Green Power's proposed Lace Hydroelectric Project would consist of: (1) A new siphon intake, directional bore, or 20-foot-high concrete dam with either intakes at the exit of Lake 3160; (2) an existing reservoir, Lake 3160, with a surface areas of 451 acres, storage capacity of 19,710 acre-feet, and normal water surface elevation of 3,160 feet msl; (3) a new above ground 8,800-feet-long, 22- to 24-inch-diameter penstock; (4) a new powerhouse containing 1–2 generating units with a total installed capacity of 4.995 MW; (5) an open channel tailrace discharging flows to Evelyn Lake; (6) a 7.6-mile-long, 14.4/24.9-kV overhead, underground, or submarine cable transmission line; and (7) appurtenant facilities. The annual production would be 40.1 GWh.

Applicants' Contact:

Mr. Robert Grimm, Alaska Power & Telephone Company, P.O. Box 3222, Port Townsend, WA 98368. (360) 385–1733x120.

Mr. Earle Ausman, Green Power Development, LLC, 1503 W. 33rd Avenue, Suite 211A, Anchorage, AK 99503. (907) 258–2420.

FERC Contact: Gina Krump, *gina.krump@ferc.gov,* (202) 502–6704.

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 (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the ''eFiling'' link. For a simpler method of submitting text only comments, click on ''Quick Comment.'' For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–12661–001, or P–13599–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–26239 Filed 10–30–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–03–000; PF09–06–000]

Questar Overthrust Pipeline Company; Notice of Application

October 26, 2009.

Take notice that on October 13, 2009, Questar Overthrust Pipeline Company (Overthrust), 180 East 100 South, Salt Lake City, Utah 84111, filed an application to section 7(c) of the Natural Gas Act (NGA) seeking authority to expand its interstate natural-gas transmission system by constructing and operating 43.3 miles of loop pipeline. Overthrust states that the proposed loop pipeline will generally run parallel to the existing Overthrust Pipeline from the Rock Springs Compressor Station in Sweetwater County, Wyoming to a tie-in facility called Cabin 31, located within Uinta County, Wyoming (The Main Line (ML) 133 Loop Expansion Project), all as more fully set forth in the application. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Specifically, The Main Line (ML) 133 Loop Expansion Project will provide up to approximately 800,000 Dth/d of natural gas from receipt points on the east end of its system, to delivery points on the west end of its system. It is further explained that Overthrust has negotiated three firm Transportation Service Agreements with Wyoming Interstate Company, Ltd. for up to 548,457 Dth/d of incremental capacity created by the project. The estimated cost of the proposed Loop Expansion is $94,288,239.

Any questions regarding the Main Line (ML) 133 Loop Expansion Project should be directed to L. Bradley Burton, Manager, Federal Regulatory Affairs, or Tad M. Taylor, Division Counsel, Questar Pipeline Company, 180 East 100 South, P.O. Box 45360, Salt Lake City, Utah 84145–0360 or at (801) 324–2459, or *brad.burton@questar.com.*

Overthrust states that by letter dated January 29, 2009, in Docket No. PF09–6–000, the Commission's Office of Energy Projects granted Overthrust's January 19, 2009, request to utilize the Commission's Pre-Filing Process for the planned Loop Expansion. Overthrust has also submitted an applicant-prepared Draft Environmental Assessment that was prepared during the Pre-Filing Process that was included with this application.

On January 29, 2009, the Commission staff granted Overthrust's request to utilize the National Environmental Policy Act (NEPA) Pre-Filing Process and assigned Docket No. PF09–6–000 to staff activities involving the project. Now, as of the filing of this application on October 13, 2009, the NEPA Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP10–3–000, as noted in the caption of this notice.

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and State agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

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 with the Commission and must mail a copy to the applicant and to every other party in the proceeding. 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.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

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: November 16, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–26248 Filed 10–30–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13568–000]

Muskingum Valley Hydro; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

October 23, 2009.

On August 12, 2009, Muskingum Valley Hydro filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Muskingum Valley Brookville Dam Hydroelectric Project No. 13568, to be located at the existing Brookville Dam, on the East Fork Whitewater River, in Franklin County, Indiana. 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 existing Brookville Dam is owned and operated by the U.S. Corps of Engineers, and includes the existing reservoir, dam, outlet works, and tailrace. The proposed project would consist of: (1) A new 60-foot-long by 30-foot-wide powerhouse to be located on the downstream side of Brookville dam below the outlet works; (2) three 100-foot-long, 36-inch-diameter penstocks; (3) three new turbine generator units for a total installed capacity of 9.0 megawatts; (4) a new 400-foot-long, 14.7-kilovolt transmission line; and (5) appurtenant facilities. The proposed project would operate in run-of-river mode and generate an estimated average annual generation of 55,000 megawatt-hours.

Applicant Contact: Randall J. Smith, Muskingum Valley Hydro, 4950 Frazeysburg Road, Zanesville, Ohio 43701, (740) 891–5424.

FERC Contact: Michael Watts, (202) 502–6123.

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 ''eFiling'' 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–13568) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–26243 Filed 10–30–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM01–5–000]

Electronic Tariff Filings; Notice of Availability of Company Registration and Technical Conference

October 23, 2009.

In Order No. 714,[1] the Commission adopted regulations requiring that tariff and tariff related filings must be made electronically. One of the required data elements to make the electronic filing is a unique Company Identifier provided by the Commission. As of November 9, 2009, companies should be able to

[1] *Electronic Tariff Filings,* Order No. 714, 73 FR 57,515 (Oct. 3, 2008), 124 FERC ¶ 61,270, FERC Stats. & Regs [Regulations Preambles] ¶ 31,276 (2008) (Sept. 19, 2008).

request a Company Identifier by using the Company Registration application located at the FERC Online Web site: *http://www.ferc.gov/docs-filing/ferconline.asp.*

Take notice that on November 20, 2009, from 9 a.m. to 12 noon (EST), a technical conference will be held to discuss the Company Registration and other issues. This conference will cover the data required to complete a request for a Company Identifier, a review of the FERC Online Company Registration application, Commission docketing under eTariff, the eLibrary rendition of eTariff metadata, the type of filing code to be used to establish official filing type. In addition, time permitting, participants will be free to ask questions about other issues related to electronic tariff filings.

The technical conference is open to the public. The conference will be held at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. In addition, the conference will be accessible via telephone. Staff anticipates posting any documents that may be referenced during the conference on the eTariff Web site so that they will be accessible to those using the telephone.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

The telephone number for the conference will be posted on *http://www.ferc.gov/docs-filing/etariff.asp* and an RSS alert of the posting will be issued. No preregistration is required.

For more information, contact Keith Pierce, Office of Energy Market Regulation at (202) 502–8525 or send an e-mail to *ETariff@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. E9–26234 Filed 10–30–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

October 26, 2009.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC09–104–001.

Applicants: Lord, Abbett & Co. LLC.

Description: Lord Abbett & Co, LLC submits a request for alternative relief as requested in its August 19, 2009 Application.

Filed Date: 10/22/2009.

Accession Number: 20091026–0293.

Comment Date: 5 p.m. Eastern Time on Thursday, November 5, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER06–560–004.

Applicants: Credit Suisse Energy LLC.

Description: Notice of Non-Material Change in Status of Credit Suisse Energy LLC.

Filed Date: 10/23/2009.

Accession Number: 20091023–5102.

Comment Date: 5 p.m. Eastern Time on Friday, November 13, 2009.

Docket Numbers: ER08–378–002; ER09–560–001.

Applicants: Covanta Delano, Inc.; Covanta Maine, LLC.

Description: Covanta Delano, Inc. *et al.* submits Second Revised Sheet 1 *et al.* to No 1 FERC Electric Tariff, Revised Volume 1.

Filed Date: 10/20/2009.

Accession Number: 20091026–0017.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 10, 2009.

Docket Numbers: ER09–172–005; ER09–173–005; ER09–174–003; ER06–1355–005; ER09–1400–001; ER09–1549–001.

Applicants: Canandaigua Power Partners, LLC; Canandaigua Power Partners II, LLC; Evergreen Wind Power V, LLC; Evergreen Wind Power, LLC; Milford Wind Corridor Phase I, LLC; First Wind Energy Marketing, LLC.

Description: Canandiagua Power Partners, LLC *et al.* submits supplemental information re pending submissions.

Filed Date: 10/21/2009.

Accession Number: 20091023–0017.

Comment Date: 5 p.m. Eastern Time on Thursday, November 12, 2009.

Docket Numbers: ER09–1381–001.

Applicants: Allegheny Energy Supply Company, LLC.

Description: Allegheny Energy Supply Company, LLC submits Substitute Original Sheet No 2B to FERC Electric Tariff, Second Revised Volume 1.

Filed Date: 10/19/2009.

Accession Number: 20091026–0018.

Comment Date: 5 p.m. Eastern Time on Monday, November 9, 2009.

Docket Numbers: ER10–104–000.

Applicants: Cleco Power LLC, Arcadia Power Partners, LLC.

Description: Acadia Power Partners, LLC *et al.* submits Joint Application requesting authorization from the Commission of a short term power purchase agreement.

Filed Date: 10/26/2009.

Accession Number: 20091026–0295.

Comment Date: 5 p.m. Eastern Time on Monday, November 16, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–26249 Filed 10–30–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

October 23, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER09–88–003.
Applicants: Southern Company Services, Inc.
Description: Southern Company Services, Inc on behalf of Southern Companies submits Fifth Revised Sheet No. 1 *et al.* to FERC Electric Tariff, Second Revised Volume No. 4.
Filed Date: 10/19/2009.
Accession Number: 20091022–0292.
Comment Date: 5 p.m. Eastern Time on Monday, November 9, 2009.

Docket Numbers: ER09–1270–002; ER09–1269–002.
Applicants: Escondido Energy Center, LLC, Chula Vista Energy Center, LLC.
Description: Notice of Change in Status of Escondido Energy Center, LLC, and Chula Vista Energy Center, LLC.
Filed Date: 10/23/2009.
Accession Number: 20091023–5026.
Comment Date: 5 p.m. Eastern Time on Friday, November 13, 2009.

Docket Numbers: ER09–1739–001.
Applicants: ResCom Energy LLC.
Description: ResCom Energy, LLC submits a Petition for Acceptance of Initial Rate Schedule, Waivers and Blanket Authority.
Filed Date: 10/20/2009.
Accession Number: 20091022–0293.
Comment Date: 5 p.m. Eastern Time on Wednesday, September 28, 2009.

Docket Numbers: ER10–75–000; ER10–87–000.
Applicants: Gibson Dunn for John Deere; Tuana Springs Energy, LLC.
Description: Tuana Springs Energy, LLC *et al.* submits revised tariff, to FERC Electric Tariff, Original Volume 1.
Filed Date: 10/22/2009.
Accession Number: 20091023–0033.
Comment Date: 5 p.m. Eastern Time on Thursday, November 12, 2009.

Docket Numbers: ER10–82–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, LLC submits revisions to PJM's Section 7.1A, *et al.*
Filed Date: 10/21/2009.
Accession Number: 20091021–0040.
Comment Date: 5 p.m. Eastern Time on Thursday, November 12, 2009.

Docket Numbers: ER10–86–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits proposed improvements and clarifications to the Module E portion of its tariff.
Filed Date: 10/20/2009.
Accession Number: 20091022–0294.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 10, 2009.

Docket Numbers: ER10–91–000.
Applicants: American Electric Power Service Corporation.
Description: Ohio Power Co *et al.* submits twentieth Interconnection and Local delivery Service Agreement with Buckeye Power, Inc.
Filed Date: 10/22/2009.
Accession Number: 20091023–0031.
Comment Date: 5 p.m. Eastern Time on Thursday, November 12, 2009.

Docket Numbers: ER10–92–000; ER03–774–014.
Applicants: EDF Trading North America, LLC.
Description: EDG Trading North America, LLC submits Notice of Name Change and Succession and Notice of Change in Status.
Filed Date: 10/22/2009.
Accession Number: 20091023–0030.
Comment Date: 5 p.m. Eastern Time on Thursday, November 12, 2009.

Docket Numbers: ER10–93–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, LLC submits an executed interconnection service agreement with American Municipal Power, Inc.
Filed Date: 10/22/2009.
Accession Number: 20091023–0028.
Comment Date: 5 p.m. Eastern Time on Thursday, November 12, 2009.

Docket Numbers: ER10–94–000.
Applicants: Sierra Pacific Power Company.
Description: Sierra Pacific Power Co submits revisions to Exhibit F of the General Transfer Agreement with Bonneville Power Administration.
Filed Date: 10/23/2009.
Accession Number: 20091023–0029.
Comment Date: 5 p.m. Eastern Time on Friday, November 13, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. E9–26250 Filed 10–30–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

October 22, 2009.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC10–7–000.
Applicants: Covanta Holding Corporation, Covanta Plymouth Renewable Energy Limited, ESI Montgomery County, LLC.
Description: Joint Application for Authorization of Disposition of Facilities under Section 203 of the Federal Power Act and Requests for

Expedited Consideration, Confidential Treatment and Waivers.

Filed Date: 10/21/2009.

Accession Number: 20091021–5088.

Comment Date: 5 p.m. Eastern Time on Thursday, November 12, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER02–1437–007.

Applicants: Triton Power Michigan LLC.

Description: Triton Power Michigan LLC's response to the Commission Staff informal request supplements it's 6/30/09 filing adding additional language to its Market Based Rate Tariff Sheets.

Filed Date: 10/14/2009.

Accession Number: 20091019–0052.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 4, 2009.

Docket Numbers: ER04–208–007; ER07–589–004.

Applicants: Citigroup Energy Canada ULC, Citigroup Energy Inc.

Description: CEI and CECU Notice of Change in Status.

Filed Date: 10/21/2009.

Accession Number: 20091021–5091.

Comment Date: 5 p.m. Eastern Time on Thursday, November 12, 2009.

Docket Numbers: ER04–170–008.

Applicants: MxEnergy Electric Inc.

Description: MXenergy Electric Inc. Notice of Change in Status.

Filed Date: 10/22/2009.

Accession Number: 20091022–5083.

Comment Date: 5 p.m. Eastern Time on Thursday, November 12, 2009.

Docket Numbers: ER09–1180–003.

Applicants: Entergy Services, Inc.

Description: Entergy Service, Inc submits response to the Commission's 10/6/09 deficiency letter issued.

Filed Date: 10/21/2009.

Accession Number: 20091021–4002.

Comment Date: 5 p.m. Eastern Time on Thursday, November 12, 2009.

Docket Numbers: ER10–74–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits proposed classifications for certain Grandfathered Agreements of Dairyland Power Cooperative.

Filed Date: 10/16/2009.

Accession Number: 20091019–0093.

Comment Date: 5 p.m. Eastern Time on Friday, November 6, 2009.

Docket Numbers: ER10–78–000.

Applicants: Orange Grove Energy, L.P.

Description: Application of Orange Grove Energy, LP for order accepting initial market-based rate tariffs, waiving regulations, and granting blanket approvals.

Filed Date: 10/20/2009.

Accession Number: 20091022–0287.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 10, 2009.

Docket Numbers: ER10–80–000.

Applicants: Three Buttes Windpower, LLC.

Description: Application of Three Buttes Windpower, LLC for market based rate authority.

Filed Date: 10/20/2009.

Accession Number: 20091022–0288.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 10, 2009

Docket Numbers: ER10–83–000.

Applicants: Westar Energy, Inc.

Description: Kansas Gas and Electric Company submits a Notice of Termination of Service Schedules for Reserve Capacity and Maintenance and Emergency Support under an Electric Power Transmission and Service etc.

Filed Date: 10/20/2009.

Accession Number: 20091021–0041.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 10, 2009.

Docket Numbers: ER10–84–000.

Applicants: Westar Energy, Inc.

Description: Kansas Gas and Electric Company submits a Notice of Cancellation of an Electric Power, Transmission and Service Contract between KGE and Kansas Electric Power Cooperative, Inc.

Filed Date: 10/21/2009.

Accession Number: 20091021–0042.

Comment Date: 5 p.m. Eastern Time on Thursday, November 12, 2009.

Docket Numbers: ER10–85–000.

Applicants: Westar Energy, Inc.

Description: Westar Energy Inc submits notice of cancellation of an Electric Power Supply Agreement between Westar and the City of Osage City.

Filed Date: 10/20/2009.

Accession Number: 20091021–0043.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 10, 2009.

Docket Numbers: ER10–88–000.

Applicants: E.ON U.S. LLC.

Description: Louisville Gas and Electric Company *et al.* submits Original Sheet *et al.* to First Revised Rate Schedule FERC No 501 to be effective 10/22/09 under ER10–88.

Filed Date: 10/21/2009.

Accession Number: 20091022–0333.

Comment Date: 5 p.m. Eastern Time on Thursday, November 12, 2009.

Docket Numbers: ER10–89–000.

Applicants: The Empire District Electric Company.

Description: Compliance Filing of The Empire District Electric Company.

Filed Date: 10/19/2009.

Accession Number: 20091019–5113.

Comment Date: 5 p.m. Eastern Time on Monday, November 9, 2009.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES10–4–001.

Applicants: Trans Bay Cable LLC.

Description: Amendment to Application for Authority to Issue Securities of Trans Bay Cable LLC.

Filed Date: 10/21/2009.

Accession Number: 20091021–5092.

Comment Date: 5 p.m. Eastern Time on Monday, November 2, 2009.

Docket Numbers: ES10–6–000.

Applicants: Carolina Power & Light Company.

Description: Section 204 Application of Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc.

Filed Date: 10/22/2009.

Accession Number: 20091022–5095.

Comment Date: 5 p.m. Eastern Time on Thursday, November 12, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's

eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–26251 Filed 10–30–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

October 27, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–60–000.
Applicants: Dominion Transmission, Inc.
Description: Dominion Transmission, Inc submits Eighth Revised Sheet 1173 to FERC Gas Tariff, Third revised Volume 1, to be effective 11/20/09.
Filed Date: 10/19/2009.
Accession Number: 20091020–0042.
Comment Date: 5 p.m. Eastern Time on Monday, November 2, 2009.

Docket Numbers: RP10–64–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: Motion to Intervene of National Fuel Gas Distribution Corporation.
Filed Date: 10/22/2009.
Accession Number: 20091022–5057.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 3, 2009.

Docket Numbers: RP10–65–000.
Applicants: Guardian Pipeline, L.L.C.
Description: Guardian Pipeline, LLC submits Twelfth Revised Sheet 6 *et al.* to its FERC Gas Tariff, Original Volume 1 to be effective 11/1/09.
Filed Date: 10/21/2009.
Accession Number: 20091022–0291.
Comment Date: 5 p.m. Eastern Time on Monday, November 2, 2009.

Docket Numbers: RP10–66–000.
Applicants: Trailblazer Pipeline Company LLC.
Description: Trailblazer Pipeline Company, LLC submits report on the refund of penalty revenues.
Filed Date: 10/21/2009.
Accession Number: 20091022–0337.
Comment Date: 5 p.m. Eastern Time on Monday, November 2, 2009.

Docket Numbers: RP10–67–000.
Applicants: Arlington Storage Company, LLC.
Description: Arlington Storage Company, LLC submits its FERC Gas Tariff, First Revised Volume 1.
Filed Date: 10/21/2009.
Accession Number: 20091022–0336.
Comment Date: 5 p.m. Eastern Time on Monday, November 2, 2009.

Docket Numbers: RP10–68–000.
Applicants: Quest Pipelines (KPC).
Description: Quest Pipelines submits First Revised Sheet 92 *et al.* to FERC Gas Tariff, Second Revised Volume 1 to be effective 11/1/09.
Filed Date: 10/22/2009.
Accession Number: 20091023–0011.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 3, 2009.

Docket Numbers: RP10–69–000.
Applicants: Midwestern Gas Transmission Company.
Description: Midwestern Gas Transmission Company submits cashout report for the 9/08 thru 8/09.
Filed Date: 10/22/2009.
Accession Number: 20091023–0009.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 3, 2009.

Docket Numbers: RP10–70–000.
Applicants: Natural Gas Pipeline Company of America.
Description: Natural Gas Pipeline Company of America LLC submits Third Revised Sheet No 35C.04 *et al.* to its FERC Gas Tariff, Seventh Revised Volume No 1.
Filed Date: 10/23/2009.
Accession Number: 20091023–0027.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 4, 2009.

Docket Numbers: RP10–71–000.
Applicants: High Island Offshore System, L.L.C.
Description: High Island Offshore System, LLC submits Sixth Revised Sheet No 11 to its FERC Gas Tariff.
Filed Date: 10/23/2009.
Accession Number: 20091023–0026.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 4, 2009.

Docket Numbers: RP10–72–000.
Applicants: Steuben Gas Storage Company.
Description: Steuben Gas Storage Company submits its FERC Gas Tariff, Original Volume 1, an original and six copies of its Tenth Revised Sheet 5, to be effective 10/1/09.
Filed Date: 10/23/2009.
Accession Number: 20091026–0281.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 4, 2009.

Docket Numbers: RP10–73–000.
Applicants: Eastern Shore Natural Gas Company.
Description: Eastern Shore Natural Gas Company submits Sixty-Ninth Revised Sheet 7 *et al.* of its FERC Gas Tariff, Second Volume 1, to be effective 10/1/09.
Filed Date: 10/23/2009.
Accession Number: 20091026–0279.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 4, 2009.

Docket Numbers: RP10–75–000.
Applicants: Natural Gas Pipeline Company of America.
Description: Natural Gas Pipeline Company of America LLC submits the Transportation Rate Schedule FTS Agreement with a negotiated rate exhibit between Natural and Eagle Energy Partner I, LP.
Filed Date: 10/26/2009.
Accession Number: 20091026–0283.
Comment Date: 5 p.m. Eastern Time on Monday, November 9, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's

eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–26275 Filed 10–30–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

October 21, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–56–000.
Applicants: ANR Pipeline Company.
Description: ANR Pipeline Company Letter Agreement Regarding Reimbursement of Grand Chenier Repair and Replacement Costs Associated with Hurricane Ike.
Filed Date: 10/16/2009.
Accession Number: 20091016–5089.
Comment Date: 5 p.m. Eastern Time on Wednesday, October 28, 2009.

Docket Numbers: RP10–57–000.
Applicants: Cameron Interstate Pipeline, LLC.
Description: Cameron Interstate Pipeline LLC submits Second Revised Sheet 6 to FERC Gas Tariff, Original Volume 1, to be effective 12/1/09.
Filed Date: 10/19/2009.
Accession Number: 20091020–0024.
Comment Date: 5 p.m. Eastern Time on Monday, November 02, 2009.

Docket Numbers: RP10–58–000.
Applicants: Questar Pipeline Company.
Description: Questar Pipeline Company submits Seventh Revised Sheet 7.01 to FERC Gas Tariff, First Revised Volume 1, to be effective 11/1/09.
Filed Date: 10/19/2009.
Accession Number: 20091020–0025.
Comment Date: 5 p.m. Eastern Time on Monday, November 02, 2009.

Docket Numbers: RP10–59–000.
Applicants: Tennessee Gas Pipeline Company.
Description: Tennessee Gas Pipeline Company submits a settlement agreement.
Filed Date: 10/19/2009.
Accession Number: 20091020–0064.
Comment Date: 5 p.m. Eastern Time on Monday, November 02, 2009.

Docket Numbers: RP10–61–000.
Applicants: Dominion Cove Point LNG, LP.
Description: Dominion Cove Point LNG, LP submits Fourth Revised Sheet 279 to its FERC Gas Tariff, Original Volume 1.
Filed Date: 10/19/2009.
Accession Number: 20091020–0043.
Comment Date: 5 p.m. Eastern Time on Monday, November 02, 2009.

Docket Numbers: RP10–62–000.
Applicants: Dominion South Pipeline Company, LP.
Description: Dominion South Pipeline Company, LP submits Second Revised Sheet 1056 to FERC Gas Tariff, Original Volume 1 to be effective 11/20/09.
Filed Date: 10/19/2009.
Accession Number: 20091020–0044.
Comment Date: 5 p.m. Eastern Time on Monday, November 02, 2009.

Docket Numbers: RP10–63–000.
Applicants: Dominion Transmission, Inc.
Description: Dominion Transmission, Inc submits Fourth Revised Sheet 1301 *et al* to FERC Gas Tariff, Third Revised Volume 1 to be effective 11/20/09.
Filed Date: 10/19/2009.
Accession Number: 20091020–0045.
Comment Date: 5 p.m. Eastern Time on Monday, November 02, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–26277 Filed 10–30–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

October 23, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP09–922–001.
Applicants: Florida Gas Transmission Company, LLC.
Description: Florida Gas Transmission Company, LLC submits Substitute Second Revised Sheet 30 *et al.* to FERC Gas Tariff, Fourth Revised Volume 1, to be effective March 1, 2010.
Filed Date: 10/19/2009.
Accession Number: 20091020–0022.
Comment Date: 5 p.m. Eastern Time on Monday, November 2, 2009.

Docket Numbers: RP10–39–001.
Applicants: ANR Pipeline Company.
Description: ANR Pipeline Company submits corrected redlined amendment to Rate Schedule FSS negotiated rate agreement with BP Canada Energy Marketing Corp, to be effective 10/8/09.
Filed Date: 10/19/2009.
Accession Number: 20091020–0021.
Comment Date: 5 p.m. Eastern Time on Monday, November 2, 2009.

Docket Numbers: RP09–1027–001.
Applicants: White River Hub, LLC.
Description: White River Hub, LLC submits Second Substitute First Revised Sheet 243 to its FERC Gas Tariff, Original Volume 1, to be effective 10/1/09.
Filed Date: 10/22/2009.
Accession Number: 20091023–0010.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 3, 2009.

Docket Numbers: RP09–1029–001.
Applicants: Questar Overthrust Pipeline Company.
Description: Questar Overthrust Pipeline Company submits Second Substitute First Revised Sheet No 211 to its FERC Gas Tariff, Second Revised Volume No 1–A.
Filed Date: 10/22/2009.
Accession Number: 20091023–0015.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 3, 2009.

Docket Numbers: RP09–1028–001.
Applicants: Questar Southern Trails Pipeline Company.
Description: Questar Southern Trails Pipeline Company submits Second Substitute First Revised Sheet No 130 to its FERC Gas Tariff, Original Volume No 1.
Filed Date: 10/22/2009.
Accession Number: 20091023–0014.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 3, 2009.

Docket Numbers: RP09–1030–001.
Applicants: Questar Pipeline Company.
Description: Questar Pipeline Company submits Substitute Fourth Revised Sheet 201 *et al.* to FERC Gas Tariff, First Revised Volume 1.
Filed Date: 10/22/2009.
Accession Number: 20091023–0013.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 3, 2009.

Docket Numbers: RP09–1037–001.
Applicants: Questar Pipeline Company.
Description: Questar Pipeline Company submits proposed Substitute Eighth Revised Sheet 8 to FERC Gas Tariff, First Revised Volume 1, to be effective 10/7/09.
Filed Date: 10/19/2009.
Accession Number: 20091020–0023.
Comment Date: 5 p.m. Eastern Time on Monday, November 2, 2009.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. E9–26276 Filed 10–30–09; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–6–000]

FirstEnergy Service Company, Complainant v. PJM Interconnection, L.L.C., Respondent; Notice of Complaint

October 23, 2009.

Take notice that on October 19, 2009, pursuant to Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, and section 206 of the Federal Power Act, 16 U.S.C. 824(e), FirstEnergy Service Company [1] (FirstEnergy) filed a formal complaint against PJM Interconnection, L.L.C. (PJM) alleging that the assignment of cost responsibility to the American Transmission Systems, Incorporated (ATSI) Zone pursuant to Schedule 12 of the PJM's Open Access Transmission Tariff for the Regional Transmission Expansion Plan (RTEP) prior to ATSI's integration into the Respondent is unjust, unreasonable, and unduly discriminatory and that Schedule 12 (b)(i)(A) should be amended to provide that applicable zonal loads used to derive rates for ATSI's Zone shall exclude the peak load for the ATSI Zone for Regional Facilities and Necessary Lower Voltage Facilities identified under Schedule 12 that were planned and approved in any RTEP prior to the date when ATSI Zone is integrated into PJM.

FirstEnergy certifies that copies of the complaint were served on the contacts for PJM as listed on the Commission's list of Corporate Officials and on entities and regulatory agencies FirstEnergy reasonably expects to be affected by this Complaint.

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 online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

[1] For purposes of this filing, ''FirstEnergy'' is FirstEnergy Service Company acting on behalf of six of its affiliates: American Transmission Systems, Incorported (ATSI), The Cleveland Electric Illuminating Company, Ohio Edison Company, The Toledo Edison Company, Pennsylvania Power Company, and FirstEnergy Solution Corp. These entities are also collectively referred to as the ''ATSI Utilities.''

Comment Date: 5 p.m. Eastern Time on November 4, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–26236 Filed 10–30–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–418–000]

Perryville Gas Storage, LLC; Notice of Availability of the Environmental Assessment for the Proposed Crowville Salt Dome Storage Project

October 23, 2009.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared this environmental assessment (EA) for the natural gas storage and transmission facilities proposed by the Perryville Gas Storage, LLC (Perryville) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental impacts resulting from construction and operation of Perryville's proposed Crowville Salt Dome Storage Project (Project). Perryville proposes to construct, own and operate; two new natural gas storage caverns; 2.68 miles of 24-inch-diameter natural gas transmission pipeline; 11.69 miles of 36-inch-diameter natural gas transmission pipeline; one 9,500 horsepower compressor station; and, related facilities in Franklin and Richland Parishes, Louisiana. The purpose of the project is to provide natural gas storage capacity to interstate shippers of natural gas.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of this EA have been mailed to the appropriate Federal, State, and local agencies; public interest groups; interested individuals and affected landowners; Native American tribes; newspapers and libraries; parties to this proceeding; and those who have expressed an interest in this project by responding to the Commission's *Notice of Intent to Prepare an Environmental Assessment for the Proposed Crowville Salt Dome Storage Project and Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting and Site Visit,* issued on June 26, 2009.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments by the date specified below.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC on or before November 24, 2009.

For your convenience, there are three methods in which you can use to submit your comments to the Commission. In all instances please reference the Project docket number CP09–418–000 with your submission. The Commission encourages electronic filing of comments and has dedicated eFiling expert available staff to assist you at (202) 502–8258 or *efiling@ferc.gov*.

(1) You may file your comments electronically by using the *Quick Comment* feature, which is located on the Commission's Internet Web site at *http://www.ferc.gov* under the link to *Documents and Filings*. A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's Internet Web site at *http://www.ferc.gov* under the link to Documents and Filings. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an account by clicking on ''Sign up'' or ''eRegister.'' You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing;'' or

(3) You may file your comments via mail to the Commission by sending an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;

If you choose the option to mail your comments, label one copy of the comments for the attention of Gas Branch 2, PJ11.2.

Your comments will be considered by the Commission, but simply filing comments will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC or on the Commission's Internet Web site (http://*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field (*i.e.,* CP09–418). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription (*http://www.ferc.gov/esubscribenow.htm)* which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. To register for this service, go to the eSubcription link on the FERC Internet Web site (*http://www.ferc.gov/esubscribenow.htm*).

Kimberly D. Bose,

Secretary.

[FR Doc. E9–26244 Filed 10–30–09; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–80–000]

Three Buttes Windpower, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

October 23, 2009.

This is a supplemental notice in the above-referenced proceeding of Three Buttes Windpower, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 12, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–26238 Filed 10–30–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–78–000]

Orange Grove Energy, L.P.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

October 23, 2009.

This is a supplemental notice in the above-referenced proceeding of Orange Grove Energy, L.P.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 12, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–26237 Filed 10–30–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–87–000]

Tuana Springs Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

October 26, 2009.

This is a supplemental notice in the above-referenced proceeding of Tuana Springs Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 16, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic

service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–26247 Filed 10–30–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–75–000]

Cassia Gulch Wind Park, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

October 26, 2009.

This is a supplemental notice in the above-referenced proceeding of Cassia Gulch Wind Park, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 16, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list.

They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–26246 Filed 10–30–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–5–000]

Public Service Company of Colorado; Notice of Institution of Proceeding and Refund Effective Date

October 23, 2009.

On October 22, 2009, the Commission issued an order that instituted a proceeding in Docket No. EL10–5–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2006), to consider the justness and reasonableness of Public Service Company of Colorado's (PSCo) $15.16/kW/month demand charge under its Coordination Sales Tariff.[1] *Western Systems Power Pool,* 129 FERC ¶ 61,055 (2009).

The refund effective date in Docket No. EL10–5–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register.**

Any person desiring to intervene in the above proceeding must file in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) within 21 days of the date of this notice. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Anyone filing a motion to intervene must serve a copy of that document on the Applicant.

The Commission encourages electronic submission of interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention.

Persons unable to file electronically should submit an original and 14 copies of the intervention to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–26235 Filed 10–30–09; 8:45 am]

BILLING CODE 6717–01–P

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[1] PSCo Coordination Sales Tariff FERC Electric Tariff, Original Volume No. 2.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

October 26, 2009.

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

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

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

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

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

EXEMPT

Docket No.	File date	Presenter or requester
1. Project No. 400–000	10–22–09	LaShavio Johnson.
2. Project No. 2079–000	10–13–09	Dianne Feinstein.
3. Project No. 2244–000	10–22–09	LaShavio Johnson.
4. Project No. 12775–000	10–20–09	Richard L. Fort.[1]

[1] (1) of two letters from Richard L. Fort to Commission staff.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–26245 Filed 10–30–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8976–6]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Kerr-McGee/Anadarko—Frederick Compressor Station

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: This document announces that the EPA Administrator has responded to a citizen petition asking EPA to object to an operating permit issued by the Colorado Department of Public Health and Environment (CDPHE). Specifically, the Administrator has granted the August 14, 2008 petition, submitted by Rocky Mountain Clean Air Action (Petitioner), to object to CDPHE's April 29, 2008 Addendum to the January 1, 2007 Technical Review Document in support of the renewal of the title V operating permit and to CDPHE's determination that ''no changes to the [title V] permit'' were warranted.

Pursuant to section 505(b)(2) of the Clean Air Act (Act), Petitioners may seek judicial review of those portions of the petitions, which EPA denied in the United States Court of Appeals for the appropriate circuit. Any petition for review shall be filed within 60 days from the date this notice appears in the **Federal Register**, pursuant to section 307 of the Act.

ADDRESSES: You may review copies of the final order, the petition, and other supporting information at the EPA Region 8 Office, 1595 Wynkoop Street, Denver, Colorado, 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the copies of the final order, the petition, and other supporting information. You may view the hard copies Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. Additionally, the final order for Kerr-McGee/Anadarko—Frederick Compressor Station, is available electronically at: *http://www.epa.gov/region7/programs/artd/air/title5/petitiondb/petitions/anadarko_response2008.pdf.*

FOR FURTHER INFORMATION CONTACT: Donald Law, Office of Partnerships and Regulatory Assistance, EPA, Region 8, 1595 Wynkoop Street, Denver, Colorado, 80202–1129, (303) 312–7015, *law.donald@epa.gov.*

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review, and object to as appropriate, a Title V operating permit proposed by State permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator, within 60 days after the expiration of this review period, to object to a Title V operating permit if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the

State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

On August 14, 2008, EPA received a petition from Rocky Mountain Clean Air Action requesting that EPA object to the issuance of the Title V operating permit to Kerr-McGee/Anadarko for the operation of the Frederick Compressor Station. First, the Petitioner asserts that natural gas wells owned or controlled by Kerr-McGee/Anadarko constitute pollutant emitting activities connected with the Frederick Compressor Station. Second, the Petitioner alleges the natural gas wells owned or controlled by Kerr-McGee/Anadarko constitute pollutant emitting activities that are contiguous or adjacent to the Frederick Compressor Station. Finally, the Petitioner argues that by CDPHE's failure to aggregate emissions from Kerr-McGee/Anadarko's interrelated and connected natural gas wells with the Frederick Compressor Station, CDPHE has issued a Title V permit that fails to assure compliance with Prevention of Significant Deterioration (PSD) requirements and without a required compliance schedule to bring the facility into compliance with PSD requirements and is in violation of title V permitting regulations at 40 CFR 70.

On October 8, 2009, the Administrator issued an order granting the petition. The order explains the reasons behind EPA's conclusion grant the petition for objection.

Dated: October 22, 2009.

Carol Rushin,

Acting Regional Administrator.

[FR Doc. E9–26339 Filed 10–30–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8974–1; Docket ID No. EPA–HQ–ORD–2007–0664]

Integrated Risk Information System (IRIS); Announcement of Availability of Literature Searches for IRIS Assessments

AGENCY: Environmental Protection Agency.

ACTION: Announcement of availability of literature searches for IRIS assessments; request for information.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing the availability of literature searches for three IRIS assessments that were or may be started in 2009 and requesting scientific information on health effects that may result from exposure to these chemical substances. The Integrated Risk Information System (IRIS) is an EPA database that contains information on human health effects that may result from exposure to chemical substances in the environment.

DATES: EPA will accept information related to the specific substances included herein as well as any other compounds being assessed by the IRIS Program. Please submit any information in accordance with the instructions provided below.

ADDRESSES: Please submit relevant scientific information identified by docket ID number EPA–HQ–ORD–2007–0664, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *ord.docket@epa.gov*; mailed to Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Information on a disk or CD–ROM should be formatted in Word or as an ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: For information on the IRIS program, contact Dr. Abdel-Razak Kadry, IRIS Program Director, National Center for Environmental Assessment, (mail code: 8601D), Office of Research and Development, U.S. Environmental Protection Agency, Washington, DC 20460; telephone: (703) 347–8545, facsimile: (703) 347–8689; or e-mail: *kadry.abdel@epa.gov*.

For general questions about access to IRIS, or the content of IRIS, please call the IRIS Hotline at (202) 566–1676 or send electronic mail inquiries to *hotline.iris@epa.gov*.

SUPPLEMENTARY INFORMATION:

Background

IRIS is a database of human health effects that may result from exposure to various chemical substances found in the environment. (EPA notes that information in the IRIS database has no preclusive effect and does not predetermine the outcome of any rulemaking. When EPA uses such information to support a rulemaking, the scientific basis for, and the application of, that information are subject to comment.) IRIS currently provides information on health effects associated with more than 500 chemical substances.

The database includes chemical-specific summaries of qualitative and quantitative health information in support of the first two steps of the risk assessment process, i.e., hazard identification and dose-response evaluation. Combined with specific situational exposure assessment information, the information in IRIS is an important source in evaluating potential public health risks from environmental contaminants.

The IRIS Annual Agenda

The 2008 IRIS agenda was announced in a **Federal Register** Notice (FRN) of December 21, 2007 (72 FR 72715), which can be found on the IRIS Web site at *http://www.epa.gov/iris*. With the December 21, 2007, IRIS agenda announcement, EPA started a new process to actively solicit information from the public at the beginning of assessment development. As literature searches are completed, the results will be posted on the IRIS Web site (*http://www.epa.gov/iris*). The public is invited to review the literature search results and submit additional information to EPA. EPA posted literature searches for 11 chemicals and stated that the availability of additional literature searches would be announced in subsequent FRNs.

Request for Public Involvement in IRIS Assessments

EPA is soliciting public involvement in assessments on the IRIS agenda, including new assessments starting in 2009. While EPA conducts a thorough literature search for each chemical substance, there may be unpublished studies or other primary technical sources that are not available through the open literature. EPA would appreciate receiving scientific information from the public during the information gathering stage for the assessments listed in this notice or any other assessments on the IRIS agenda. Interested persons should provide scientific analyses, studies, and other pertinent scientific information. While EPA is primarily soliciting information on new assessments starting in 2009 and beyond, the public may submit information on any chemical substance at any time.

This notice provides (1) a list of new IRIS assessments for which literature searches have recently become available; and (2) instructions to the public for submitting scientific information to EPA pertinent to the development of assessments.

EPA is announcing the availability of additional literature searches on the IRIS Web site (*http://www.epa.gov/iris*). The public is invited to review the literature search results and submit additional information to EPA. Literature searches are now available for chromium VI (hexavalent chromium) (CAS 18540–29–9), ammonia (7664–41–7), and 10 alkylates—2-methylpentane (107–83–5), 2-methylbutane (78–78–4), 3-methylpentane (96–14–0), 2,2,5-trimethylhexane (3522–94–9), 2,3,3-trimethylpentane (560–21–4), 2,3,5-trimethylpentane (565–75–3), cyclohexane (110–82–7), methylcyclohexane (108–87–2), n-heptane (142–82–5), and n-octane (111–65–9) at *http://www.epa.gov/iris* under ''Annual IRIS Agenda.'' Literature search results were provided on December 21, 2007, and April 25, 2008, at *http://www.epa.gov/iris* for tert-amyl methyl ether, biphenyl, n-butanol, tert-butanol, carbonyl sulfide, diethyl phthalate, diisopropyl ether, hexabromocyclodecane, manganese, 1,2,4-trimethylbenzene, 1,3,5-trimethylbenzene, tungsten, urea, and weathered toxaphene. Additional literature searches will be posted as they are completed. Availability will be announced in the **Federal Register.** Instructions on how to submit information are provided below under General Information.

General Information

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2007–0664 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov.*
- *Fax:* 202–566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket, (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center's Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide information by mail or hand delivery, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the main text, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2007–0664. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov*, including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: October 20, 2009.

Rebecca Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. E9–26335 Filed 10–30–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8975–9]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice of Proposed Consent Decree; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (CAA or ''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree to address a lawsuit filed by Association of Irritated Residents (''Plaintiff'') in the United States District Court for the Northern District of California: *Association of Irritated Residents* v. *EPA*, No. 09–cv–1890–CW (N.D. Cal.). On or about April 30, 2009, Plaintiff filed a complaint alleging that EPA failed to perform a non-discretionary duty to take action under section 110(k) of the Act on a revision to the state implementation plan (SIP) submitted by the State of California. Specifically, the complaint alleges that EPA failed to take action on two rules amended by the San Joaquin Valley Unified Air Pollution Control District (''District'') on September 21, 2006 and included in a SIP revision submitted to EPA by the California Air Resources Board (CARB) on December 29, 2006: Rule 2020 (''Exemptions'') and Rule 2020 (''New and Modified Stationary Source Review Rule''). The subject rule amendments relate to permitting of agricultural sources. In the SIP revision dated December 29, 2006, CARB submitted amended District Rule 2020 in its entirety but only Paragraph 4.6.9 of District Rule 2020. Under the terms of the proposed consent decree, a deadline has been established for EPA to take action on the amended District rules as submitted on December 29, 2006. If EPA fulfills its obligations, Plaintiff has agreed to dismiss this suit with prejudice.

DATES: Written comments on the proposed consent decree must be received by *December 2, 2009.*

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2009–0831, online at *http://www.regulations.gov* (EPA's preferred

method); by e-mail to *oei.docket@epa.gov*; mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Jefferson Wehling, Office of Regional Counsel (ORC–2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105; telephone: (415) 972–3901; fax number (415) 947–3571; e-mail address: *wehling.jefferson@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

This proposed consent decree would resolve a lawsuit seeking action by EPA under section 110(k) of the CAA on two rules amended by the District on September 21, 2006 and included in a SIP revision submitted by CARB on December 29, 2006: Rule 2020 (''Exemptions'') and Paragraph 4.6.9 of Rule 2020 (''New and Modified Stationary Source Review Rule''). The subject rule amendments relate to permitting of agricultural sources. The District has adopted further amendments to Rules 2020 and 2201, and CARB has submitted the further amended rules, which carry forward the specific amendments to the rules submitted on December 29, 2006, to EPA as SIP revisions. The further amended District Rule 2020 was submitted on March 7, 2008, and the further amended District Rule 2201 was submitted on March 17, 2009.

Under the terms of the proposed consent decree, EPA will sign for publication in the **Federal Register** notice of the Agency's final action pursuant to CAA section 110(k) on Rule 2020 (''Exemptions'') and Paragraph 4.6.9 of Rule 2020 (''New and Modified Stationary Source Review Rule''), submitted to EPA for review on December 29, 2006, by March 15, 2010. However, the proposed consent decree provides that EPA final action on the more recent amendments to District Rules 2020 and 2201 shall discharge EPA's obligations to act on the subject rules as submitted on December 29, 2006.

In the proposed consent decree, EPA agrees that, pursuant to CAA section 304(d), 42 U.S.C. 7604(d), Plaintiff is both eligible and entitled to recover its costs of litigation in this action, including reasonable attorneys' fees, incurred prior to entry of the consent decree. The consent decree becomes an order of the Court upon entry, and, consistent with the terms of the consent decree, the case shall be dismissed with prejudice after EPA takes final action on the amended rules.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed consent decree from persons who were not named as parties to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment which may be submitted, that consent to the consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How Can I Get a Copy of the Consent Decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2009–0831) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov*. You may use the *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search''.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *http://www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the *http://www.regulations.gov* website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you

provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through *http://www.regulations.gov*, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: October 26, 2009.

Richard B. Ossias,

Associate General Counsel.

[FR Doc. E9–26338 Filed 10–30–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2009–N–14]

Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Agency.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Agency (FHFA) is announcing the Federal Home Loan Bank (Bank) members it has selected for the 2008–09 seventh round review cycle under the FHFA's community support requirements regulation. This notice also prescribes the deadline by which Bank members selected for review must submit Community Support Statements to FHFA.

DATES: Bank members selected for the review cycle under the FHFA's community support requirements regulation must submit completed Community Support Statements to FHFA on or before December 21, 2009.

ADDRESSES: Bank members selected for the 2008–09 seventh round review cycle under the FHFA's community support requirements regulation must submit completed Community Support Statements to FHFA either by hard-copy mail at the Federal Housing Finance Agency, Housing Mission and Goals, 1625 Eye Street, NW., Washington, DC 20006, or by electronic mail at: *hmgcommunitysupportprogram @fhfa.gov*.

FOR FURTHER INFORMATION CONTACT: Rona Richardson, Office Assistant, Housing Mission and Goals, Federal Housing Finance Agency, at 202–408–2945, by electronic mail at *hmgcommunitysupportprogram @fhfa.gov*, or by hard-copy mail at the Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Selection for Community Support Review

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires FHFA to promulgate regulations establishing standards of community investment or service Bank members must meet in order to maintain access to long-term advances. *See* 12 U.S.C. 1430(g)(1). The regulations promulgated by FHFA must take into account factors such as the Bank member's performance under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901 *et seq.,* and record of lending to first-time homebuyers. *See* 12 U.S.C. 1430(g)(2). Pursuant to section 10(g) of the Bank Act, FHFA has promulgated a community support requirements regulation that establishes standards a Bank member must meet in order to maintain access to long-term advances, and review criteria FHFA must apply in evaluating a member's community support performance. *See* 12 CFR part 944. The regulation includes standards and criteria for the two statutory factors—CRA performance and record of lending to first-time homebuyers. 12 CFR 944.3. Only members subject to the CRA must meet the CRA standard. 12 CFR 944.3(b). All members, including those not subject to CRA, must meet the first-time homebuyer standard. 12 CFR 944.3(c).

Under the rule, FHFA selects approximately one-eighth of the members in each Bank district for community support review each calendar quarter. 12 CFR 944.2(a). FHFA will not review an institution's community support performance until it has been a Bank member for at least one year. Selection for review is not, nor should it be construed as, any indication of either the financial condition or the community support performance of the member.

Each Bank member selected for review must complete a Community Support Statement and submit it to FHFA by the December 21, 2009 deadline prescribed in this notice. 12 CFR 944.2(b)(1)(ii) and (c). On or before November 16, 2009, each Bank will notify the members in its district that have been selected for the 2008–09 seventh round community support review cycle that they must complete and submit to FHFA by the deadline a Community Support Statement. 12 CFR 944.2(b)(2)(i). The member's Bank will provide a blank Community Support Statement Form (OMB No. 2590–0005), which also is available on the FHFA's Web site: *http://www.fhfa.gov/webfiles/2924/FHFAForm060.pdf*. Upon request, the member's Bank also will provide assistance in completing the Community Support Statement.

FHFA has selected the following members for the 2008–09 seventh round community support review cycle:

Federal Home Loan Bank of Boston—District 1

First New England Federal Credit Union	East Hartford	Connecticut.
Bankers' Bank Northeast	Glastonbury	Connecticut.
Fieldpoint Private Bank & Trust	Greenwich	Connecticut.
Ledge Light Federal Credit Union	Groton	Connecticut.
Connecticut Bank and Trust Company (The)	Hartford	Connecticut.
Prudential Bank & Trust, FSB	Hartford	Connecticut.
Northeast Family Federal Credit Union	Manchester	Connecticut.
Connex Credit Union	North Haven	Connecticut.
Eastern Federal Bank	Norwich	Connecticut.
Workers Federal Credit Union	Stafford	Connecticut.
Connecticut Community Bank, N.A	Westport	Connecticut.
Avon Co-operative Bank	Avon	Massachusetts.
Belmont Savings Bank	Belmont	Massachusetts.
Beverly National Bank	Beverly	Massachusetts.
Industrial Credit Union	Boston	Massachusetts.
Liberty Bay Credit Union	Boston	Massachusetts.
Bridgewater Credit Union	Bridgewater	Massachusetts.
Massachusetts Institute of Technology FCU	Cambridge	Massachusetts.
Polish National Credit Union	Chicopee	Massachusetts.

Boston Firefighters Credit Union	Dorchester	Massachusetts.
Fall River Municipal Credit Union	Fall River	Massachusetts.
Holbrook Co-operative Bank	Holbrook	Massachusetts.
Lenox National Bank	Lenox	Massachusetts.
Butler Bank, A Co-Operative Bank	Lowell	Massachusetts.
Enterprise Bank and Trust Company	Lowell	Massachusetts.
M/A–Com Federal Credit Union	Lowell	Massachusetts.
Luso Federal Credit Union	Ludlow	Massachusetts.
Brotherhood Credit Union	Lynn	Massachusetts.
Digital Federal Credit Union	Marlborough	Massachusetts.
Melrose Co-operative Bank	Melrose	Massachusetts.
Direct Federal Credit Union	Needham	Massachusetts.
Southcoast Health System Federal Credit Union	New Bedford	Massachusetts.
Northmark Bank	North Andover	Massachusetts.
Luso-American Credit Union	Peabody	Massachusetts.
Seaport Credit Union	Salem	Massachusetts.
Sharon Credit Union	Sharon	Massachusetts.
Braintree Co-Operative Bank (The)	South Braintree	Massachusetts.
MassMutual Federal Credit Union	Springfield	Massachusetts.
Taunton Federal Credit Union	Taunton	Massachusetts.
RTN Federal Credit Union	Waltham	Massachusetts.
Webster First Federal Credit Union	Webster	Massachusetts.
Westport Federal Credit Union	Westport	Massachusetts.
Eastern Corporate Federal Credit Union	Woburn	Massachusetts.
AllCom Credit Union	Worcester	Massachusetts.
Commerce Bank & Trust Company	Worcester	Massachusetts.
Worcester Credit Union	Worcester	Massachusetts.
Seaboard Federal Credit Union	Bucksport	Maine.
Gorham Savings Bank	Gorham	Maine.
NorState Federal Credit Union	Madawaska	Maine.
Norway Savings Bank	Norway	Maine.
University Credit Union	Orono	Maine.
Sebasticook Valley Federal Credit Union	Pittsfield	Maine.
Infinity Federal Credit Union	Portland	Maine.
New Dimensions Federal Credit Union	Waterville	Maine.
Bellwether Community Credit Union	Manchester	New Hampshire.
Granite State Credit Union	Manchester	New Hampshire.
Members First Credit Union of New Hampshire	Manchester	New Hampshire.
Bank of America Rhode Island, N.A	Providence	Rhode Island.
Columbus Credit Union	Warren	Rhode Island.
Centreville Savings Bank	West Warwick	Rhode Island.
New England Federal Credit Union	Williston	Vermont.

Federal Home Loan Bank of New York—District 2

Hudson Valley Bank, National Association	Stamford	Connecticut.
Affinity Federal Credit Union	Bedminster	New Jersey.
Somerset Savings Bank, SLA	Bound Brook	New Jersey.
Financial Resources Federal Credit Union	Bridgewater	New Jersey.
Liberty Bell Bank	Cherry Hill	New Jersey.
Northern State Bank	Closter	New Jersey.
Unilever Federal Credit Union	Englewood Cliffs	New Jersey.
CENLAR FSB	Ewing Township	New Jersey.
Grand Bank, National Association	Hamilton	New Jersey.
Enterprise National Bank N.J	Kenilworth	New Jersey.
MetLife Bank, NA	Kingston	New Jersey.
Central Jersey Bank, National Association	Long Branch	New Jersey.
Millville Savings & Loan Association	Millville	New Jersey.
Hudson City Savings Bank	Paramus	New Jersey.
Harvest Community Bank	Pennsville	New Jersey.
United Teletech Financial Federal Credit Union	Tinton Falls	New Jersey.
North Jersey Federal Credit Union	Totowa	New Jersey.
Llewellyn-Edison Savings Bank, FSB	West Orange	New Jersey.
N.J.M. Bank, FSB	West Trenton	New Jersey.
Pascack Community Bank	Westwood	New Jersey.
First Investors Federal Savings Bank	Woodbridge	New Jersey.
Bank of Akron	Akron	New York.
Capital Bank & Trust Company	Albany	New York.
State Employees Federal Credit Union	Albany	New York.
Bethpage Federal Credit Union	Bethpage	New York.
Putnam County Savings Bank	Brewster	New York.
New York National Bank	Bronx	New York.
First American International Bank	Brooklyn	New York.
First State Bank	Canisteo	New York.
Corning Federal Credit Union	Corning	New York.
The Delaware National Bank of Delhi	Delhi	New York.

The First National Bank of Dryden	Dryden	New York.
Beacon Federal	East Syracuse	New York.
Flushing Savings Bank, FSB	Flushing	New York.
American Community Bank	Glen Cove	New York.
Gouverneur S&L Association	Gouverneur	New York.
Alternatives Federal Credit Union	Ithaca	New York.
CFCU Community Credit Union	Ithaca	New York.
Community Mutual Savings Bank	Mt. Vernon	New York.
Bank Leumi USA	New York	New York.
Doral Bank, FSB	New York	New York.
Fiduciary Trust Company International	New York	New York.
Liberty Pointe Bank	New York	New York.
Metropolitan National Bank	New York	New York.
Progressive Credit Union	New York	New York.
Shinhan Bank America	New York	New York.
Gotham Bank of New York	New York City	New York.
Hudson Heritage Federal Credit Union	Newburgh	New York.
Oceanside Christopher Federal Credit Union	Oceanside	New York.
Hudson Valley Federal Credit Union	Poughkeepsie	New York.
Savannah Bank, National Association	Savannah	New York.
Reliant Community Credit Union	Sodus	New York.
Hamptons State Bank	Southampton	New York.
Empower Federal Credit Union	Syracuse	New York.
Pioneer Savings Bank	Troy	New York.
Northern Federal Credit Union	Watertown	New York.
FirstBank of Puerto Rico	Santurce	Puerto Rico.
Citizens Bank, National Association	Providence	Rhode Island.
HSBC Bank USA, N.A	Buffalo	New York.
Bank of St. Croix, Inc	Christiansted	Virgin Islands.

Federal Home Loan Bank of Pittsburgh—District 3

Felton Bank (The)	Felton	Delaware.
Community Bank Delaware	Lewes	Delaware.
AIG Federal Savings Bank	Wilmington	Delaware.
Wilmington Trust Company	Wilmington	Delaware.
People First Federal Credit Union	Allentown	Pennsylvania.
Bally Savings Bank	Bally	Pennsylvania.
Meridian Bank	Berwyn	Pennsylvania.
NOVA Bank	Berwyn	Pennsylvania.
Embassy Bank For The Lehigh Valley	Bethlehem	Pennsylvania.
Fidelity S & LA of Bucks Co	Bristol	Pennsylvania.
Bucks County Bank	Doylestown	Pennsylvania.
The Fidelity Deposit and Discount Bank	Dunmore	Pennsylvania.
Lafayette Ambassador Bank	Easton	Pennsylvania.
First Resource Bank	Exton	Pennsylvania.
Fleetwood Bank	Fleetwood	Pennsylvania.
S & T Bank	Indiana	Pennsylvania.
Jonestown Bank and Trust Company	Jonestown	Pennsylvania.
Graystone Tower Bank	Lancaster	Pennsylvania.
Commercial Bank and Trust of Pennsylvania	Latrobe	Pennsylvania.
Susquehanna Bank PA	Lititz	Pennsylvania.
National Bank of Malvern (The)	Malvern	Pennsylvania.
Gateway Bank of Pennsylvania	Mc Murray	Pennsylvania.
Members 1st Federal Credit Union	Mechanicsburg	Pennsylvania.
The First National of Mercersburg	Mercersburg	Pennsylvania.
Swineford National Bank	Middleburg	Pennsylvania.
Juniata Valley Bank	Mifflintown	Pennsylvania.
Mid Penn Bank	Millersburg	Pennsylvania.
Citizens Savings Bank	Mount Pocono	Pennsylvania.
Royal Bank America	Narberth	Pennsylvania.
The Neffs National Bank	Neffs	Pennsylvania.
First National B & T Company of Newtown	Newtown	Pennsylvania.
East River Bank	Philadelphia	Pennsylvania.
Port Richmond Savings	Philadelphia	Pennsylvania.
Ukrainian Selfreliance Federal Credit Union	Philadelphia	Pennsylvania.
Continental Bank	Plymouth Meeting	Pennsylvania.
Earthstar Bank	Southampton	Pennsylvania.
Quaint Oak Bank	Southampton	Pennsylvania.
Citadel Federal Credit Union	Thorndale	Pennsylvania.
TruMark Financial Credit Union	Trevose	Pennsylvania.
The Turbotville National Bank	Turbotville	Pennsylvania.
Penn Liberty Bank	Wayne	Pennsylvania.
Merck, Sharp & Dohme FCU	West Point	Pennsylvania.
Woodlands Bank	Williamsport	Pennsylvania.
Affinity Bank of Pennsylvania	Wyomissing	Pennsylvania.

Berkshire Bank	Wyomissing	Pennsylvania.
STAR USA Federal Credit Union	Charleston	West Virginia.
Boone County Bank, Inc	Madison	West Virginia.
The United Federal Credit Union	Morgantown	West Virginia.
One Community Credit Union	Parkersburg	West Virginia.
Jefferson Security Bank	Shepherdstown	West Virginia.
West Virginia Federal Credit Union	South Charleston	West Virginia.
First Choice America Community FCU	Weirton	West Virginia.

Federal Home Loan Bank of Atlanta—District 4

Compass Bank	Birmingham	Alabama.
Nexity Bank	Birmingham	Alabama.
Oakworth Capital Bank	Birmingham	Alabama.
Red Mountain Bank	Birmingham	Alabama.
Secure First Credit Union	Birmingham	Alabama.
SevisFirst Bank	Birmingham	Alabama.
SouthPoint Bank	Birmingham	Alabama.
First Federal Savings & Loan of Cullman	Cullman	Alabama.
Premier Bank of the South	Cullman	Alabama.
BankSouth	Dothan	Alabama.
MidSouth Bank, N.A	Dothan	Alabama.
First Southern Bank	Florence	Alabama.
Family Savings Credit Union	Gasden	Alabama.
Peoples Trust Bank	Hamilton	Alabama.
First National Bank of Hartford	Hartford	Alabama.
Bank of Walker County	Jasper	Alabama.
Farmers Exchange Bank	Louisville	Alabama.
Listerhill Credit Union	Muscle Shoals	Alabama.
Hometown Bank of Alabama	Oneonta	Alabama.
First Bank of The South	Rainsville	Alabama.
Citizens Bank & Savings Company	Russellville	Alabama.
FNB Bank	Scottsboro	Alabama.
PrimeSouth Bank	Tallassee	Alabama.
Troy Bank & Trust Company	Troy	Alabama.
Citizens State Bank	Vernon	Alabama.
State Bank and Trust	Winfield	Alabama.
IDB–IIC Federal Credit Union	Washington	District of Columbia.
Industrial Bank	Washington	District of Columbia.
Southshore Community Bank	Apollo Beach	Florida.
Paradise Bank	Boca Raton	Florida.
Sun American Bank	Boca Raton	Florida.
First America Bank	Bradenton	Florida.
AmericanFirst Bank	Clermont	Florida.
Sunrise Bank	Cocoa Beach	Florida.
Biscayne Bank	Coconut Grove	Florida.
Gibraltar Bank, FSB	Coral Gables	Florida.
Nature Coast Bank	Crystal River	Florida.
Community Bank of Broward	Dania Beach	Florida.
Mainstreet Community Bank of Florida	Deland	Florida.
Broward Bank of Commerce	Fort Lauderdale	Florida.
FineMark National Bank & Trust	Fort Myers	Florida.
IronStone Bank	Fort Myers	Florida.
Reliance Bank, FSB	Fort Myers	Florida.
Beach Community Bank	Fort Walton Beach	Florida.
First National Bank & Trust	Fort Walton Beach	Florida.
Edison National Bank	Ft. Myers	Florida.
Oculina Bank (The)	Ft. Pierce	Florida.
Merchants and Southern Bank	Gainesville	Florida.
American Enterprise Bank of Florida	Jacksonville	Florida.
EverBank	Jacksonville	Florida.
First Bank of Jacksonville	Jacksonville	Florida.
First Florida Credit Union	Jacksonville	Florida.
Keys Federal Credit Union	Key West	Florida.
Achieva Credit Union	Largo	Florida.
Panther Community Bank, N.A	Lehigh Acres	Florida.
City County Credit Union of Fort Lauderdale	Margate	Florida.
Lafayette State Bank	Mayo	Florida.
Florida Bus Bank	Melbourne	Florida.
Prime Bank	Melbourne	Florida.
Continental National Bank of Miami	Miami	Florida.
Dade County Federal Credit Union	Miami	Florida.
Espirito Santo Bank	Miami	Florida.
Great Florida Bank	Miami	Florida.
U.S. Century Bank	Miami	Florida.
Partners Bank	Naples	Florida.

Alarion Bank	Ocala	Florida.
Community Bank and Trust of Florida	Ocala	Florida.
Lydian Private Bank	Palm Beach Gardens	Florida.
Intracoastal Bank	Palm Coast	Florida.
Manatee River Community Bank	Palmetto	Florida.
Tyndall Federal Credit Union	Panama City	Florida.
Vision Bank	Panama City	Florida.
Coastal Community Bank	Panama City Beach	Florida.
Bank of Pensacola	Pensacola	Florida.
Florida Shores Bank—Southeast	Pompano Beach	Florida.
Freedom Bank of America	Saint Petersburg	Florida.
Synovus Bank of Tampa Bay	Saint Petersburg	Florida.
Prime Meridian Bank	Tallahassee	Florida.
Bank of Florida—Tampa Bay	Tampa	Florida.
Pilot Bank	Tampa	Florida.
Suncoast Schools Federal Credit Union	Tampa	Florida.
Tampa Bay Federal Credit Union	Tampa	Florida.
Patriot Bank	Trinity	Florida.
Bank of Venice (The)	Venice	Florida.
First Choice Credit Union	West Palm Beach	Florida.
Flagler Bank	West Palm Beach	Florida.
CenterState Bank of Florida, NA	Winter Haven	Florida.
Northwest Bank and Trust Company	Acworth	Georgia.
Atlanta Business Bank	Atlanta	Georgia.
Cads Federal Credit Union	Atlanta	Georgia.
First National Bank of Decatur County	Bainbridge	Georgia.
First State Bank of Blakely	Blakely	Georgia.
Hamilton State Bank	Braselton	Georgia.
Hometown Community Bank	Braselton	Georgia.
Peoples Community National Bank	Bremen	Georgia.
Oglethorpe Bank	Brunswick	Georgia.
North Georgia National Bank	Calhoun	Georgia.
Flint River National Bank	Camilla	Georgia.
First National Bank of Polk City	Cedartown	Georgia.
Habersham Bank	Clarkesville	Georgia.
Southern Bank and Trust	Clarkesville	Georgia.
Mountain Valley Community Bank	Cleveland	Georgia.
First Madison Bank &Trust	Colbert	Georgia.
Community Business Bank	Cumming	Georgia.
Southeastern Bank	Darien	Georgia.
First Commerce Community Bank	Douglasville	Georgia.
Georgia Central Credit Union	Duluth	Georgia.
New Horizons Bank	East Ellijay	Georgia.
Bank of Ellijay	Ellijay	Georgia.
1st Georgia Banking Company	Franklin	Georgia.
Gordon Bank (The)	Gordon	Georgia.
Piedmont Community Bank	Gray	Georgia.
Citizens Community Bank	Hahira	Georgia.
Community Capital Bank	Jonesboro	Georgia.
Legacy State Bank	Loganville	Georgia.
Highland Commercial Bank	Marietta	Georgia.
Century Bank and Trust	Milledgeville	Georgia.
The Patterson Bank	Patterson	Georgia.
Pelham Banking Company	Pelham	Georgia.
The Bank of Perry	Perry	Georgia.
Community Bank of Rockmart	Rockmart	Georgia.
American Trust Bank	Roswell	Georgia.
George D. Warthen Bank	Sandersville	Georgia.
The Savannah Bank, N.A	Savannah	Georgia.
Farmers & Merchants Community Bank	Senoia	Georgia.
High Trust Bank	Stockbridge	Georgia.
Republic Bank of Georgia	Suwanee	Georgia.
The Park Avenue Bank	Valdosta	Georgia.
Oconee State Bank	Watkinsville	Georgia.
The First National Bank of Waynesboro	Waynesboro	Georgia.
PlantersFirst	Hawkinsville	Georgia.
Aberdeen Proving Ground	Aberdeen	Maryland.
BankAnnapolis	Annapolis	Maryland.
First Mariner Bank	Baltimore	Maryland.
Fullerton Federal Savings Association	Baltimore	Maryland.
Kosciuszko Federal Savings Bank	Baltimore	Maryland.
Midstate Federal Savings and Loan	Baltimore	Maryland.
The John Hopkins Federal Credit Union	Baltimore	Maryland.
Educational Systems Employees F.C.U	Bladensburg	Maryland.
The Washington Savings Bank, FSB	Bowie	Maryland.
Bank of the Eastern Shore	Cambridge	Maryland.

The Centreville National Bank of Maryland	Centreville	Maryland.
The Columbia Bank	Columbia	Maryland.
First Peoples Community F.C.U	Cumberland	Maryland.
Damascus Community Bank	Damascus	Maryland.
Freedom of Maryland F.C.U	Aberdeen Proving Ground	Maryland.
Howard Bank	Ellicott City	Maryland.
Montgomery County Teachers FCU	Gaithersburg	Maryland.
The Bank of Glen Burnie	Glen Burnie	Maryland.
Washington Telephone Federal Credit Union	Kensington	Maryland.
Sandy Spring Bank	Olney	Maryland.
Cedar Point Federal Credit Union	Patuxent River	Maryland.
Congressional Bank	Potomac	Maryland.
Capital Bank NA	Rockville	Maryland.
Energy Federal Credit Union	Rockville	Maryland.
Harvest Bank of Maryland	Rockville	Maryland.
National Institute of Health FCU	Rockville	Maryland.
Maryland Financial Bank	Towson	Maryland.
Prince George's Federal Savings Bank	Upper Marlboro	Maryland.
Farmers Bank of Willards (The)	Willards	Maryland.
Belmont FS & LA	Belmont	North Carolina.
Black Mountain Savings Bank, S.S.B	Black Mountain	North Carolina.
Mid-Carolina Bank	Burlington	North Carolina.
Bank of Commerce	Charlotte	North Carolina.
Latino Community Credit Union	Durham	North Carolina.
Nantahala Bank & Trust Company	Franklin	North Carolina.
Alliance Bank Trust Co	Gastonia	North Carolina.
Carolina Commerce Bank	Gastonia	North Carolina.
Citizens South Bank	Gastonia	North Carolina.
Premier Federal Credit Union	Greensboro	North Carolina.
Parkway Bank	Lenoir	North Carolina.
Coastal Federal Credit Union	Raleigh	North Carolina.
Greystone Bank	Raleigh	North Carolina.
North State Bank	Raleigh	North Carolina.
New Republic Savings Bank	Roanoke Rapids	North Carolina.
Providence Bank	Rocky Mount	North Carolina.
Security Savings Bank, SSB	Southport	North Carolina.
Bank of North Carolina	Thomasville	North Carolina.
AF Bank	West Jefferson	North Carolina.
Southern Community Bank & Trust	Winston-Salem	North Carolina.
Select Bank & Trust Company	Winterville	North Carolina.
Carolina Bank & Trust Company	Bennettsville	South Carolina.
First Capital Bank	Bennettsville	South Carolina.
Atlantic Bank & Trust	Charleston	South Carolina.
Carolina Federal Savings Bank	Charleston	South Carolina.
Clover Community Bank	Clover	South Carolina.
BankMeridian, National Association	Columbia	South Carolina.
First Citizens Bank and Trust Company, Inc	Columbia	South Carolina.
South Carolina Community Bank	Columbia	South Carolina.
The National Bank of South Carolina	Columbia	South Carolina.
Darlington County Bank	Darlington	South Carolina.
CommunitySouth Bank and Trust	Easley	South Carolina.
The Peoples National Bank	Easley	South Carolina.
Carolina First Bank	Greenville	South Carolina.
Independence National Bank	Greenville	South Carolina.
Heritage Community Bank	Hartsville	South Carolina.
Coastal States Bank	Hilton Head	South Carolina.
Harbourside Community Bank	Hilton Head	South Carolina.
Williamsburg First National Bank	Kingstree	South Carolina.
Tidelands Bank	Mount Pleasant	South Carolina.
Palmetto Heritage Bank & Trust	Pawleys Island	South Carolina.
Arthur State Bank	Union	South Carolina.
Provident Community Bank, NA	Union	South Carolina.
Burke & Herbert Bank & Trust Company	Alexandria	Virginia.
Common Wealth One Federal C.U	Alexandria	Virginia.
Hew Federal Credit Union	Alexandria	Virginia.
United States Senate FCU	Alexandria	Virginia.
The First National Bank of Altavista	Altavista	Virginia.
Arlington Virginia Federal Credit Union	Arlington	Virginia.
Union Bank & Trust Company	Bowling Green	Virginia.
Sonabank, N.A	Charlottesville	Virginia.
URW Community Federal Credit Union	Danville	Virginia.
Peoples Bank (The)	Ewing	Virginia.
United Bank	Fairfax	Virginia.
Security One Bank	Falls Church	Virginia.
Franklin Federal Savings & Loan Association of Richmond	Glen Allen	Virginia.
MainStreet Bank	Herndon	Virginia.

The Page Valley Bank	Luray	Virginia.
Central Virginia Federal Credit Union	Lynchburg	Virginia.
Smith River Community Bank, NA	Martinsville	Virginia.
The Bank of McKenney	McKenney	Virginia.
Bank of Virginia	Midlothian	Virginia.
Virginia Company Bank	Newport News	Virginia.
Northern Star Credit Union, Inc	Portsmouth	Virginia.
Greater Atlantic Bank	Reston	Virginia.
WashingtonFirst Bank	Reston	Virginia.
First Market Bank FSB	Richmond	Virginia.
HomeTown Bank	Roanoke	Virginia.
Member One Federal Credit Union	Roanoke	Virginia.
SuffolkFirst Bank	Suffolk	Virginia.
Farmers and Merchants Bank	Timberville	Virginia.
The Business Bank	Vienna	Virginia.
Bank @LANTEC	Virginia Beach	Virginia.
The Rappahannock NB of Washington	Washington	Virginia.
DuPont Community Credit Union	Waynesboro	Virginia.

Federal Home Loan Bank of Cincinnati—District 5

Community Financial Services Bank	Benton	Kentucky.
Taylor County Bank	Cambellsville	Kentucky.
The First National Bank of Carrollton	Carrollton	Kentucky.
The Cecilian Bank	Cecilia	Kentucky.
United Citizens Bank of Southern Kentucky	Columbia	Kentucky.
First Federal Savings Bank of Elizabethtown	Elizabethtown	Kentucky.
Commonwealth Credit Union	Frankfort	Kentucky.
Kentucky Employees Credit Union	Frankfort	Kentucky.
Commonwealth Community Bank	Hartford	Kentucky.
1st Trust Bank, Inc	Hazard	Kentucky.
The Citizens Bank	Hickman	Kentucky.
Lincoln National Bank	Hodgenville	Kentucky.
The First State Bank	Irvington	Kentucky.
Kue Federal Credit Union	Lexington	Kentucky.
Whitaker Bank	Lexington	Kentucky.
Cumberland Valley NB&T Company	London	Kentucky.
Inez Deposit Bank, FSB	Louisa	Kentucky.
Kemba Louisville Credit Union	Louisville	Kentucky.
Louchem Federal Credit Union	Louisville	Kentucky.
River City Bank	Louisville	Kentucky.
Magnolia Bank, Incorporated	Magnolia	Kentucky.
The First National Bank of Manchester	Manchester	Kentucky.
First Kentucky Bank Inc	Mayfield	Kentucky.
Farmers Deposit Bank Of Middleburg	Middleburg	Kentucky.
The Murray Bank Fsb	Murray	Kentucky.
Citizens National Bank of Paintsville	Paintsville	Kentucky.
West Point Bank	Radcliff	Kentucky.
The Fib of Russell Springs	Russell Springs	Kentucky.
Sebree Deposit Bank	Sebree	Kentucky.
The Peoples Bank Of Bullitt County	Shepherdsville	Kentucky.
Peoples Bank	Taylorsville	Kentucky.
Citizens Commerce National Bank	Versailles	Kentucky.
United Bank & Trust Company	Versailles	Kentucky.
Alliance Banking Company	Winchester	Kentucky.
BFG Federal Credit Union	Akron	Ohio.
Farmers & Merchants State Bank	Archbold	Ohio.
The Citizens Bank Of Ashville	Ashville	Ohio.
Ohio University Credit Union	Athens	Ohio.
Baltic State Bank	Baltic	Ohio.
Bartlett Farmers Bank	Bartlett	Ohio.
Ohio Commerce Bank	Beachwood	Ohio.
Reward One Credit Union	Brook Park	Ohio.
Community Savings	Caldwell	Ohio.
Cinco Credit Union Inc	Cincinnati	Ohio.
New Horizons Credit Union, Inc	Cincinnati	Ohio.
Ohio Valley Community Credit Union	Clarington	Ohio.
Century Federal Credit Union	Cleveland	Ohio.
KeyBank, National Association	Cleveland	Ohio.
The Pioneer Savings Bank	Cleveland	Ohio.
Clyde-Findlay Area Credit Union	Clyde	Ohio.
Columbus Metro Federal Credit Union	Columbus	Ohio.
Guernsey Bank	Columbus	Ohio.
Members First Credit Union	Columbus	Ohio.
MidState Educators Credit Union	Columbus	Ohio.
Nationwide Bank	Columbus	Ohio.

Western Credit Union, Inc	Columbus	Ohio.
First Federal Savings & Loan Association	Delta	Ohio.
Emerald Bank	Dublin	Ohio.
Croghan Colonial Bank (The)	Fremont	Ohio.
Powerco Credit Union	Gahanna	Ohio.
First Federal Savings & Loan Association	Galion	Ohio.
First Service FCU	Groveport	Ohio.
Hardin Community Federal Credit Union	Kenton	Ohio.
Day Air Credit Union	Kettering	Ohio.
The Killbuck Savings Bank	Killbuck	Ohio.
Standing Stone National Bank	Lancaster	Ohio.
Marblehead Bank (The)	Marblehead	Ohio.
Marion Community Credit Union	Marion	Ohio.
Bank of Maumee	Maumee	Ohio.
The First National Bank of McConnelsville	McConnelsville	Ohio.
Lake National Bank	Mentor	Ohio.
River Valley Credit Union	Miamisburg	Ohio.
CES Credit Union, Inc	Mount Vernon	Ohio.
Fiberglas Federal Credit Union	Newark	Ohio.
Miami University Community FCU	Oxford	Ohio.
Desco Federal Credit Union	Portsmouth	Ohio.
The FNB of Powhatan Point	Powhatan Point	Ohio.
Park View Federal Savings Bank	Solon	Ohio.
The Farmers Savings Bank	Spencer	Ohio.
The Old Fort Banking Company	Tiffin	Ohio.
First Place Bank	Warren	Ohio.
Seven Seventeen Credit Union	Warren	Ohio.
Atomic Employees Credit Union, Inc	Waverly	Ohio.
The First National Bank of Wellston	Wellston	Ohio.
Twin Valley Bank	West Alexandria	Ohio.
Wayne Savings Community Bank	Wooster	Ohio.
Alcoa Tennessee Federal Credit Union	Alcoa	Tennessee.
Insouth Bank	Brownsville	Tennessee.
Cohutta Banking Company	Chattanooga	Tennessee.
FSGBANK, NA	Chattanooga	Tennessee.
First Federal Savings Bank	Clarksville	Tennessee.
Peoples Bank	Clifton	Tennessee.
Bank Of Dickson	Dickson	Tennessee.
Sumner Bank & Trust	Gallatin	Tennessee.
First Capital Bank	Germantown	Tennessee.
Greeneville Federal Bank, FSB	Greeneville	Tennessee.
Heritage Community Bank	Greeneville	Tennessee.
Citizens Bank	Hartsville	Tennessee.
American Security Bank & Trust Company	Hendersonville	Tennessee.
Leaders Credit Union	Jackson	Tennessee.
Community Bank of the Cumberlands	Jamestown	Tennessee.
Eastman Credit Union	Kingsport	Tennessee.
American Trust Bank of East Tennessee	Knoxville	Tennessee.
BankEast	Knoxville	Tennessee.
Knoxville TVA Employees Credit Union	Knoxville	Tennessee.
UT Federal Credit Union	Knoxville	Tennessee.
Citizens Bank of Lafayette	Lafayette	Tennessee.
Peoples Bank of the South	LaFollette	Tennessee.
First National Bank	Lenoir City	Tennessee.
First Commerce Bank	Lewisburg	Tennessee.
Peoples Bank & Trust Company	Manchester	Tennessee.
Citizens Bank Of Blount County	Maryville	Tennessee.
Homeland Community Bank	McMinnville	Tennessee.
The First National Bank-McMinnville	McMinnville	Tennessee.
Landmark Community Bank	Memphis	Tennessee.
Magna Bank	Memphis	Tennessee.
Community National Bank of the Lakeway Area	Morristown	Tennessee.
Bank of Fayette County	Moscow	Tennessee.
MidSouth Bank	Murfreesboro	Tennessee.
CapStar Bank	Nashville	Tennessee.
Civic Bank & Trust	Nashville	Tennessee.
InsBank	Nashville	Tennessee.
Nashville Bank and Trust Company	Nashville	Tennessee.
Southeast Financial Federal Credit Union	Nashville	Tennessee.
Security Bank	Newbern	Tennessee.
Ornl Federal Credit Union	Oak Ridge	Tennessee.
Volunteer State Bank	Portland	Tennessee.
Merchants & Planters Bank	Toone	Tennessee.
Ascend Federal Credit Union	Tullahoma	Tennessee.
The Bank of Tullahoma	Tullahoma	Tennessee.
First Volunteer Bank	Union City	Tennessee.

Federal Home Loan Bank of Indianapolis—District 6

Members Choice Federal Credit Union	Bloomington	Indiana.
Community State Bank	Brook	Indiana.
Hendricks County Bank & Trust Co	Brownsburg	Indiana.
State Bank Burnettsville	Burnettsville	Indiana.
First Savings Bank, FSB	Clarksville	Indiana.
First Farmers Bank & Trust Co	Converse	Indiana.
Bank of Indiana, National Association	Dana	Indiana.
Dupont State Bank	DuPont	Indiana.
Elkhart Community Bank	Elkhart	Indiana.
Evansville Federal Credit Union	Evansville	Indiana.
Evansville Teachers Federal Credit Union	Evansville	Indiana.
Pinnacle Credit Union	Fort Wayne	Indiana.
Professional Federal Credit Union	Fort Wayne	Indiana.
STAR Financial Bank	Fort Wayne	Indiana.
Springs Valley Bank & Trust Co	French Lick	Indiana.
The Garrett State Bank	Garrett	Indiana.
Griffith Savings Bank	Griffith	Indiana.
Eli Lilly Federal Credit Union	Indianapolis	Indiana.
First Internet Bank of Indiana	Indianapolis	Indiana.
Indiana Members Credit Union	Indianapolis	Indiana.
German American Bancorp	Jasper	Indiana.
Dearborn Savings Bank	Lawrenceburg	Indiana.
Farmers State Bank of Warsaw	Mentone	Indiana.
Members Advantage Credit Union	Michigan City	Indiana.
Citizens Bank	Mooresville	Indiana.
North Salem State Bank	North Salem	Indiana.
Ossian State Bank	Ossian	Indiana.
First State Bank Of Porter	Porter	Indiana.
Tri-County Bank & Trust Company	Roachdale	Indiana.
Central Bank	Russiaville	Indiana.
Advance Financial Federal Credit Union	Schererville	Indiana.
Teachers Credit Union	South Bend	Indiana.
The Home National Bank	Thorntown	Indiana.
Ann Arbor State Bank	Ann Arbor	Michigan.
University Bank	Ann Arbor	Michigan.
University of Michigan Credit Union	Ann Arbor	Michigan.
Cornerstone Community Financial FCU	Auburn Hills	Michigan.
Genisys Credit Union	Auburn Hills	Michigan.
FinancialEdge Community Credit Union	Bay City	Michigan.
Gogebic Range Bank	Bessemer	Michigan.
The Blissfield State Bank	Blissfield	Michigan.
Private Bank	Bloomfield Hills	Michigan.
ELGA Credit Union	Burton	Michigan.
Byron Bank	Byron Center	Michigan.
CSB BANK	Capac	Michigan.
Exchange State Bank	Carsonville	Michigan.
Citizens National Bank of Cheboygan	Cheboygan	Michigan.
Central Macomb Community Credit Union	Clinton Township	Michigan.
First National Bank of Crystal Falls	Crystal Falls	Michigan.
First State Bank Of East Detroit	Eastpointe	Michigan.
Upper Peninsula State Bank	Escanaba	Michigan.
The State Savings Bank	Frankfort	Michigan.
West Michigan Bank & Trust	Frankfort	Michigan.
Superior National B&T Company	Hancock	Michigan.
First Community Bank	Harbor Springs	Michigan.
First National Bank in Howell	Howell	Michigan.
mBank	Manistique	Michigan.
G.W. Jones Exchange Bank	Marcellus	Michigan.
Chemical Bank	Midland	Michigan.
Monroe Bank & Trust	Monroe	Michigan.
Isabella Bank	Mount Pleasant	Michigan.
St. Francis X Federal Credit Union	Petoskey	Michigan.
Chief Pontiac Federal Credit Union	Pontiac	Michigan.
E & A Credit Union	Port Huron	Michigan.
1st State Bank	Saginaw	Michigan.
Catholic Federal Credit Union	Saginaw	Michigan.
Shelby State Bank	Shelby	Michigan.
Choiceone Bank	Sparta	Michigan.
Berrien Teachers Credit Union	St. Joseph	Michigan.
Traverse City State Bank	Traverse City	Michigan.
Bestsource Credit Union	Waterford	Michigan.

Federal Home Loan Bank of Chicago—District 7

First Trust & Savings Bank of Albany, Illinois	Albany	Illinois.

Algonquin State Bank, N.A	Algonquin	Illinois.
Farmers State Bank of Alto Pass, Illinois	Alto Pass	Illinois.
State Bank of the Lakes	Antioch	Illinois.
The Peoples Bank of Arlington Heights	Arlington Heights	Illinois.
State Bank of Arthur	Arthur	Illinois.
First National Bank of Ava	Ava	Illinois.
Bank of Belleville	Belleville	Illinois.
Olin Community Credit Union	Bethalto	Illinois.
State Farm Bank, F.S.B	Bloomington	Illinois.
MidAmerica National Bank	Canton	Illinois.
The First National Bank of Carmi	Carmi	Illinois.
University of Illinois Employees Credit Union	Champaign	Illinois.
Alliant Credit Union	Chicago	Illinois.
American Union Savings and Loan Association, S.B	Chicago	Illinois.
Archer Bank	Chicago	Illinois.
Belmont Bank & Trust Company	Chicago	Illinois.
Builders Bank	Chicago	Illinois.
Chicago Community Bank	Chicago	Illinois.
Cole Taylor Bank	Chicago	Illinois.
Devon Bank	Chicago	Illinois.
Harris National Association	Chicago	Illinois.
International Bank of Chicago	Chicago	Illinois.
Metropolitan Capital Bank	Chicago	Illinois.
Park Federal Savings Bank	Chicago	Illinois.
The National Republic Bank of Chicago	Chicago	Illinois.
Cissna Park State Bank	Cissna Park	Illinois.
State Bank Davis	Davis	Illinois.
The First National Bank of Dwight	Dwight	Illinois.
National Bank of Earlville	Earlville	Illinois.
First Choice Bank	Geneva	Illinois.
The First National Bank of Grand Ridge	Grand Ridge	Illinois.
National Bank	Hillsboro	Illinois.
Hinsdale Bank & Trust Company	Hinsdale	Illinois.
Farmers State Bank of Hoffman	Hoffman	Illinois.
Community Trust Bank	Irvington	Illinois.
First Midwest Bank	Itasca	Illinois.
Southern Illinois Bank	Johnston City	Illinois.
First Community Bank of Joliet	Joliet	Illinois.
Kenney Bank and Trust	Kenney	Illinois.
Lake Forest Bank and Trust Company	Lake Forest	Illinois.
Lena State Bank	Lena	Illinois.
Peoples National Bank, N.A	Mcleansboro	Illinois.
Milledgeville State Bank	Milledgeville	Illinois.
Bank of Modesto	Modesto	Illinois.
Midwest Bank of Western Illinois	Monmouth	Illinois.
Community First Bank of the Heartland	Mount Vernon	Illinois.
Prairie State Bank and Trust	Mount Zion	Illinois.
Hawthorne Credit Union	Naperville	Illinois.
The Farmers and Merchants N.B. of Nashville	Nashville	Illinois.
State Bank of Niantic	Niantic	Illinois.
Bank of Illinois	Normal	Illinois.
Oswego Community Bank	Oswego	Illinois.
Palos Bank and Trust Company	Palos Heights	Illinois.
Citizens Equity First Credit Union	Peoria	Illinois.
Farmers State Bank	Pittsfield	Illinois.
First Bankers Trust Company, National Association	Quincy	Illinois.
The First National Bank of Raymond	Raymond	Illinois.
Amcore Bank, National Association	Rockford	Illinois.
Riverside Community Bank	Rockford	Illinois.
Rockford Bank and Trust Company	Rockford	Illinois.
1st Equity Bank	Skokie	Illinois.
American Eagle Bank	South Elgin	Illinois.
Providence Bank, LLC	South Holland	Illinois.
Valley Community Bank	St. Charles	Illinois.
Prairie National Bank	Stewardson	Illinois.
American Heartland Bank and Trust	Sugar Grove	Illinois.
Texico State Bank	Texico	Illinois.
First Neighbor Bank, N.A	Toledo	Illinois.
Busey Bank	Urbana	Illinois.
North Adams State Bank	Ursa	Illinois.
First State Bank of Van Orin	Van Orin	Illinois.
The First Trust and Savings Bank of Watseka, Illinois	Watseka	Illinois.
Dupage National Bank	West Chicago	Illinois.
Bank of Alma	Alma	Wisconsin.
Fox Communities Credit Union	Appleton	Wisconsin.
The Business Bank	Appleton	Wisconsin.

Unity Bank	Augusta	Wisconsin.
The First National Bank and Trust Company	Beloit	Wisconsin.
Benton State Bank	Benton	Wisconsin.
The Farmers & Merchants Bank	Berlin	Wisconsin.
Fox River State Bank	Burlington	Wisconsin.
Citizens State Bank	Cadott	Wisconsin.
Citizens State Bank of Clayton	Clayton	Wisconsin.
Collins State Bank	Collins	Wisconsin.
Denmark State Bank	Denmark	Wisconsin.
Advantage Community Bank	Dorchester	Wisconsin.
Security Financial Bank	Durand	Wisconsin.
Union Bank & Trust Company	Evansville	Wisconsin.
Associated Bank, National Association	Green Bay	Wisconsin.
Farmers and Merchants Bank of Kendall	Kendall	Wisconsin.
Southport Bank	Kenosha	Wisconsin.
Altra Federal Credit Union	La Crosse	Wisconsin.
State Bank Financial	La Crosse	Wisconsin.
Livingston State Bank	Livingston	Wisconsin.
Capitol Bank	Madison	Wisconsin.
Madison Credit Union	Madison	Wisconsin.
The Park Bank	Madison	Wisconsin.
Premier Community Bank	Marion	Wisconsin.
Bay View Federal Savings and Loan Association	Milwaukee	Wisconsin.
Layton State Bank	Milwaukee	Wisconsin.
North Milwaukee State Bank	Milwaukee	Wisconsin.
Farmers Savings Bank	Mineral Point	Wisconsin.
Alliance Bank	Mondovi	Wisconsin.
The Necedah Bank	Necedah	Wisconsin.
Lakeview Credit Union	Neenah	Wisconsin.
Farmers Exchange Bank	Neshkoro	Wisconsin.
State Bank of Newburg	Newburg	Wisconsin.
Community State Bank	Norwalk	Wisconsin.
Oregon Community Bank & Trust	Oregon	Wisconsin.
Northwoods Community Credit Union	Park Falls	Wisconsin.
Foundations Bank	Pewaukee	Wisconsin.
State Bank of Reeseville	Reeseville	Wisconsin.
Hometown Bank	St. Cloud	Wisconsin.
The Pineries Bank	Stevens Point	Wisconsin.
Timberwood Bank	Tomah	Wisconsin.
Community State Bank	Union Grove	Wisconsin.
Citizens First Bank	Viroqua	Wisconsin.
Waumandee State Bank	Waumandee	Wisconsin.
Integrity First Bank	Wausau	Wisconsin.

Federal Home Loan Bank of Des Moines—District 8

River Valley Credit Union	Ames	Iowa.
First Whitney Bank and Trust	Atlantic	Iowa.
Iowa Bank	Bellevue	Iowa.
Quad City Bank and Trust Company	Bettendorf	Iowa.
Success Bank	Bloomfield	Iowa.
BankIowa	Cedar Rapids	Iowa.
Valley Bank & Trust	Cherokee	Iowa.
Exchange State Bank	Collins	Iowa.
Corridor State Bank	Coralville	Iowa.
American B&T, National Association	Davenport	Iowa.
Bank Iowa	Denison	Iowa.
East Dubuque Savings Bank	Dubuque	Iowa.
Community Bank	Dunlap	Iowa.
Security Savings Bank	Eagle Grove	Iowa.
Central State Bank	Elkader	Iowa.
Employees Credit Union	Estherville	Iowa.
Iowa S.B. and Trust Company of Fairfield, Iowa	Fairfield	Iowa.
Glenwood State Bank	Glenwood	Iowa.
First National Bank	Greenfield	Iowa.
First National Bank of Hampton	Hampton	Iowa.
Citizens Savings Bank	Hawkeye	Iowa.
American National Bank	Holstein	Iowa.
Home State Bank	Jefferson	Iowa.
Security Savings Bank	Larchwood	Iowa.
American Bank, N.A	Le Mars	Iowa.
Malvern Trust & Savings Bank	Malvern	Iowa.
Farmers & Merchants Savings Bank	Manchester	Iowa.
Citizens Savings Bank	Marshalltown	Iowa.
MEMBERS1st Community Credit Union	Marshalltown	Iowa.
Pinnacle Bank	Marshalltown	Iowa.

First Citizens National Bank	Mason City	Iowa.
Northwoods State Bank	Mason City	Iowa.
First State Bank	Nashua	Iowa.
Raccoon Valley Bank	Perry	Iowa.
Pilot Grove Savings Bank	Pilot Grove	Iowa.
Frontier Bank	Rock Rapids	Iowa.
Citizens State Bank	Sheldon	Iowa.
The First National Bank of Farragut	Shenandoah	Iowa.
Pinnacle Bank Sioux City	Sioux City	Iowa.
Community State Bank	Spencer	Iowa.
MetaBank	Storm Lake	Iowa.
Security Trust & Savings Bank	Storm Lake	Iowa.
Walcott Trust and Savings Bank	Walcott	Iowa.
First Bank	West Des Moines	Iowa.
The First National Bank of West Union	West Union	Iowa.
THE National Bank	Moline	Illinois.
Security Bank Minnesota	Albert Lea	Minnesota.
Community Bank, Austin	Austin	Minnesota.
Avon State Bank	Avon	Minnesota.
KleinBank	Big Lake	Minnesota.
Bridgewater Bank	Bloomington	Minnesota.
United Bankers' Bank	Bloomington	Minnesota.
Rural American Bank	Braham	Minnesota.
Mid Minnesota Federal Credit Union	Brainerd	Minnesota.
First National Bank of Buhl	Buhl	Minnesota.
First Security Bank	Byron	Minnesota.
Community Bank Corporation	Chaska	Minnesota.
Members Cooperative Credit Union	Cloquet	Minnesota.
The First National Bank of Cold Spring	Cold Spring	Minnesota.
Choice Financial Savings Bank	Comfrey	Minnesota.
Midwest Bank	Detroit Lakes	Minnesota.
Duluth Teachers Credit Union	Duluth	Minnesota.
Crown Bank	Edina	Minnesota.
Tradition Capital Bank	Edina	Minnesota.
American State Bank of Erskine	Erskine	Minnesota.
The Miners National Bank of Eveleth	Eveleth	Minnesota.
Reliance Bank	Faribault	Minnesota.
Falcon National Bank	Foley	Minnesota.
Glenwood State Bank	Glenwood	Minnesota.
Granite Falls Bank	Granite Falls	Minnesota.
Prime Security Bank	Karlstad	Minnesota.
First State Bank of Kensington	Kensington	Minnesota.
Financial Security Bank	Kerkhoven	Minnesota.
Lakeview Bank	Lakeville	Minnesota.
Lowry State Bank	Lowry	Minnesota.
Premier Bank	Maplewood	Minnesota.
Gateway Bank	Mendota Heights	Minnesota.
Equity Bank	Minnetonka	Minnesota.
Signature Bank	Minnetonka	Minnesota.
State Bank of New Richland	New Richland	Minnesota.
Ormsby State Bank	Ormsby	Minnesota.
State Bank of Park Rapids	Park Rapids	Minnesota.
The Citizens National Bank of Park Rapids	Park Rapids	Minnesota.
Peoples State Bank of Plainview	Plainview	Minnesota.
First Alliance Credit Union	Rochester	Minnesota.
Minnwest Bank Metro	Rochester	Minnesota.
BankCherokee	Saint Paul	Minnesota.
Pinehurst Bank	Saint Paul	Minnesota.
First Security Bank—Sleepy Eye	Sleepy Eye	Minnesota.
The First National Bank in Wadena	Wadena	Minnesota.
Wadena State Bank	Wadena	Minnesota.
Plaza Park State Bank	Waite Park	Minnesota.
First Financial Bank in Winnebago	Winnebago	Minnesota.
Adrian Bank	Adrian	Missouri.
Peoples Bank of Altenburg	Altenburg	Missouri.
Arsenal Credit Union	Arnold	Missouri.
Bank of Birch Tree	Birch Tree	Missouri.
Bank of Bloomsdale	Bloomsdale	Missouri.
Bank of Bolivar	Bolivar	Missouri.
Mid-Missouri Bank	Bolivar	Missouri.
Branson Bank	Branson	Missouri.
Focus Bank	Charleston	Missouri.
First Community Credit Union	Chesterfield	Missouri.
St. Louis Bank	Chesterfield	Missouri.
Providence Bank	Columbia	Missouri.
Peoples Bank	Cuba	Missouri.

Reliance Bank	Des Peres	Missouri.
Century Bank of the Ozarks	Gainesville	Missouri.
Garden City Bank	Garden City	Missouri.
Tri-County Trust Company	Glasgow	Missouri.
Hamilton Bank (The)	Hamilton	Missouri.
Bank of Houston (The)	Houston	Missouri.
First Financial Credit Union	Jefferson City	Missouri.
Mid America Bank	Jefferson City	Missouri.
Premier Bank	Jefferson City	Missouri.
H&R Block Bank	Kansas City	Missouri.
American Trust Bank	Kirksville	Missouri.
Lone Summit Bank	Lake Lotawana	Missouri.
B & L Bank	Lexington	Missouri.
The Bank of Macks Creek	Macks Creek	Missouri.
Southern Missouri Bank of Marshfield	Marshfield	Missouri.
United Credit Union	Mexico	Missouri.
Bank of Minden	Minden	Missouri.
Bank of Cairo and Moberly	Moberly	Missouri.
RCSBank	New London	Missouri.
West Community Credit Union	O'Fallon	Missouri.
St. Clair County State Bank	Osceola	Missouri.
Bank of Missouri	Perryville	Missouri.
Platte Valley Bank of Missouri	Platte City	Missouri.
Wells Bank of Platte City	Platte City	Missouri.
Sterling Bank	Poplar Bluff	Missouri.
Citizens Bank of Newburg	Rolla	Missouri.
Health Care Family Credit Union	Saint Louis	Missouri.
1st Advantage Bank	Saint Peters	Missouri.
Central Bank of Missouri	Sedalia	Missouri.
Citizens National Bank of Springfield	Springfield	Missouri.
Great Southern Bank	Springfield	Missouri.
OakStar Bank, National Association	Springfield	Missouri.
Concord Bank	St. Louis	Missouri.
Edward Jones Trust Company	St. Louis	Missouri.
Heartland Bank	St. Louis	Missouri.
TIAA–CREF Trust Company, FSB	St. Louis	Missouri.
First Security Bank	Union Star	Missouri.
Putnam County State Bank	Unionville	Missouri.
Bank of Versailles (The)	Versailles	Missouri.
Community First National Bank of West Plains	West Plains	Missouri.
Union Bank (The)	Beulah	North Dakota.
Capital Credit Union	Bismarck	North Dakota.
American Federal Bank	Fargo	North Dakota.
Gate City Bank	Fargo	North Dakota.
State Bank & Trust	Fargo	North Dakota.
VISIONBank	Fargo	North Dakota.
Dakota Community Bank, National Association	Hebron	North Dakota.
United Community Bank of North Dakota	Leeds	North Dakota.
First State Bank of Sharon	Sharon	North Dakota.
State Bank of Alcester	Alcester	South Dakota.
First Midwest Bank	Centerville	South Dakota.
Great Plains Bank	Eureka	South Dakota.
Farmers State Bank	Faith	South Dakota.
Farmers & Merchants State Bank	Iroquois	South Dakota.
First Bank & Trust of Milbank	Milbank	South Dakota.
Black Hills Federal Credit Union	Rapid City	South Dakota.
Highmark Federal Credit Union	Rapid City	South Dakota.
Heartland State Bank	Redfield	South Dakota.
First Bank & Trust	Sioux Falls	South Dakota.
Minnwest Bank Sioux Falls	Sioux Falls	South Dakota.
Peoples State Bank	Summit	South Dakota.
First National Bank of Volga	Volga	South Dakota.
First State Bank of Warner	Warner	South Dakota.

Federal Home Loan Bank of Dallas—District 9

The First National Bank in Blytheville	Blytheville	Arkansas.
First Federal Bank	Harrison	Arkansas.
Simmons First Bank of Hot Springs	Hot Springs	Arkansas.
Arkansas Federal Credit Union	Jacksonville	Arkansas.
Simmons First Bank Jonesboro	Jonesboro	Arkansas.
The Peoples Bank	Magnolia	Arkansas.
First Delta Bank	Marked Tree	Arkansas.
McGehee Bank	McGehee	Arkansas.
Petit Jean State Bank	Morrilton	Arkansas.
Home Bank of Arkansas	Portland	Arkansas.

Simmons First Bank	Russellville	Arkansas.
Warren Bank & Trust Company	Warren	Arkansas.
Campus Federal Credit Union	Baton Rouge	Louisiana.
First National Banker's Bank	Baton Rouge	Louisiana.
Mississippi River Bank	Belle Chasse	Louisiana.
Citizens Savings Bank	Bogalusa	Louisiana.
Farmers-Merchants Bank & Trust Company	Breaux Bridge	Louisiana.
Colfax Banking Company	Colfax	Louisiana.
Homeland Federal Savings Bank	Columbia	Louisiana.
The Cottonport Bank	Cottonport	Louisiana.
Citizens Bank & Trust Company	Covington	Louisiana.
First National Bank in DeRidder	DeRidder	Louisiana.
Bank of Greensburg	Greensburg	Louisiana.
First Guaranty Bank	Hammond	Louisiana.
The Bank	Jennings	Louisiana.
Southern Heritage Bank	Jonesville	Louisiana.
Vernon Bank (The)	Leesville	Louisiana.
Peoples State Bank	Many	Louisiana.
Marion State Bank	Marion	Louisiana.
Metairie Bank and Trust Company	Metairie	Louisiana.
Ouachita Independent Bank	Monroe	Louisiana.
City Bank & Trust Co	Natchitoches	Louisiana.
First Bank & Trust	New Orleans	Louisiana.
American Bank & Trust Company	Opelousas	Louisiana.
Aneca Federal Credit Union	Shreveport	Louisiana.
Louisiana Delta Bank	Vidalia	Louisiana.
Franklin State Bank & Trust Company	Winnsboro	Louisiana.
Bank of Anguilla	Anguilla	Mississippi.
Guaranty Bank & Trust Company	Belzoni	Mississippi.
Heritage Banking Group	Carthage	Mississippi.
Covenant Bank	Clarksdale	Mississippi.
First National Bank of Clarksdale	Clarksdale	Mississippi.
Bank of Forest	Forest	Mississippi.
Hancock Bank	Gulfport	Mississippi.
Hope Community Credit Union	Jackson	Mississippi.
Merchants & Farmers Bank	Kosciusko	Mississippi.
Holmes County Bank & Trust Company	Lexington	Mississippi.
PriorityOne Bank	Magee	Mississippi.
Navigator Credit Union	Pascagoula	Mississippi.
First National Bank of Picayune	Picayune	Mississippi.
Mississippi National Banker's Bank	Ridgeland	Mississippi.
The Peoples Bank	Ripley	Mississippi.
Cadence Bank, National Association	Starkville	Mississippi.
New Mexico Educators FCU	Albuquerque	New Mexico.
American Heritage Bank	Clovis	New Mexico.
Grants State Bank	Grants	New Mexico.
First Community Bank	Taos	New Mexico.
First State Bank (The)	Abernathy	Texas.
First State Bank	Abilene	Texas.
Herring Bank	Amarillo	Texas.
First National Bank of Anderson	Anderson	Texas.
Libertad Bank SSB	Austin	Texas.
United Heritage Credit Union	Austin	Texas.
University Federal Credit Union	Austin	Texas.
Velocity Credit Union	Austin	Texas.
CommunityBank of Texas, N.A	Beaumont	Texas.
First International Bank	Bedford	Texas.
First National Bank of Bells/Savoy (The)	Bells	Texas.
State National Bank of Big Spring (The)	Big Spring	Texas.
First National Bank of Borger	Borger	Texas.
Citizens National Bank—Breckenridge	Breckenridge	Texas.
Citizens National Bank At Brownwood	Brownwood	Texas.
First National Bank of Burleson	Burleson	Texas.
Classic Bank, National Association	Cameron	Texas.
The First National Bank of Canadian	Canadian	Texas.
Capital Bank of Texas	Carrizo Springs	Texas.
Castroville State Bank	Castroville	Texas.
First State Bank	Chico	Texas.
Coleman County State Bank	Coleman	Texas.
First Coleman National Bank of Coleman	Coleman	Texas.
Brazos Valley Bank, N.A	College Station	Texas.
Peoples Bank	Colleyville	Texas.
Columbus State Bank	Columbus	Texas.
Town Center Bank	Coppell	Texas.
Navy Army	Corpus Christi	Texas.
Dallas City Bank	Dallas	Texas.

One World Bank	Dallas	Texas.
Pegasus Credit Union	Dallas	Texas.
Professional Bank, NA	Dallas	Texas.
Texas Security Bank	Dallas	Texas.
United Texas Bank	Dallas	Texas.
Your Federal Credit Union	Dallas	Texas.
State Bank of De Kalb	De Kalb	Texas.
North Texas Bank, N.A	Decatur	Texas.
Access 1st Capital Bank	Denton	Texas.
The Bank of Texas	Devine	Texas.
National Bank of Texas at Fort Worth	Fort Worth	Texas.
West Side Bank and Trust	Fort Worth	Texas.
Sage Capital Bank, N.A	Gonzales	Texas.
Graham National Bank	Graham	Texas.
Graham Savings & Loan	Graham	Texas.
HBank Texas	Grapevine	Texas.
State National Bank of Groom	Groom	Texas.
Hamlin National Bank	Hamlin	Texas.
Haskell National Bank	Haskell	Texas.
Hereford State Bank	Hereford	Texas.
Bank of Houston	Houston	Texas.
Capital Bank	Houston	Texas.
Golden Bank, National Association	Houston	Texas.
Green Bank, N.A	Houston	Texas.
Lone Star Bank	Houston	Texas.
Members Choice Credit Union	Houston	Texas.
MemberSource Credit Union	Houston	Texas.
Oasis Bank, SSB	Houston	Texas.
Patriot Bank	Houston	Texas.
Post Oak Bank, N.A	Houston	Texas.
Texas One Community Credit Union	Houston	Texas.
Tradition Bank	Houston	Texas.
Unity National Bank of Houston	Houston	Texas.
Plains State Bank	Humble	Texas.
TransPecos Banks—Iraan	Iraan	Texas.
Sovereign Bank, N.A	Irving	Texas.
Jourdanton State Bank	Jourdanton	Texas.
First State Bank	Junction	Texas.
Kleberg First National Bank of Kingsville	Kingsville	Texas.
Colorado Valley Bank, SSB	La Grange	Texas.
Texas Dow Employees Credit Union	Lake Jackson	Texas.
Independent Bank of Austin, SSB	Lakeway	Texas.
Laredo Federal Credit Union	Laredo	Texas.
AIMBank	Littlefield	Texas.
Arrowhead Bank	Llano	Texas.
Llano National Bank	Llano	Texas.
Peoples Bank	Lorenzo	Texas.
American State Bank	Lubbock	Texas.
Platinum Bank	Lubbock	Texas.
American Bank of Texas, N.A	Marble Falls	Texas.
Marfa National Bank	Marfa	Texas.
First Bank & Trust Of Memphis	Memphis	Texas.
Texas National Bank	Mercedes	Texas.
Incommons Bank, National Association	Mexia	Texas.
First National Bank of Olney	Olney	Texas.
The Liberty National Bank in Paris	Paris	Texas.
Security State Bank	Pearsall	Texas.
TransPecos Banks	Pecos	Texas.
HCSB	Plainview	Texas.
Beal Savings Bank	Plano	Texas.
LegacyTexas Bank	Plano	Texas.
Share Plus Federal Bank	Plano	Texas.
Southwest Corporate Federal Credit Union	Plano	Texas.
Texans Credit Union	Richardson	Texas.
San Angelo National Bank	San Angelo	Texas.
Broadway National Bank	San Antonio	Texas.
Jefferson State Bank	San Antonio	Texas.
First Community Bank, National Association	San Benito	Texas.
City National Bank of San Saba (The)	San Saba	Texas.
Schwertner State Bank	Schwertner	Texas.
First Commercial Bank NA	Seguin	Texas.
Farmers National Bank (The)	Seymour	Texas.
Peoples State Bank	Shepherd	Texas.
Texas Savings Bank, SSB	Snyder	Texas.
First State Bank	Spearman	Texas.
First Community Bank, National Association	Sugar Land	Texas.

First National Bank	Texarkana	Texas.
Mainland Bank	Texas City	Texas.
First NB of Throckmorton	Throckmorton	Texas.
Texstar National Bank	Universal City	Texas.
Texas Star Bank	Van Alstyne	Texas.
Fidelity Bank of Texas	Waco	Texas.
The Bank	Weatherford	Texas.
Fidelity Bank	Wichita Falls	Texas.

Federal Home Loan Bank of Topeka—District 10

First Western Trust Bank	Scottsdale	Arizona.
Pine River Valley Bank	Bayfield	Colorado.
Avanta Credit Union	Colorado Springs	Colorado.
Steele Street Bank & Trust	Denver	Colorado.
FirstBank of Arapahoe County—Littleton, CO	Englewood	Colorado.
Bank of Colorado	Fort Collins	Colorado.
Alpine Bank—Glenwood Springs, CO	Glenwood Springs	Colorado.
Cache Bank and Trust	Greeley	Colorado.
First American State Bank	Greenwood Village	Colorado.
Front Range Bank	Lakewood	Colorado.
The First National Bank of Las Animas	Las Animas	Colorado.
Colorado Credit Union	Littleton	Colorado.
Advantage Bank	Loveland	Colorado.
Mancos Valley Bank—Mancos, CO	Mancos	Colorado.
Integrity Bank & Trust	Monument	Colorado.
The Pueblo Bank and Trust Company—Pueblo, CO	Pueblo	Colorado.
High Country Bank—Salida, CO	Salida	Colorado.
International Bank	Trinidad	Colorado.
Great American Bank	De Soto	Kansas.
Farmers State Bank (The)	Fairview	Kansas.
Armed Forces Bank, N.A	Fort Leavenworth	Kansas.
Patriots Bank	Garnett	Kansas.
BANKWEST of Kansas	Goodland	Kansas.
Bank of Hays	Hays	Kansas.
Bank of Holyrood	Holyrood	Kansas.
First State Bank—Kansas City, KS	Kansas City	Kansas.
Heartland Bank	Leawood	Kansas.
Premier Bank—Lenexa, KS	Lenexa	Kansas.
United Bank & Trust	Marysville	Kansas.
The Farmers Bank	Osborne	Kansas.
Cross First Bank	Overland Park	Kansas.
Freedom Bank	Overland Park	Kansas.
TeamBank NA/Great Southern Bank	Paola	Kansas.
Bank VI	Salina	Kansas.
Community National Bank	Seneca	Kansas.
VisionBank	Topeka	Kansas.
The Troy State Bank—Troy, KS	Troy	Kansas.
Community Bank of Wichita, Inca	Wichita	Kansas.
Mid American Credit Union	Wichita	Kansas.
Commercial National Bank	Ainsworth	Nebraska.
Security State Bank	Ansley	Nebraska.
Archer Cooperative Credit Union	Archer	Nebraska.
State Bank of Bartley	Bartley	Nebraska.
Pathway Bank	Cairo	Nebraska.
Cedar Rapids State Bank	Cedar Rapids	Nebraska.
Columbus United Federal Credit Union	Columbus	Nebraska.
Frontier Bank	Davenport	Nebraska.
Bank of Elgin	Elgin	Nebraska.
Five Points Bank	Grand Island	Nebraska.
Banner County Bank	Harrisburg	Nebraska.
State Bank of Hildreth	Hildreth	Nebraska.
First State Bank	Hordville	Nebraska.
Adams County Bank—Kenesaw, NE	Kenesaw	Nebraska.
Farmers Bank	Lincoln	Nebraska.
First State Bank	Lincoln	Nebraska.
Citizens Bank	Loup City	Nebraska.
First Bank and Trust Company	Minden	Nebraska.
Minden Exchange Bank & Trust Co	Minden	Nebraska.
Platte Valley Bank	North Bend	Nebraska.
State Bank of Odell	Odell	Nebraska.
Four Points Federal Credit Union	Omaha	Nebraska.
Plattsmouth State Bank—Plattsmouth, NE	Plattsmouth	Nebraska.
State Bank of Riverdale	Riverdale	Nebraska.
Scribner Bank	Scribner	Nebraska.
The Jones NB&T Company of Seward	Seward	Nebraska.

Citizens Bank and Trust Company	St. Paul	Nebraska.
The Tri-County Bank	Stuart	Nebraska.
State Bank of Table Rock	Table Rock	Nebraska.
Countryside Bank	Unadilla	Nebraska.
First National Bank of Wahoo	Wahoo	Nebraska.
York State Bank And Trust Company	York	Nebraska.
Vision Bank, National Association	Ada	Oklahoma.
Alva State Bank & Trust Company	Alva	Oklahoma.
Community Bank	Alva	Oklahoma.
American National Bank	Ardmore	Oklahoma.
First Security Bank	Beaver	Oklahoma.
First Bethany Bank & Trust	Bethany	Oklahoma.
First State Bank	Boise City	Oklahoma.
SpiritBank, National Association	Bristow	Oklahoma.
First BankCentre	Broken Arrow	Oklahoma.
Farmers Bank	Carnegie	Oklahoma.
First State Bank	Commerce	Oklahoma.
Farmers and Merchants Bank	Crescent	Oklahoma.
Bank of Cushing and Trust Company	Cushing	Oklahoma.
First National Bank of Fletcher	Fletcher	Oklahoma.
Bank of Grove	Grove	Oklahoma.
Community State Bank	Hennessey	Oklahoma.
The Eastman NB	Newkirk	Oklahoma.
Regent Bank	Nowata	Oklahoma.
Municipal Employees Credit Union	Oklahoma City	Oklahoma.
Oklahoma Employees Credit Union	Oklahoma City	Oklahoma.
Valiance Bank	Oklahoma City	Oklahoma.
Century Bank of Oklahoma	Pryor	Oklahoma.
McClain Bank	Purcell	Oklahoma.
Oklahoma Heritage Bank	Roff	Oklahoma.
American Heritage Bank	Sapulpa	Oklahoma.
Bank of the Wichitas	Snyder	Oklahoma.
Tinker Federal Credit Union	Tinker Air Force Base	Oklahoma.
Freedom Bank of Oklahoma	Tulsa	Oklahoma.
Oklahoma Central Credit Union	Tulsa	Oklahoma.
First State Bank	Waynoka	Oklahoma.
Southwest National Bank	Weatherford	Oklahoma.
Welch State Bank	Welch	Oklahoma.
The State Bank of Wynnewood	Wynnewood	Oklahoma.
F&M Bank, National Association	Yukon	Oklahoma.

Federal Home Loan Bank of San Francisco—District 11

Union Bank, National Association	Gilbert	Arizona.
Community Bank of Arizona	Glendale	Arizona.
Mission Bank	Kingman	Arizona.
Mohave State Bank	Lake Havasu City	Arizona.
Arizona Bank & Trust	Mesa	Arizona.
Mesa Bank	Mesa	Arizona.
Arizona State Credit Union	Phoenix	Arizona.
Bank of Arizona, NA	Phoenix	Arizona.
Biltmore Bank of Arizona (The)	Phoenix	Arizona.
Camelback Community Bank	Phoenix	Arizona.
Credit Union West	Phoenix	Arizona.
Desert Schools Federal Credit Union	Phoenix	Arizona.
First Corporate Credit Union	Phoenix	Arizona.
Western National Bank	Phoenix	Arizona.
Summit Bank	Prescott	Arizona.
Legacy Bank	Scottsdale	Arizona.
Tempe Schools Credit Union	Tempe	Arizona.
TruWest Credit Union	Tempe	Arizona.
Bank of Tucson	Tucson	Arizona.
Southern Arizona Community Bank	Tucson	Arizona.
Vantage West Credit Union	Tucson	Arizona.
Meridian Bank, NA	Wickenburg	Arizona.
1st Bank Yuma	Yuma	Arizona.
Golden Security Bank	Alhambra	California.
Partners Federal Credit Union	Anaheim	California.
American Plus Bank, N.A	Arcadia	California.
Mission Bank	Bakersfield	California.
San Joaquin Bank	Bakersfield	California.
America's Christian Credit Union	Brea	California.
Uniti Bank	Buena Park	California.
Merchants Bank of California, NA	Carson	California.
Gateway Business Bank	Cerritos	California.
Premier America Credit Union	Chatsworth	California.

Telesis Community Credit Union	Chatsworth	California.
Seacoast Commerce Bank	Chula Vista	California.
American Continental Bank	City of Industry	California.
Coronado First Bank	Coronado	California.
Commercial Bank of California	Costa Mesa	California.
Rabobank, National Association	El Centro	California.
California United Bank	Encino	California.
Bank of Escondido	Escondido	California.
Redwood Capital Bank	Eureka	California.
Pan Pacific Bank	Fremont	California.
United Security Bank	Fresno	California.
Commerce National Bank	Fullerton	California.
Pacific Community Credit Union	Fullerton	California.
Community Credit Union of Southern Humboldt	Garberville	California.
California Credit Union	Glendale	California.
Granite Community Bank, NA	Granite Bay	California.
California First National Bank	Irvine	California.
Sce Federal Credit Union	Irwindale	California.
Regents Bank, NA	La Jolla	California.
Operating Engineers Local Union No. 3 FCU	Livermore	California.
Southland Credit Union	Los Alamitos	California.
1st Century Bank, N.A	Los Angeles	California.
Cathay Bank	Los Angeles	California.
Gilmore Bank	Los Angeles	California.
Pacific Commerce Bank	Los Angeles	California.
Pacific Resource Credit Union	Los Angeles	California.
PROMERICA Bank	Los Angeles	California.
Saehan Bank	Los Angeles	California.
Water and Power Community Credit Union	Los Angeles	California.
Beach Business Bank	Manhattan Beach	California.
SRI Federal Credit Union	Menlo Park	California.
Focus One Community Credit Union	Monrovia	California.
Visterra Credit Union	Moreno Valley	California.
Bank of Napa, N.A	Napa	California.
Charter Oak Bank	Napa	California.
CommerceWest Bank, NA	Newport Beach	California.
Independence Bank	Newport Beach	California.
Community Bank of the Bay	Oakland	California.
Innovative Bank	Oakland	California.
Stanford Federal Credit Union	Palo Alto	California.
CBC Federal Credit Union	Port Hueneme	California.
Bourns Employees Federal Credit Union	Riverside	California.
Premier Service Bank	Riverside	California.
Security Bank of California	Riverside	California.
First General Bank	Rowland Heights	California.
Heritage Community Credit Union	Sacramento	California.
Merchants National Bank of Sacramento (The)	Sacramento	California.
Pacific Valley Bank	Salinas	California.
Cabrillo Credit Union	San Diego	California.
California Coast Credit Union	San Diego	California.
Point Loma Community Bank	San Diego	California.
Security Business Bank of San Diego	San Diego	California.
Gateway Bank, AFSB	San Francisco	California.
Heritage Bank of Commerce	San Jose	California.
Technology Credit Union	San Jose	California.
Founders Community Bank	San Luis Obispo	California.
Mission Community Bank	San Luis Obispo	California.
First American Trust, FSB	Santa Ana	California.
Pacific Capital Bank. N.A	Santa Barbara	California.
National 1st Credit Union	Santa Clara	California.
Lighthouse Bank	Santa Cruz	California.
Santa Cruz County Bank	Santa Cruz	California.
Exchange Bank	Santa Rosa	California.
Mother Lode Bank	Sonora	California.
First National Bank of Northern California	South San Francisco	California.
Mission Valley Bank	Sun Valley	California.
Keypoint Credit Union	Sunnyvale	California.
California Oaks State Bank	Thousand Oaks	California.
Honda Federal Credit Union	Torrance	California.
Valley Business Bank	Visalia	California.
Visalia Community Bank	Visalia	California.
Bay Commercial Bank	Walnut Creek	California.
Community Business Bank	West Sacramento	California.
I.L.W.U. Credit Union	Wilmington	California.
Yolo Federal Credit Union	Woodland	California.
Western Commercial Bank	Woodland Hills	California.

Community Bank of Nevada	Las Vegas	Nevada.
Ensign Federal Credit Union	Las Vegas	Nevada.
M & I Bank FSB	Las Vegas	Nevada.
Nevada Commerce Bank	Las Vegas	Nevada.
SouthwestUSA Bank	Las Vegas	Nevada.
Charles Schwab Bank	Reno	Nevada.
Home NB	Blackwell	Oklahoma.

Federal Home Loan Bank of Seattle—District 12

Amerika Samoa Bank	Pago Pago	American Samoa.
HawaiiUSA Federal Credit Union	Honolulu	Hawaii.
Idaho Banking Company	Boise	Idaho.
The Farmers National Bank of Buhl	Buhl	Idaho.
Idaho Central Credit Union	Chubbuck	Idaho.
The Bank of Baker	Baker	Montana.
First Community Bank	Glasgow	Montana.
Valley Bank of Kalispell	Kalispell	Montana.
First National Bank of Montana, Inc	Missoula	Montana.
Gateway Community Federal Credit Union	Missoula	Montana.
Montana First Credit Union	Missoula	Montana.
1st Bank	Sidney	Montana.
The State Bank of Townsend	Townsend	Montana.
Central Williamette Community Credit Union	Albany	Oregon.
First Technology Credit Union	Beaverton	Oregon.
Bank of the Cascades	Bend	Oregon.
WAUNA Federal Credit Union	Clatskanie	Oregon.
Century Bank	Eugene	Oregon.
SELCO Community Credit Union	Eugene	Oregon.
Summit Bank	Eugene	Oregon.
Siuslaw Bank	Florence	Oregon.
Columbia Community Bank	Hillsboro	Oregon.
CenterPointe Community Bank	Hood River	Oregon.
People's Bank of Commerce	Medford	Oregon.
Advantis Credit Union	Milwaukie	Oregon.
OnPoint Community Credit Union	Portland	Oregon.
Unitus Community Credit Union	Portland	Oregon.
Umpqua Bank	Roseburg	Oregon.
Clackamas County Bank	Sandy	Oregon.
Clatsop Community Bank	Seaside	Oregon.
Lewiston State Bank	Lewiston	Utah.
America First Credit Union	Ogden	Utah.
Bank of Utah	Ogden	Utah.
Goldenwest Credit Union	Ogden	Utah.
Weber State Federal Credit Union	Ogden	Utah.
Western Community Bank	Orem	Utah.
American Bank of Commerce	Provo	Utah.
Utah Community Federal Credit Union	Provo	Utah.
Beehive Credit Union	Salt Lake City	Utah.
CIT Bank	Salt Lake City	Utah.
First Utah Bank	Salt Lake City	Utah.
Mountain High Federal Credit Union	Spanish Fork	Utah.
Heritage Bank	St. George	Utah.
North County Bank	Arlington	Washington.
Puget Sound Bank	Bellevue	Washington.
Industrial CU of Whatcom County	Bellingham	Washington.
Cashmere Valley Bank	Cashmere	Washington.
Bank of Everett	Everett	Washington.
Northwest Plus Credit Union	Everett	Washington.
HomeTown National Bank	Longview	Washington.
Washington Business Bank	Olympia	Washington.
Group Health Credit Union	Seattle	Washington.
The Commerce Bank of Washington, N.A	Seattle	Washington.
Verity Credit Union	Seattle	Washington.
Watermark Credit Union	Seattle	Washington.
First Heritage Bank	Snohomish	Washington.
AmericanWest Bank	Spokane	Washington.
Horizon Credit Union	Spokane	Washington.
Bank of Tacoma	Tacoma	Washington.
Rainier Pacific Bank	Tacoma	Washington.
Boeing Employees' Credit Union	Tukwila	Washington.
Warren Federal Credit Union	Cheyenne	Wyoming.
Western Vista Federal Credit Union	Cheyenne	Wyoming.
1st Bank	Evanston	Wyoming.
Bank of Jackson Hole	Jackson	Wyoming.
Central Bank & Trust	Lander	Wyoming.

Lusk State Bank	Lusk	Wyoming.
Wyoming National Bank	Riverton	Wyoming.
First Federal Savings Bank	Sheridan	Wyoming.

II. Public Comments

To encourage the submission of public comments on the community support performance of Bank members, on or before November 16, 2009, each Bank will notify its Advisory Council and nonprofit housing developers, community groups, and other interested parties in its district of the members selected for community support review in the 2008–09 seventh round review cycle. 12 CFR 944.2(b)(2)(ii). In reviewing a member for community support compliance, FHFA will consider any public comments it has received concerning the member. 12 CFR 944.2(d). To ensure consideration by FHFA, comments concerning the community support performance of members selected for the 2008–09 seventh round review cycle must be delivered to FHFA, either by hard-copy mail at the Federal Housing Finance Agency, Housing Mission and Goals, 1625 Eye Street, NW., Washington, DC 20006, or by electronic mail at RONA.RICHARDSON at *hmgcommunity supportprogram@fhfa.gov* on or before the December 21, 2009 deadline for submission of Community Support Statements.

Dated: October 27, 2009.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. E9–26270 Filed 10–30–09; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: *Background.* On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR part 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements, and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment on Information Collection Proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before January 4, 2010.

ADDRESSES: You may submit comments, identified by FR 2004 or FR 3036, by any of the following methods:

- *Agency Web Site: www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include the OMB control number in the subject line of the message.
- *Fax:* 202–452–3819 or 202–452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

Additionally, commenters should send a copy of their comments to the OMB Desk Officer by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503 or by fax to 202–395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm* or may be requested from the agency clearance officer, whose name appears below.

Michelle Shore, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869).

Proposal to approve under OMB delegated authority the extension for three years, with revision, of the following report:

Report title: The Government Securities Dealers Reports: Weekly Report of Dealer Positions (FR 2004A), Weekly Report of Cumulative Dealer Transactions (FR 2004B), Weekly Report of Dealer Financing and Fails (FR 2004C), Weekly Report of Specific Issues (FR 2004SI), Daily Report of Specific Issues (FR 2004SD), Daily

Report of Specific Issues ad hoc (FR 2004SD), and Daily Report of Dealer Activity in Treasury Financing (FR 2004WI).

Agency form number: FR 2004.

OMB control number: 7100–0003.

Frequency: Weekly, daily.

Reporters: Dealers in the U.S. government securities market.

Estimated annual reporting hours: FR 2004A, 1,404 hours; FR 2004B, 1,872 hours; FR 2004C, 1,170 hours; FR 2004SI, 1,872 hours; FR 2004SD, 900 hours; FR 2004SD ad hoc, 936 hours; FR 2004WI, 2,880 hours.

Estimated average hours per response: FR 2004A, 1.5 hours; FR 2004B, 2.0 hours; FR 2004C, 1.25 hours; FR 2004SI, 2.0 hours; FR 2004SD, 2.0 hours; FR 2004SD ad hoc, 2.0 hours; FR 2004WI, 1.0 hour.

Number of respondents: 18.

General description of report: This information collection is authorized by sections 2A, 12A, and 14 of the Federal Reserve Act (12 U.S.C. 225a, 263, and 353–359) and is required to obtain or retain a benefit. Individual respondent data are regarded as confidential under the Freedom of Information Act (5 U.S.C. 552(b)(4) and (b)(8)).

Abstract: The FR 2004A collects weekly data on dealers' outright positions in Treasury and other marketable debt securities. The FR 2004B collects cumulative weekly data on the volume of transactions made by dealers in the same instruments for which positions are reported on the FR 2004A. The FR 2004C collects weekly data on the amounts of dealer financing and fails. The FR 2004SI collects weekly data on position, transaction, financing, and fails for the most recently issued on-the-run Treasury securities (the most recently issued Treasury securities for each maturity class). When unusual trading practices occur for a specific security, this information can be collected on a daily basis on the FR 2004SD for either on-the-run Treasury securities or off-the-run Treasury securities. The FR 2004WI collects daily data on positions in to-be-issued Treasury coupon securities, mainly the trading on a when-issued delivery basis.

Current actions: The Federal Reserve proposes to revise the FR 2004 information collection by collecting ad hoc information on the FR 2004SD and making several clarifications to the FR 2004 instructions. On occasion, there may be a need to collect critical information within a short timeframe for a short period of time from primary dealers. This authority would have proven extremely useful during recent market events. Based on this experience the Federal Reserve proposes authorizing the collection of up to 10 ad hoc data items from all respondents that generally would pertain to specific securities, asset classes, or financing transactions. The request for additional data would be based on recommendations from staff at the Federal Reserve. The dealers would be notified in advance and any data requested or required would be readily available. These data could be reported as frequently as daily until dealers were notified to discontinue reporting. Written qualitative questions might include categorical questions, yes-no questions, ordinal questions, and open-ended questions. Written quantitative questions would include dollar amounts, percentages, numbers of items, interest rates, and other such information. These data would not be available from any other source.

The Federal Reserve also proposes to clarify instructions to (1) explicitly cover new product types that have been actively traded or held since the last reports review (*e.g.,* covered bonds, Federal Deposit Insurance Corporation debt guarantees), (2) address the reporting of security underwriting done with issuers through reverse inquiry, (3) add a section for prime brokerage reporting, and (4) incorporate several editorial changes.

Proposal to approve under OMB delegated authority the implementation of the following survey:

Report title: Central Bank Survey of Foreign Exchange and Derivatives Market Activity.

Agency form number: FR 3036.

OMB control number: 7100–0285.

Frequency: One-time.

Reporters: Financial institutions that serve as intermediaries in the wholesale foreign exchange and derivatives market and dealers.

Estimated annual reporting hours: 2,165 hours.

Estimated average hours per response: Turnover survey, 55 hours; outstandings survey, 60 hours.

Number of respondents: 39.

General description of report: This information collection is voluntary (12 U.S.C. 225a and 263) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The FR 3036 is the U.S. part of a global data collection that is conducted by central banks once every three years. More than 50 central banks plan to conduct the survey in 2010. The Bank for International Settlements compiles national data from each central bank to produce global market statistics.

The Federal Reserve System and other government agencies use the survey to monitor activity in the foreign exchange and derivatives markets. Respondents use the published data to gauge their market share.

Current actions: The proposed survey would collect information on the size and structure of the foreign exchange and over-the-counter derivatives markets. The survey would cover the turnover in the foreign exchange spot market, the foreign exchange derivatives market, and interest rate derivatives markets (forwards, swaps, and options). In addition, the survey would gather data on the notional amounts and gross positive and negative market values of outstanding derivatives contracts for over-the-counter foreign exchange, interest rates, equities, and commodities.

To reduce reporting burden, the Derivatives Outstanding part of the survey is coordinated with the Semiannual Report of Derivatives Activity (FR 2436; OMB No. 7100–0286). Those firms that submit FR 2436 data would not complete the Derivatives Outstanding part of the survey during the overlapping reporting period.

Differences between the proposed survey and the 2007 survey are:

1. Data items to capture credit default swaps with central counterparties would be added to the Outstanding survey to be consistent with the FR 2436. The growth in the credit derivative market has made these data an important component of understanding the structure and activity of the overall over-the-counter derivatives market. This has become particularly evident during the recent financial crisis.

2. Additional currencies would be identified in tables for foreign exchange transactions and for interest rate derivatives on the Turnover survey. This change would facilitate reporting of currency pairs in carry trade strategies and ensure comprehensive identification of turnover in all participating countries' currencies.

Board of Governors of the Federal Reserve System, October 28, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–26266 Filed 10–30–09; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and

§ 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 17, 2009.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Mary Jean Jensen, Lemmon, South Dakota; to join a group acting in concert, consisting of Carveth and Margaret Thompson, Lead, South Dakota; Gary and Nancy Vance, Faith, South Dakota; Eldon Jensen, Lemmon, South Dakota; and Morris Gustafson, Faith, South Dakota, and retain and acquire voting shares of Faith Bank Holding Company, and thereby indirectly retain and acquire voting shares of Farmer's State Bank, both of Faith, South Dakota.

Board of Governors of the Federal Reserve System, October 28, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–26267 Filed 10–30–09; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0243]

General Services Administration Acquisition Regulation; Submission for OMB Review; Economic Price Adjustment Clauses

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Notice of a request for public comments regarding the reinstatement of a previously existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration (GSA) will be submitting to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement concerning the Economic Price Adjustment (EPA) Clauses for the Federal Supply Schedule (FSS) and SOP Programs. A request for public comments was published in the **Federal Register** at 74 FR 4596, January 26, 2009. No comments were received.

Public comments are particularly invited on: Whether the information collection generated by the General Services Administration Acquisition Regulation (GSAR) Clauses, Economic Price Adjustment (EPA) is necessary to determine an offeror's price is fair and reasonable; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before December 2, 2009.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to Regulatory Secretariat, 1800 F Street, NW., Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Warren Blankenship, Procurement Analyst, Contract Policy Division, (202) 501–1900 or *warren.blankenship@gsa.gov*.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration Manual (GSAM) has prescribed in GSAM 538.1203(c)(63) the use of GSAR clause 552.238–63, Economic Price Adjustment—Supplies and/or Services with an Established Catalog Price, GSAM 538.1203(c)(64), Economic Price Adjustment—Supplies and/or Services with Market Pricing without an Established Catalog Price and in GSAM 516.203–4, the use of GSAR clause 552.216–71, Economic Price Adjustment—Special Order Programs Contracts. GSAR clauses 552.239–63 and 552.238–64 require the FSS contractor to submit certain pricing information when a request for price increases is submitted to the contracting officer under a FSS contract. GSAR clause 552.216–71 requires the SOP contractor to submit certain pricing information when a request for price increases is submitted to the contracting officer under SOP contracts. EPA clauses are used as a convenience to provide for a predetermined manner for adjusting prices based upon the occurrence of specific contingencies.

B. Annual Reporting Burden.

Number of Respondents: 30,000.
Responses per Respondent: 1.
Annual Responses: 30,000.
Average Burdens per Response: 1.
Total Burden Hours: 30,000.
Obtaining Copies of Proposals: A copy of this proposal may be obtained from the General Services Administration, Regulatory Secretariat, 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 3090–0243, Economic Price Adjustment Clauses, in all correspondence.

Dated: October 21, 2009.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. E9–26354 Filed 10–30–09; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0070]

Submission for OMB Review; Payments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding the reinstatement of a previously existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement concerning Payments. A request for public comments was published in the **Federal Register** at 74 FR 27799, on June 11, 2009.

DATES: Submit comments on or before December 2, 2009.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC

20503, and a copy to the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 9000–0070, Payments, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Edward Chambers, Procurement Analyst, Contract Policy Branch, GSA at (202) 501–3221 or e-mail *Edward.chambers@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Firms performing under Federal contracts must provide adequate documentation to support requests for payment under these contracts. The documentation may range from a simple invoice to detailed cost data. The information is usually submitted once, at the end of the contract period or upon delivery of the supplies, but could be submitted more often depending on the payment schedule established under the contract (*see* FAR 52.232–1 through 52.232–11). The information is used to determine the proper amount of payments to Federal contractors.

B. Annual Reporting Burden

Respondents: 80,000.
Responses per Respondent: 120.
Total Responses: 9,600,000.
Hours per Response: .025.
Total Burden Hours: 240,000.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0070, Payments, in all correspondence.

Dated: October 23, 2009.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. E9–26343 Filed 10–30–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0059]

Federal Acquisition Regulation; Submission for OMB Review; North Carolina Sales Tax Certification

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of reinstatement request for an information collection requirement regarding an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve reinstatement of a previously approved information collection requirement concerning North Carolina sales tax certification. A request for public comments was published in the **Federal Register** at 74 FR 30094, on June 24, 2009.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before December 2, 2009.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Edward Chambers, Procurement Analyst, Contract Policy Branch, GSA (202) 501–3221 or e-mail *Edward.chambers@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The North Carolina Sales and Use Tax Act authorizes counties and incorporated cities and towns to obtain each year from the Commissioner of Revenue of the State of North Carolina a refund of sales and use taxes indirectly paid on building materials, supplies, fixtures, and equipment that become a part of or are annexed to any building or structure in North Carolina. However, to substantiate a refund claim for sales or use taxes paid on purchases of building materials, supplies, fixtures, or equipment by a contractor, the Government must secure from the contractor certified statements setting forth the cost of the property purchased from each vendor and the amount of sales or use taxes paid. Similar certified statements by subcontractors must be obtained by the general contractor and furnished to the Government. The information is used as evidence to establish exemption from State and local taxes.

B. Annual Reporting Burden

Respondents: 424.
Responses per Respondent: 1.
Annual Responses: 424.
Hours per Response: .17.
Total Burden Hours: 72.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0059, North Carolina Sales Tax Certification, in all correspondence.

Dated: October 23, 2009.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. E9–26347 Filed 10–30–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0108]

Federal Acquisition Regulation; Submission for OMB Review; Bankruptcy

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding the reinstatement of a previously existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement concerning Bankruptcy. A notice of request for

comments was published in the **Federal Register** at 74 FR 27799, on June 11, 2009.

Public comments are particularly invited on: Whether this collection of information is necessary; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before December 2, 2009.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 9000–0107, Notice of Radioactive Materials, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Cromer, Procurement Analyst, Contract Policy Branch, GSA, (202) 501–1448 or e-mail *Beverly.cromer@gsa.gov.*

A. Purpose

Under statute, contractors may enter into bankruptcy which may have a significant impact on the contractor's ability to perform its Government contract. The Government often does not receive adequate and timely notice of this event. The clause at 52.242–13 requires contractors to notify the contracting officer within 5 days after the contractor enters into bankruptcy.

B. Annual Reporting Burden

Respondents: 1,000.
Responses per Respondent: 5.
Annual Responses: 1,000.
Hours per Response: 1.25.
Total Burden Hours: 1,250.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0108, Bankruptcy, in all correspondence.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. E9–26349 Filed 10–30–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0107]

Federal Acquisition Regulation; Submission for OMB Review; Notice of Radioactive Materials

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding the reinstatement of a previously existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR), Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement concerning Notice of Radioactive Materials. A notice of request for comments published in the **Federal Register** at 74 FR 32613, on July 8, 2009.

Public comments are particularly invited on: Whether this collection of information is necessary; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before December 2, 2009.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 9000–0107, Notice of Radioactive Materials, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. William Clark, Procurement Analyst, Contract Policy Branch, GSA, (202) 219–1813 or e-mail *William.clark@gsa.gov.*

A. Purpose

The clause at FAR 52.223–7, Notice of Radioactive Materials, requires contractors to notify the Government prior to delivery of items containing radioactive materials. The purpose of the notification is to alert receiving activities that appropriate safeguards may need to be instituted. The notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the contractor which will put users of the items on notice as to the hazards involved.

B. Annual Reporting Burden

Respondents: 500.
Responses per Respondent: 5.
Annual Responses: 2,500.
Hours per Response: 1.
Total Burden Hours: 2,500.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0107, Notice of Radioactive Materials, in all correspondence.

Dated: October 23, 2009.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. E9–26350 Filed 10–30–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0056]

Federal Acquisition Regulation; Submission for OMB Review; Report of Shipment

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding the reinstatement of a previously existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the

Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning report of shipment. A request for public comments was published in the **Federal Register** at 74 FR 36167, on July 22, 2009. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before December 2, 2009.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Streets, NW., Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jeritta Parnell, Procurement Analyst, Contract Policy Branch, by telephone at (202) 501–4082 or *jeritta.parnell@gsa.gov*.

SUPPLEMENTARY INFORMATION:

A. Purpose

Military (and, as required, civilian agency) storage and distribution points, depots, and other receiving activities require advance notice of large shipments en-route from contractors' plants. Timely receipt of notices by the consignee transportation office precludes the incurring of demurrage and vehicle detention charges. The information is used to alert the receiving activity of the arrival of a large shipment.

Respondents: 250.

Responses per Respondent: 4.

Annual Responses: 1,000.

Hours per Response: .167.

Total Burden Hours: 167.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0056, Report of Shipment, in all correspondence.

Dated: October 23, 2009.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. E9–26344 Filed 10–30–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0073]

Federal Acquisition Regulation; Submission for OMB Review; Advance Payments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding a reinstatement to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement concerning advance payments. A request for public comments was published in the **Federal Register** at 74 FR 30091 on June 24, 2009.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before December 2, 2009.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulation Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Edward Chambers, Procurement Analyst, Contract Policy Branch, GSA (202) 501–3221 or e-mail *edward.chambers@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Advance payments may be authorized under Federal contracts and subcontracts. Advance payments are the least preferred method of contract financing and require special determinations by the agency head or designee. Specific financial information about the contractor is required before determinations by the agency head or designee. Specific financial information about the contractor is required before such payments can be authorized (*see* FAR 32.4 and 52.232–12). The information is used to determine if advance payments should be provided to the contractor.

B. Annual Reporting Burden

Respondents: 500.

Responses per Respondent: 1.

Annual Responses: 500.

Hours per Response: 1.

Total Burden Hours: 500.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0073, Advance Payments, in all correspondence.

Dated: October 23, 2009.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. E9–26342 Filed 10–30–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0102]

Federal Acquisition Regulation; Submission for OMB Review; Prompt Payment

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding a reinstatement to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve a reinstatement to a previously approved information collection requirement concerning prompt payment. A notice for public comments published in the **Federal Register** at 74 FR 30090, on June 24, 2009.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before December 2, 2009.

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 (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 9000–0102, Prompt Payment, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Edward Chambers, Procurement Analyst, Contract Policy Branch, GSA (202) 501–3221 or e-mail *Edward.chambers@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Part 32 of the FAR and the clause at FAR 52.232–5, Payments Under Fixed-Price Construction Contracts, require that contractors under fixed-price construction contracts certify, for every progress payment request, that payments to subcontractors/suppliers have been made from previous payments received under the contract and timely payments will be made from the proceeds of the payment covered by the certification, and that this payment request does not include any amount which the contractor intends to withhold from a subcontractor/supplier. Part 32 of the FAR and the clause at 52.232–27, Prompt Payment for Construction Contracts, further require that contractors on construction contracts—

(a) Notify subcontractors/suppliers of any amounts to be withheld and furnish a copy of the notification to the contracting officer;

(b) Pay interest to subcontractors/suppliers if payment is not made by 7 days after receipt of payment from the Government, or within 7 days after correction of previously identified deficiencies;

(c) Pay interest to the Government if amounts are withheld from subcontractors/suppliers after the Government has paid the contractor the amounts subsequently withheld, or if the Government has inadvertently paid the contractor for nonconforming performance; and

(d) Include a payment clause in each subcontract which obligates the contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days after such amounts are paid to the contractor, include an interest penalty clause which obligates the contractor to pay the subcontractor an interest penalty if payments are not made in a timely manner, and include a clause requiring each subcontractor to include these clauses in each of its subcontractors and to require each of its subcontractors to include similar clauses in their subcontracts.

These requirements are imposed by Public Law 100–496, the Prompt Payment Act Amendments of 1988.

Contracting officers will be notified if the contractor withholds amounts from subcontractors/suppliers after the Government has already paid the contractor the amounts withheld. The contracting officer must then charge the contractor interest on the amounts withheld from subcontractors/suppliers. Federal agencies could not comply with the requirements of the law if this information were not collected.

B. Annual Reporting Burden

Respondents: 36,666.
Responses per Respondent: 11.
Total Responses: 403,326.
Hours per Response: .11.
Total Burden Hours: 44,366.

C. Annual Recordkeeping Burden

Recordkeepers: 33,333.
Hours per Recordkeeper: 18.
Total Recordkeeping Burden Hours: 599,994.

Obtaining Copies Of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0102, Prompt Payment, in all correspondence.

Dated: October 23, 2009.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. E9–26352 Filed 10–30–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0074]

Federal Acquisition Regulation; Submission for OMB Review; Contract Funding—Limitation of Costs/Funds

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding a reinstatement of an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement concerning limitation of costs/funds. A request for public comments was published in the **Federal Register** at 74 FR 30092 on June 24, 2009.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper

performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before December 2, 2009.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Edward Chambers, Procurement Analyst, Contract Policy Branch, GSA (202) 501–3221 or e-mail *Edward.chambers@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Firms performing under Federal cost-reimbursement contracts are required to notify the contracting officer in writing whenever they have reason to believe—

(1) The costs the contractors expect to incur under the contracts in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost of the contracts; or

(2) The total cost for the performance of the contracts will be greater or substantially less than estimated. As a part of the notification, the contractors must provide a revised estimate of total cost.

B. Annual Reporting Burden

Respondents: 53,456.
Responses per Respondent: 1.
Annual Responses: 53,456.
Hours per Response: .5.
Total Burden Hours: 26,728.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0074, Contract Funding—Limitation of Costs/Funds, in all correspondence.

Dated: October 23, 2009.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. E9–26353 Filed 10–30–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0053]

Federal Acquisition Regulation; Submission for OMB Review; Permits, Authorities, or Franchises Certification

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding a reinstatement of a previously existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning permits, authorities, or franchises certification. A request for public comments was published in the **Federal Register** at 74 FR 28497 on June 16, 2009.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before December 2, 2009.

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 (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jeritta Parnell, Procurement Analyst, Contract Policy Branch, GSA (202) 501–4082 or e-mail *Jeritta.Parnell@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

This certification and copies of authorizations are needed to determine that the offeror has obtained all authorizations, permits, etc., required in connection with transporting the material involved. The contracting officer reviews the certification and any documents requested to ensure that the offeror has complied with all regulatory requirements and has obtained any permits, licenses, etc., that are needed.

B. Annual Reporting Burden

Respondents: 1,106.
Responses per Respondent: 3.
Annual Responses: 3,318.
Hours per Response: .094.
Total Burden Hours: 312.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0053, Permits, Authorities, or Franchises Certification, in all correspondence.

Dated: October 23, 2009.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. E9–26348 Filed 10–30–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Determination and Declaration Regarding Emergency Use of the Antiviral Product Peramivir Accompanied by Emergency Use Information

AGENCY: Office of the Secretary (OS), HHS.

ACTION: Notice.

SUMMARY: The Secretary of Health and Human Services (HHS) is issuing this notice pursuant to section 564(b) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 360bbb–3(b)(4). On April 26, 2009, the then Acting Secretary of HHS determined that a public health emergency exists nationwide involving Swine Influenza A (now known as 2009–H1N1 Influenza A, or 2009–H1N1 influenza) that affects or has significant potential to affect

national security. On July 24 and October 1, 2009 the Secretary renewed that determination of a public health emergency. On the basis of this determination, on October 20, 2009 the Secretary declared an emergency justifying the authorization of emergency use of the antiviral product peramivir accompanied by emergency use information subject to the terms of any authorization issued by the Commissioner of Food and Drugs (Commissioner) under 21 U.S.C. 360bbb–3(a). The Secretary also specified that this declaration is a declaration of emergency as defined in the Declaration under the Public Readiness and Emergency Preparedness (PREP) Act for Influenza Antiviral peramivir.

DATES: The declaration of an emergency justifying the authorization of emergency use of the antiviral product peramivir is effective October 20, 2009.

FOR FURTHER INFORMATION CONTACT: Nicole Lurie, M.D., MSPH, Assistant Secretary for Preparedness and Response, Office of the Secretary, Department of Health and Human Services, 200 Independence Avenue, SW., Washington, DC 20201, Telephone (202) 205–2882 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

Under Section 564 of the FFDCA, the Commissioner, acting under delegated authority from the Secretary of HHS, may issue an Emergency Use Authorization (EUA) authorizing the emergency use of an unapproved drug, an unapproved or uncleared device, or an unlicensed biological product, or an unapproved use of an approved drug, approved or cleared device, or licensed biological product. Before an EUA may be issued, the Secretary of HHS must declare an emergency justifying the authorization based on one of three determinations: A determination of a domestic emergency, or a significant potential for a domestic emergency, by the Secretary of Homeland Security; a determination of a military emergency, or a significant potential for a military emergency, by the Secretary of Defense; or a determination of a public health emergency by the Secretary of HHS. See 21 U.S.C. 360bbb–3(b)(1). In the case of a determination by the Secretary of HHS (as was made here), the Secretary must determine that a public health emergency exists under section 319 of the Public Health Service (PHS) Act that affects, or has a significant potential to affect, national security, and that involves a specified biological, chemical, radiological, or nuclear agent or agents, or a specified disease or condition that may be attributable to such agent or agents. Based on such a determination, the Secretary of HHS may then declare an emergency that justifies the EUA, at which point the Commissioner may issue an EUA if the criteria for issuance of an authorization under section 564 of the FFDCA are met.

The Centers for Disease Control and Prevention (CDC), HHS, requested that the Food and Drug Administration (FDA) issue an EUA for the antiviral product peramivir accompanied by emergency use information. The determination of a public health emergency by the Acting Secretary of HHS, renewal of that determination by the Secretary of HHS, and the declarations of an emergency by the Secretary of HHS based on that determination, as described below, enable the Commissioner to issue an EUA for certain antiviral products for emergency use under section 564(a) of the FFDCA, 21 U.S.C. 360bbb–3(a).

II. Determination of the Acting Secretary of Health and Human Services and Renewal of the Determination by the Secretary of Health and Human Services

On April 26, 2009, pursuant to section 564(b)(1)(C) of the FFDCA, 21 U.S.C. 360bbb–3(b)(1)(A), and section 319 of the PHS Act, 42 U.S.C. 247d, the Acting Secretary of HHS determined, as a consequence of confirmed cases of Swine Influenza A (now called ''2009–H1N1 influenza'') in California, Texas, Kansas, and New York, and after consultation with public health officials as necessary, that a public health emergency exists nationwide involving 2009–H1N1 influenza that affects or has significant potential to affect national security.

On July 24 and October 1, 2009 pursuant to section 564(b)(1)(C) of the FFDCA, 21 U.S.C. 360bbb–3(b)(1)(A), and section 319 of the PHS Act, 42 U.S.C. 247d, because the 2009–H1N1 flu outbreak remains a worldwide public health threat and because the Department should use all available tools to ensure that we are prepared, and after consultation with public health officials as necessary, the Secretary renewed the April 26, 2009 determination by then Acting Secretary Charles E. Johnson that a public health emergency exists nationwide involving Swine Influenza A (now called ''2009–H1N1 influenza'') that affects or has significant potential to affect national security.

III. Declaration of the Secretary of Health and Human Services

On October 20, 2009, on the basis of my renewal on July 24 and October 1, 2009, of the April 26, 2009 determination by Acting Secretary Charles E. Johnson that a public health emergency exists involving Swine Influenza A (now called ''2009–H1N1 influenza'') that affects or has significant potential to affect national security, and pursuant to section 564(b) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 360bbb–3(b), I, Kathleen Sebelius, Secretary of the U.S. Department of Health and Human Services, hereby declare an emergency justifying the authorization of the emergency use of the antiviral peramivir, accompanied by emergency use information, subject to the terms of any authorization issued under 21 U.S.C. 360bbb–3(a). This declaration is a declaration of emergency, as defined in the Declaration under the Public Readiness and Emergency Preparedness Act for Influenza Antiviral peramivir, which was signed September 25, 2009, and any amendments thereto.

Notice of the authorizations issued by the FDA Commissioner under 21 U.S.C. 360bbb–3 is provided elsewhere in this **Federal Register**.

Dated: October 23, 2009.

Kathleen Sebelius,

Secretary.

[FR Doc. E9–26294 Filed 10–30–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: OCSE–75 Tribal Child Support Enforcement Program Annual Data Report.

OMB No.: 0970–0320.

Description: The data collected by form OCSE–75 are used to prepare the OCSE preliminary and annual data reports. In addition, Tribes administering CSE programs under Title IV–D of the Social Security Act are required to report program status and accomplishments and submit the OCSE–75 report annually.

Respondents: Tribal Child Support Enforcement Organizations or the Department/Agency/Bureau responsible for Child Support Enforcement in each Tribe.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OCSE–75	36	1	60	2,160

Estimated Total Annual Burden Hours: 2,160.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: October 28, 2009.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. E9–26315 Filed 10–30–09; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0360]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Food and Drug Administration Public Health Notification Readership Survey (Formerly Known as "Safety Alert/Public Health Advisory Readership Survey")

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by December 2, 2009.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0341. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3793.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

FDA Public Health Notification Readership Survey (formerly known as Safety Alert/Public Health Advisory Readership Survey) (PHS Act, Section 1701(a)(4)); (OMB Control Number 0910–0341—Extension)

Section 705(b) of the Federal Food Drug and Cosmetic Act (the act) (21 U.S.C. 375(b)) authorizes FDA to disseminate information concerning imminent danger to public health by any regulated product. The Center for Devices and Radiological Health (CDRH), communicates these risks to user communities through two publications: (1) The Public Health Notification (PHN) and (2) the Preliminary Public Health Notification (PPHN). The PHN is published when CDRH has information or a message to convey to health care practitioners that they would want to know in order to make informed clinical decisions about the use of a device or device type, and that information may not be readily available to the affected target audience in the health care community. CDRH can make recommendations that will help the health care practitioner mitigate or avoid the risk.

The PPHN is also published when CDRH has information to convey to health care practitioners that they would want to know in order to make informed clinical decisions about the use of a device or device type. However, two additional conditions exist that make the use of this type of notification preferable: (1) CDRH's understanding of the problem, its cause(s), and the scope of the risk that is still evolving, so that in order to minimize the risk, the center believes that health care practitioners needs the information they can provide, however incomplete, as soon as possible and (2) the problem is actively being investigated by the center, private industry, another agency or some other reliable entity, so that the center expects to be able to update the PPHN when definitive new information becomes available. Notifications are sent to organizations affected by risks discussed in the notification, such as hospitals, nursing homes, hospices, home health care agencies, retail pharmacies, and other health care providers. Through a process for identifying and addressing postmarket safety issues related to

regulated products, CDRH determines when to publish notifications.

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)), authorizes FDA to conduct research relating to health information. FDA seeks to evaluate the clarity, timeliness, and impact of safety alerts and public health advisories by surveying a sample of recipients. Subjects will receive a questionnaire to be completed and returned to FDA. The information to be collected will address how clearly notifications for reducing risks are explained, the timeliness of the information, and whether the reader has taken any action to eliminate or reduce risk as a result of the information in the alert. Subjects will also be asked whether they wish to receive future notifications electronically, as well as how the PHN program might be improved.

The information collected will be used to shape FDA's editorial policy for the PHN and PPHN. Understanding how target audiences view these publications will aid in deciding what changes should be considered in their content and format, and method of dissemination.

In the **Federal Register** of August 24, 2009 (74 FR 42674), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

PHS Act	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Section 1701(a)(4)	308	3	924	.17	157

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on the history of the PHN program, it is estimated that an average of three collections will be conducted a year. The total burden of response time is estimated at 10 minutes per survey. This was derived by CDRH staff completing the survey and through discussions with the contacts in trade organizations.

Dated: October 19, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–26307 Filed 10–30–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0497]

Agency Information Collection Activities; Proposed Collection; Comment Request; Abbreviated New Animal Drug Applications

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, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the paperwork associated with abbreviated new animal drug applications submitted to the Center for Veterinary Medicine, FDA.

DATES: Submit written or electronic comments on the collection of information by January 4, 2010.

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: Denver Presley, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3793.

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, 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.

Abbreviated New Animal Drug Applications—FD&C Act/Section 512(n)(1) (OMB Control Number 0910–NEW)

On November 16, 1988, the President signed into law the Generic Animal Drug and Patent Restoration Act (GADPTRA) (Public Law 100–670). Under Section 512(b)(2) of the Federal Food, Drug, and Cosmetic Act (the act), as amended by GADPTRA, any person may file an abbreviated new animal drug application (ANADA) seeking approval of a generic copy of an approved new animal drug. The information required to be submitted as part of an abbreviated application is described in section 512(n)(1) of the act. Among other things, an abbreviated application is required to contain information to show that the proposed generic drug is bioequivalent to, and has the same labeling as, the approved drug referenced in the abbreviated application. FDA allows applicants to

submit a complete ANADA or to submit information in support of an ANADA for phased review followed by the submission of an Administrative ANADA when FDA finds that all the applicable technical sections for an ANADA are complete. FDA requests that an applicant accompany ANADAs and requests for phased review of data to support ANADAs with the Form FDA 356v to ensure efficient and accurate processing of information to support approval of the generic new animal drug.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

FD&C Act Section 512(n)(1)	FDA Form	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
ANADA	356 V	17	1	17	159	2,703
Phased Review with Administrative ANADA	356 V	5	5	25	31.8	795
Total						3,498

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

ANADA paperwork burden (Section 512(n)(1) of the act) (21 U.S.C. 360b(b)(2)): Over the past 5 fiscal years, from October 2003 through September 2008, FDA has received an average of 22 ANADAs per year. FDA estimates that preparing the paperwork required under Section 512 (n)(1) of the act to be contained in an ANADA, whether all of the information is submitted with the ANADA or the applicant submits information for phased review followed by an Administrative ANADA that references that information, will take approximately 159 hours. FDA is estimating that each ANADA that uses the phased review process will have approximately 5 phased reviews per application. Therefore, assuming that 5 respondents will take advantage of the phased review option per year and an average of 5 phased reviews are submitted per application, times 31.8 hours per phased review, equals 795 total hours per year or 159 hours per application.

FDA believes that with time, more sponsors will take advantage of the phased review option, as it provides greater flexibility. Eventually, phased review will increase to the point of being the majority of ANADAs submitted during the course of the year. FDA also estimates that it takes sponsors of ANADAs approximately 25 percent less time to put together the information to support an ANADA than an NADA because they only need to provide evidence of bioequivalence and not the data required in an NADA to support a full demonstration of safety and effectiveness.

Form FDA 356v: FDA requests that an applicant fill out and send in with an ANADA and requests for phased review of data to support an ANADAs, a Form FDA 356v to ensure efficient and accurate processing of information to support the approval of a generic new animal drug.

This notice also refers to previously approved collections of information found in FDA regulations. The collections of information under 21 CFR 514.80, which describes records and reports that are required post approval, have been approved under OMB Control No. 0910–0284.

Dated: October 27, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–26290 Filed 10–30–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0521]

Authorization of Emergency Use of the Antiviral Product Peramivir Accompanied by Emergency Use Information; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of an Emergency Use Authorization (EUA) (the Authorization) for peramivir 200 milligrams (mg)/20 milliliter (mL) (10 mg/mL) single use vial manufactured for BioCryst Pharmaceuticals, Inc. (BioCryst) for intravenous (IV) administration in certain adult and pediatric patients. Peramivir is a drug that is not approved by FDA. FDA is issuing the Authorization under the Federal Food, Drug, and Cosmetic Act (the act), as requested by the Centers for Disease Control and Prevention (CDC). The Authorization contains, among other things, conditions on the emergency use of peramivir. The Authorization follows the determination by then Acting Secretary of the U.S. Department of Health and Human Services Charles E. Johnson (then Acting Secretary) that a public health emergency exists involving Swine Influenza A (now known as ''2009–H1N1 Influenza'') that affects, or has the significant potential to affect, national security. The determination has been renewed. On the basis of such determination, the Secretary declared an emergency justifying the authorization of the emergency use of the antiviral peramivir, accompanied by emergency use information, subject to the terms of any authorization issued under the act. The Authorization, which includes an explanation of the reasons for issuance, is reprinted in this document. The notice of the declaration of the Secretary is announced elsewhere in this issue of the **Federal Register**.

DATES: The Authorization is effective as of October 23, 2009.

ADDRESSES: Submit written requests for single copies of the Emergency Use Authorization(s) to the Office of Counterterrorism and Emerging Threats (HF–29), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the Authorization(s) may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the Authorizations.

FOR FURTHER INFORMATION CONTACT: RADM Boris Lushniak, Office of Counterterrorism and Emerging Threats

(HF–29), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4067.

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the act (21 U.S.C. 360bbb-3), as amended by the Project BioShield Act of 2004 (Public Law 108–276), allows FDA to strengthen the public health protections against biological, chemical, nuclear, and radiological agents. Among other things, section 564 of the act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product during a public health emergency that affects, or has a significant potential to affect, national security, and that involves biological, chemical, radiological, or nuclear agent or agents, or a specified disease or condition that may be attributable to such agent or agents. With this EUA authority, FDA can help assure that medical countermeasures may be used in an emergency to diagnose, treat, or prevent serious or life-threatening diseases or conditions caused by such agents, when there are no adequate, approved, and available alternatives.

Section 564(b)(1) of the act provides that, before an EUA may be issued, the Secretary must declare an emergency justifying the authorization based on one of the following grounds: ''(A) a determination by the Secretary of Homeland Security that there is a domestic emergency, or a significant potential for a domestic emergency, involving a heightened risk of attack with a specified biological, chemical, radiological, or nuclear agent or agents; (B) a determination by the Secretary of Defense that there is a military emergency, or a significant potential for a military emergency, involving a heightened risk to United States military forces of attack with a specified biological, chemical, radiological, or nuclear agent or agents; or (C) a determination by the Secretary of a public health emergency under section 319 of the Public Health Service Act (PHS Act) that affects, or has a significant potential to affect, national security, and that involves a specified biological, chemical, radiological, or nuclear agent or agents, or a specified disease or condition that may be attributable to such agent or agents.''

Once the Secretary has declared an emergency justifying an authorization under section 564 of the act, FDA may authorize the emergency use of a drug, device, or biological product if the agency concludes that the statutory criteria are satisfied. Under section 564(h)(1) of the act, FDA is required to publish in the **Federal Register**, a notice of each authorization, and each termination or revocation of an authorization, and an explanation of the reasons for the action. Section 564 of the act permits FDA to authorize the introduction into interstate commerce of a drug, device, or biological product intended for use in a declared emergency. Products appropriate for emergency use may include products and uses that are not approved, cleared, or licensed under sections 505, 510(k), and 515 of the act (21 U.S.C. 355, 360(k), and 360e) or section 351 of the Public Health Service Act (42 U.S.C. 262). FDA may issue an EUA only if, after consultation with the National Institutes of Health and CDC (to the extent feasible and appropriate given the circumstances of the emergency), FDA[1] concludes: ''(1) that an agent specified in a declaration of emergency can cause a serious or life-threatening disease or condition; (2) that, based on the totality of scientific evidence available to FDA, including data from adequate and well-controlled clinical trials, if available, it is reasonable to believe that: (A) the product may be effective in diagnosing, treating, or preventing—(1) such disease or condition; or (2) a serious or life-threatening disease or condition caused by a product authorized under Section 564, approved or cleared under this Act, or licensed under Section 351 of the PHS Act, for diagnosing, treating, or preventing such a disease or condition caused by such an agent; and (B) the known and potential benefits of the product, when used to diagnose, prevent, or treat such disease or condition, outweigh the known and potential risks of the product; (3) that there is no adequate, approved, and available alternative to the product for diagnosing, preventing, or treating such disease or condition; and (4) that such other criteria as the Secretary may by regulation prescribe are satisfied.''

No other criteria of issuance have been prescribed by regulation under section 564(c)(4) of the act. Because the statute is self-executing, FDA does not require regulations or guidance to implement the EUA authority. However, in the **Federal Register** of July 26, 2007 (72 FR 41083), FDA published a notice of availability of a guidance entitled ''Emergency Use Authorization of Medical Products'' to provide more information for stakeholders and the public about the EUA authority and the agency's process for the consideration of EUA requests.

II. EUA Request for Peramivir

On April 26, 2009, under section 564(b)(1)(C) of the act (21 U.S.C. 360bbb-3(b)(1)(C)), the then Acting Secretary determined that a public health emergency exists involving Swine Influenza A (now known as 2009–H1N1 influenza) that affects, or has the significant potential to affect, national security. The declaration has been renewed. On October 20, 2009, under section 564(b) of the act, and on the basis of such determination, the Secretary declared an emergency justifying the authorization of the emergency use of the antiviral peramivir, accompanied by emergency use information, subject to the terms of any authorization issued under 21 U.S.C. 360bbb-3(a). Notice of the declaration of the Secretary is published elsewhere in this issue of the **Federal Register**. On October 23, 2009, CDC requested and FDA issued the EUA for peramivir 200 mg/ 20 mL (10 mg/mL) single use vial manufactured for BioCryst for IV administration in certain adult and pediatric patients, accompanied by emergency use instructions, subject to the terms and conditions of the authorization.

III. Electronic Access

An electronic version of this document and the full text of the Authorizations are available on the Internet at *http://www.regulations.gov*.

IV. The Authorization

Having concluded that the criteria for issuance of the Authorizations under section 564(c) of the act are met, FDA has authorized the emergency use of peramivir 200 mg/ 20 mL (10 mg/mL) single use vial manufactured for BioCryst for IV administration in certain adult and pediatric patient, accompanied by emergency use information, subject to the terms and conditions of the authorization.

The Authorization for peramivir 200 mg/ 20 mL (10 mg/mL) single use vial manufactured for BioCryst for IV administration follows and provides an explanation of the reasons for its issuance, as required by section 564(h)(1) of the act:

[1] The Secretary has delegated her authority to issue an EUA under section 564 of the act to the Commissioner of Food and Drugs.

October 23, 2009

Thomas R. Frieden, MD, MPH
Director
Centers for Disease Control and Prevention
1600 Clifton Rd, MS D-14
Atlanta, GA 30333

Dear Dr. Frieden:

This letter is in response to your request that the Food and Drug Administration (FDA) issue an Emergency Use Authorization (EUA) for the emergency use of the unapproved drug peramivir administered intravenously for treatment of 2009 H1N1 influenza virus (hereafter "2009 H1N1") in certain adult and pediatric patients, pursuant to section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. § 360bbb-3).

On April 26, 2009, pursuant to section 564(b)(1)(C) of the Act (21 U.S.C. § 360bbb-3(b)(1)(C)), the then Acting Secretary of the Department of Health and Human Services (DHHS) determined that a public health emergency exists involving Swine Influenza A (now referred to as "2009 H1N1") that affects or has significant potential to affect national security. The Secretary has renewed the determination. Pursuant to section 564(b) of the Act (21 U.S.C. § 360bbb-3(b)), and on the basis of such determination, the Secretary of DHHS declared an emergency justifying the authorization of the emergency use of the antiviral peramivir, accompanied by emergency use information, subject to the terms of any authorization issued under section 564(a) of the Act (21 U.S.C. § 360bbb-3(a)).

Having consulted with the Centers for Disease Control and Prevention (CDC) and the National Institutes of Health (NIH), and having concluded that the criteria for issuance of this authorization under section 564(c) of the Act (21 U.S.C. § 360bbb-3(b)) are met, I am authorizing the emergency use of peramivir[1] administered intravenously for treatment of 2009 H1N1 in certain adult and pediatric patients, subject to the terms of this authorization.

I. Criteria for Issuance of Authorization

I have concluded that the emergency use of peramivir administered intravenously for treatment of 2009 H1N1 in certain adult and pediatric patients meets the criteria for issuance of an authorization under section 564(c) of the Act, because I have concluded that:

(1) 2009 H1N1 can cause influenza, a serious or life-threatening disease or condition;

(2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that peramivir may be effective when administered intravenously for the treatment of 2009 H1N1 in certain adult and pediatric patients, and that the known and potential benefits of peramivir, when administered intravenously for the treatment of 2009 H1N1 in certain adult and pediatric patients, outweigh the known and potential risks of peramivir; and

(3) there is no adequate, approved, and available alternative to the emergency use of peramivir administered intravenously for the treatment of 2009 H1N1 in certain adult and pediatric patients.[2]

Therefore, I have concluded that the emergency use of peramivir administered intravenously for the treatment of 2009 H1N1 in certain adult and pediatric patients meets the above statutory criteria for issuance of an authorization.

II. Scope of Authorization

I have concluded, pursuant to section 564(d)(1) of the Act, that the scope of this authorization is limited to the emergency use of authorized peramivir for the treatment of 2009 H1N1 in certain adult and pediatric patients. The emergency use of authorized peramivir under this EUA must be consistent with, and may not exceed, the terms of this letter, including the scope and the conditions of authorization set forth below.

Peramivir (a neuraminidase inhibitor) is an unapproved drug that it is currently being studied in clinical investigations. Peramivir is not currently approved by FDA for any use in the United States.

The authorized peramivir is as follows:

- Peramivir injection: 200mg/20mL (10 mg/mL) single use vial manufactured for BioCryst Pharmaceuticals, Inc. (BioCryst). (See Section IV.D.3. of this letter).

1. The above peramivir product is authorized only for intravenous (IV) administration.

2. The above peramivir product is authorized for the treatment of certain patients with suspected or laboratory confirmed 2009 H1N1 infection or infection due to nonsubtypable influenza A virus suspected to be 2009 H1N1 based on community epidemiology. Specifically, the peramivir product is authorized *only* for the following patients who are admitted to a hospital and under the care or consultation of a licensed clinician (skilled in the diagnosis and management of patients with potentially life-threatening illness and the ability to recognize and manage medication-related adverse events):

a. Adult patients for whom therapy with an IV agent is clinically appropriate, based upon one or more of the following reasons:
   (i) patient not responding to either oral or inhaled antiviral therapy, or
   (ii) drug delivery by a route other than IV (e.g., enteral oseltamivir or inhaled zanamivir) is not expected to be dependable or is not feasible, or
   (iii) the clinician judges IV therapy is appropriate due to other circumstances.
b. Pediatric patients for whom an IV agent is clinically appropriate because:
   (i) patient not responding to either oral or inhaled antiviral therapy, or

(ii) drug delivery by a route other than IV (e.g., enteral oseltamivir or inhaled zanamivir) is not expected to be dependable or is not feasible).

3. The above peramivir product may only include product distributed from Strategic National Stockpile (SNS), in which case such product is authorized only to be labeled with the attached label.

4. The above peramivir product is authorized to be accompanied by the following written information pertaining to the emergency use, which is attached and authorized to be made available to health care providers and patients (and parents/caregivers):

- Fact Sheet for Health Care Provider
- Fact Sheet for Patients and Parents/Caregivers

CDC, hospitals, and health care providers receiving authorized peramivir are also authorized to make available additional written information relating to the emergency use of authorized peramivir that is consistent with and does not exceed the terms of this letter of authorization (including the above referenced facts sheets).

I have concluded, pursuant to section 564(d)(2) of the Act, that it is reasonable to believe that the known and potential benefits of authorized peramivir, when used for the treatment of H1N1 in certain adult and pediatric patients, outweigh the known and potential risks of such product.

I have concluded, pursuant to section 564(d)(3) of the Act, based on the totality of scientific evidence available to FDA, that it is reasonable to believe that the authorized peramivir may be effective for the treatment of 2009 H1N1 in certain adult and pediatric patients pursuant to section 564(c)(2)(A) of the Act. FDA has reviewed the scientific information available, including the information supporting the conclusions described in Section I of this letter above, and concludes that the authorized peramivir when used for the treatment of 2009 H1N1 in certain adult and pediatric patients, meets the criteria set forth in section 564(c) of the Act concerning safety and potential effectiveness.

Subject to the terms of this EUA and under the circumstances set forth in the Secretary of DHHS's determination under section 564(b)(1)(C) described above and the Secretary of DHHS's corresponding declaration under section 564(b)(1), the peramivir described above is authorized for the treatment of 2009 H1N1 in certain adult and pediatric patients.

This EUA will cease to be effective when the declaration of emergency is terminated under section 564(b)(2) of the Act or when the EUA is revoked under section 564(g) of the Act.

III. Current Good Manufacturing Practice

This letter covers authorized peramivir as previously manufactured for BioCryst as of the date of this letter as well as authorized peramivir that may be manufactured for BioCryst after such date, insofar as FDA has determined that the methods used in, and the facilities and controls used for, the manufacturing, processing and packing of authorized peramivir are adequate to preserve its identity, strength, quality and purity.

Authorized peramivir should be held in accordance with its labeled and appropriate product storage conditions (ambient temperature, 15°C-30°C or 59°F-86°F). However, in order to ensure the delivery and availability of authorized peramivir, I am waiving current good manufacturing practice (CGMP) requirements with respect to proper storage conditions of temperature during the shipment and holding of authorized peramivir by CDC and/or its designees for a maximum of 90 days (consecutive or non-consecutive) from the date of shipment to CDC and/or its designees. Significant excursions from labeled storage conditions should be documented to the extent practicable given the circumstances of the emergency, and need not be supported by additional testing by CDC or its designees.?

IV. Conditions of Authorization

Pursuant to section 564 of the Act, I am establishing the following conditions on this authorization:

A. CDC

A.1. CDC will decide how authorized peramivir will be distributed under its direction to Hospitals upon request by licensed treating clinicians at the Hospitals to the extent such decisions are consistent with and do not exceed the terms of this letter; except that CDC will ensure that authorized peramivir will be distributed to Hospitals as soon as possible within 24 hours of CDC's decision to distribute such product, to the extent practicable given the circumstances of the emergency.

A.2. CDC will maintain adequate records regarding distribution under its direction of authorized peramivir (i.e., lot numbers, quantity, receiving site, receipt date, unique identifier(s) (e.g., Peramivir Request number(s))).

A.3. CDC will notify FDA on a weekly basis (unless otherwise specified by FDA) of the quantity of and to which Hospitals authorized peramivir is distributed under its direction. CDC will also include in the notification the unique identifier(s) (e.g., Peramivir Request number(s)).

A.4. CDC will ensure that authorized peramivir is distributed for use under its direction only within the expiry dates identified by FDA. CDC will inform Hospitals receiving authorized peramivir under its direction of the expiry dates by which authorized peramivir is to be used if authorized peramivir is nearing expiry. CDC will maintain adequate records regarding the expiry dates by which authorized peramivir is to be used.

A.5. CDC will ensure that Hospitals receiving authorized peramivir under its direction are informed of this letter, including the terms and conditions as well as any authorized amendments thereto.

A.6. CDC will make available through appropriate means to the Hospitals receiving authorized peramivir under its direction the authorized Fact Sheet for Health Care Providers and Fact Sheet for Patients and Parents/Caregivers as well as any authorized amendments thereto.

A.7. CDC will perform adverse event monitoring and compliance activities (e.g., follow-up surveys) designed: (1) to ensure that selected adverse events and all medication errors associated with the use of authorized peramivir are reported to FDA as follows: the MedWatch FDA Form 3500 must be completed either online at *www.fda.gov/medwatch/report.htm* **or** by using a postage-paid FDA Form 3500 (available at *http://www.fda.gov/medwatch/safety/FDA-3500_fillable.pdf*) and returning by fax (1-800-FDA-0178) or by mail (MedWatch, 5600 Fishers Lane, Rockville, MD 20852-9787). If there is no online internet access such reports must be made by calling 1-800-FDA-1088; (2) to ensure that such reports include in the description section of the MedWatch Form 3500 the words ''Peramivir EUA'' and include unique identifier(s) (e.g., Peramivir Request number(s)), and (3) to ensure that such reports are made within seven calendar days from the onset of the event. CDC will report such information to FDA upon request.

A.8. CDC will only make available additional written information relating to the emergency use of authorized peramivir to the extent that it is consistent with and does not exceed the terms of this letter (including the facts sheets referenced in Section II of this letter).

A.9. CDC will make available to FDA upon request any records maintained in connection with this letter.

B. Hospitals to Which Authorized Peramivir is Distributed

B.1 Such Hospitals will make available through appropriate means to relevant health care providers this letter, including the terms and conditions as well as any authorized amendments thereto.

B.2. Such Hospitals will make available through appropriate means to relevant health care providers and patients and/or parents/caregivers the authorized Fact Sheet for Health Care Providers and Fact Sheet for Patients and Parents/Caregivers as well as any authorized amendments thereto.

B.3. Such Hospitals will ensure that relevant health care providers abide by the institutional procedures regarding drug accountability. Such Hospitals will maintain adequate records showing receipt, use, and disposition of authorized peramivir.

B.4. Such Hospitals will ensure that the emergency use of authorized peramivir is limited to patients who are under the care or consultation of a licensed clinician (e.g., skilled in the diagnosis and management of patients with systemic illness, including recognition and management of medication-related adverse events).

B.5. Such Hospitals will conduct any follow-up requested by FDA and/or CDC regarding medication errors and adverse events.

B.6. Such Hospitals will only make available additional written information relating to the emergency use of authorized peramivir to the extent that it is consistent with and does not exceed the terms of this letter of authorization (including the facts sheets referenced in Section II of this letter).

B.7. Such Hospitals will make available to FDA and/or CDC upon request any records maintained in connection with this letter. Upon request, such Hospitals will report to FDA and/or CDC information with respect to the emergency use of authorized peramivir.

C. Health Care Providers Conducting Activities With Respect to Authorized Peramivir[3]

C.1. Health Care Providers will be aware of this letter, including the terms and conditions as well as any authorized amendments thereto. Health Care Providers will read the Fact Sheet for Health Care Providers, including the sections on Mandatory Requirements for Peramivir Administration Under Emergency Use Authorization and Considerations Prior to Peramivir Use Under EUA as well as any amendments thereto. (See Fact Sheet for Health Care Providers).

C.2. Health Care Providers prescribing and/or administering authorized peramivir will ensure that the authorized Fact Sheet for Patients and Parents/Caregivers, as well as any authorized amendments thereto, have been made available to patients and/or parents/caregivers through appropriate means. Such Health Care Providers (to the extent practicable given the circumstances of the emergency) will document in the patient's medical record that: (a) patients/caregivers have been given the Fact Sheet for Patients and Parents/Caregivers, (b) patients/caregivers have been informed of the alternatives to receiving authorized peramivir, and (c) patients/caregivers have been informed that peramivir is an unapproved drug that is authorized for use under Emergency Use Authorization.

C.3. Prescribing Health Care Providers (or their designees) will ensure that: (1) selected adverse events and all medication errors associated with the use of authorized peramivir are reported as follows: the MedWatch FDA Form 3500 must be completed either online at *www.fda.gov/medwatch/report.htm* **or** by using a postage-paid FDA Form 3500 (available at *http://www.fda.gov/medwatch/safety/FDA-3500_fillable.pdf*) and returning by fax (1-800-FDA-0178) OR by mail (MedWatch, 5600 Fishers Lane, Rockville, MD 20852-9787). If there is no online internet access such reports must be made by calling 1-800-FDA-1088; (2) that such reports include in the description section of the MedWatch Form 3500 the words ''Peramivir EUA'' and include unique identifier(s); and (3) that such reports are made within seven calendar days from the onset of the event. Such Health Care Providers or their designees will conduct any follow-up requested by FDA and/or CDC.

C.4. Health Care Providers will prescribe and/or administer authorized peramivir only for the treatment of certain patients with suspected or laboratory confirmed 2009 H1N1 infection or infection due to nonsubtypable influenza A virus suspected to be 2009 H1N1 based on community epidemiology. Specifically, peramivir is authorized only for the following patients who are admitted to a hospital and under the care or consultation of a licensed clinical (skilled in the diagnosis and management of patients with potentially life-threatening illness and the ability to recognize and manage medication-related adverse events):

a. Adult patients for whom therapy with an IV agent is clinically appropriate, based upon one or more of the following reasons:
(i) patient not responding to either oral or inhaled antiviral therapy, or
(ii) drug delivery by a route other than IV (e.g., enteral oseltamivir or inhaled zanamivir) is not expected to be dependable or is not feasible, or
(iii) the clinician judges IV therapy is appropriate due to other circumstances.
b. Pediatric patients for whom an IV agent is clinically appropriate because:
(i) patient not responding to either oral or inhaled antiviral therapy, or
(ii) drug delivery by a route other than IV (e.g., enteral oseltamivir or inhaled zanamivir) is not expected to be dependable or is not feasible).

C.5. Health Care Providers will ensure that patients with known or suspected renal insufficiency have creatinine clearance determined prior to peramivir dose calculation and first administration. (See Fact Sheet For Health Care Providers; Dosage and Administration for Impaired Renal Function Dosing).

C.6. Health Care Providers prescribing and/or administering authorized peramivir will ensure that patients with history of severe allergic reaction to any other neuraminidase inhibitor (zanamivir or oseltamivir) or any ingredient of peramivir will not receive authorized peramivir. (See Fact Sheet for Health Care Providers; Product Description.)

C.7. Health Care Providers will only make available additional written information relating to the emergency use of authorized peramivir to the extent that it is consistent with and does not exceed the terms of this letter of authorization (including the facts sheets referenced in Section II of this letter).

C.8. Heath Care Providers will make available to FDA and/or CDC upon request any records maintained in connection with this letter. Upon request, Health Care Providers will report to FDA and/or CDC information with respect to the emergency use of authorized peramivir.

D. BioCryst

D.1. BioCryst will post on its website the following statement: ''For information about the FDA-authorized emergency use of peramivir, please see *www.cdc.gov/h1n1flu/eua*.''

D.2. BioCryst will distribute authorized peramivir only to CDC and/or its designees subject to the terms and conditions of this letter.

D.3 BioCryst will contact FDA concerning the need for any FDA review and approval before any changes are made to the manufacturing, packaging, and labeling processes authorized as of the date of this letter.

D.4. BioCryst (or anyone acting on behalf of BioCryst) will not represent authorized peramivir in a promotional context or otherwise promote authorized peramivir.

D.5. BioCryst will make available to FDA and (as reasonably appropriate) CDC upon request any records maintained in connection with this letter. Upon request, BioCryst will report to FDA and/or (as reasonably appropriate) CDC information with respect to the emergency use of authorized peramivir.

The emergency use of authorized peramivir as described in this letter of authorization must comply with the conditions above and all other terms of this authorization.

V. Duration of Authorization

This EUA will be effective until the declaration of emergency is terminated under section 564(b)(2) of the Act or the EUA is revoked under section 564(g) of the Act.

Margaret A. Hamburg, M.D.
Commissioner of Food and Drugs

[1] FDA is authorizing the emergency use of peramivir administered intravenously for treatment of 2009 H1N1 in certain adult and pediatric patients as described in the scope section of this letter (Section II of this letter). For ease of reference, this letter of authorization will also use the term ''authorized peramivir.''
[2] No other criteria of issuance have been prescribed by regulation under section 564(c)(4) of the Act.
[3] The activities with respect to authorized peramivir refer to requesting, preparing, prescribing, and/or administering authorized peramivir, unless otherwise specified.

Dated: October 26, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–26291 Filed 10–30–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage

for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Novel Inhibitors of Interleukin-6 for Kaposi Sarcoma Therapy

Description of Invention: The cancer therapy market is forecast to reach $40.9 billion by 2012. With immunosuppressant drugs set for phenomenal growth over the next six years, revenues could reach $26.2 billion by 2014. One market for which there is a significant need for new therapies is cancers induced by Kaposi Sarcoma-associated Herpesvirus (KSHV).

Researchers at the National Cancer Institute have identified novel nucleic acid sequences that act through a unique mechanism to inhibit the expression of interleukin-6 that occurs in cancerous cells transformed by KSHV infection and which promotes cancer cell proliferation. The researchers have also identified a key protein involved in the mechanism which could be inhibited using antibodies.

These inhibitors are likely to be accepted in the marketplace because their unique specificity in mechanism of action gives them a distinct advantage over the mechanisms of other existing therapies.

Applications:

- Therapies for KSHV-induced cancers (Kaposi sarcoma (KS), primary effusion lymphoma (PEL)) and multicentric Castleman disease (MCD).
- Therapies for KSHV infection.
- Therapies for interleukin-6 associated inflammatory diseases.
- Immunosuppression of interleukin-6.

Advantages:

- Utilizes available small-molecule and antibody technologies.
- Targets a key pathway in interleukin-6 production.
- Specificity of mechanism of action may reduce/limit potential side-effects.

Development Status: Pre-clinical.

Inventors: Zhi-Ming Zheng and Jeong-Gu Kang (NCI).

Relevant Publication: JG Kang et al. KSHV infection induces IL6 expression by interrupting microRNA-mediated translational repression. *Submitted.*

Patent Status: U.S. Provisional Application No. 61/241,678 filed 11 Sep 2009 (HHS Reference No. E–296–2009/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Patrick P. McCue, Ph.D.; 301–435–5560; *mccuepat@mail.nih.gov.*

Collaborative Research Opportunity: The NCI Center for Cancer Research, HIV and AIDS Malignancy Branch, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Prediction of Immune Response Outcomes to Keyhole Limpet Hemocyanin (KLH) Treatment

Description of Invention: Keyhole limpet hemocyanin (KLH) is a large, heterogeneous glycosylated protein that is being tested as an immunotherapeutic agent to treat bladder cancer. KLH is approved for use in parts of Europe and Asia and is in late stage clinical trials in the U.S. KLH immunotherapy however only produces a clinical response in approximately 40–50% of patients, and currently there is no good method to select the subset of patients that will respond best to this treatment. This invention revealed that levels of certain serum antibodies can be used as biomarkers to predict the magnitude of the antibody response to the glycoprotein KLH. The best correlations are obtained by using a combination of markers. Since the size of the antibody response correlates with the clinical response, the invention provides a method to select the subset of patients that may benefit most from this form of treatment.

Applications and Market:

- It is estimated that 70,980 men and women will be diagnosed with and 14,330 men and women will die of cancer of the urinary bladder in 2009;
- Biomarkers for immune response outcomes to keyhole limpet hemocyanin (KLH);
- Patient selection based on prediction of response.

Development Status: Pre-clinical stage of development.

Inventors: Jeffrey C. Gildersleeve and Oyindasola Oyelaran (NCI).

Publications: Manuscript accepted, *Proteomics—Clinical Applications.*

Patent Status: U.S. Provisional Application No. 61/243,849 filed 18 Sep 2009, (HHS Reference No. E–295–2009/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Betty B. Tong, Ph.D.; 301–594–6565; *tongb@mail.nih.gov.*

Collaborative Research Opportunity: The NCI Center for Cancer Research, Laboratory of Medicinal Chemistry, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize a set of serum antibody-based biomarkers for personalized cancer immunotherapy using keyhole limpet hemocyanin (KLH). Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Dated: October 26, 2009.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E9–26313 Filed 10–30–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 11, 2009, from 8 a.m. to 5 p.m.

Location: Holiday Inn, Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Megan M. Mickal, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD, 20993, 301–796–5590, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512523. Please call the Information

Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On December 11, 2009, the committee will discuss and make recommendations on the study designs and endpoints of clinical investigations intended to support approval or clearance of devices indicated for the primary treatment of localized prostate cancer.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before December 1, 2009. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before November 23, 2009. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by November 24, 2009.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, 301–796–5966, at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 27, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–26259 Filed 10–30–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Ear, Nose, and Throat Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Ear, Nose, and Throat Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 18, 2009, from 8 a.m. to 5 p.m.

Location: Holiday Inn, Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: James K. Kane, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–6477, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512522. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On December 18, 2009, the committee will discuss, make recommendations, and vote on a premarket approval application, sponsored by Envoy Medical Corporation, for the Esteem Totally Implantable Hearing System. The ESTEEM is a totally implantable hearing device that is implanted in the middle ear to help hearing in patients suffering from mild to severe hearing loss that is sensorineural in origin. The Esteem System consists of three implantable components (Sound Processor, Sensor, and Driver), two external programmers (Esteem Programmer and Personal Programmer), an external Intraoperative System Analyzer (ISA) and accessories. The intended use of the ESTEEM is to alleviate hearing loss in adults by replicating the ossicular chain and providing additional gain.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before December 8, 2009. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before November 30, 2009. Time allotted for each presentation may be

limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by December 1, 2009.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, 301–796–5966 or *annmarie.williams@fda.hhs.gov* by December 4, 2009.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 27, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–26260 Filed 10–30–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2009–N–0664]

Pediatric Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Pediatric Advisory Committee. This meeting was announced in the **Federal Register** of October 6, 2009 (74 FR 51289). The amendment is being made to reflect a change in the *Agenda* portion of the document. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Doreen Kezer, Office of Medical and Scientific Programs, Office of the Commissioner, Food and Drug Administration, 5600 Fishers Lane (HF–33), rm. 14–65, Rockville, MD 20857, 301–827–1249, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 8732310001. Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 6, 2009, FDA announced that a meeting of the Pediatric Advisory Committee would be held on December 8, 2009. On page 51290, in the first column, the *Agenda* portion of the document is changed to read as follows:

Agenda: On December 8, 2009, the Pediatric Advisory Committee will meet to discuss pediatric-focused safety reviews, as mandated by the Best Pharmaceuticals for Children Act and the Pediatric Research Equity Act, for Abilify (aripiprazole), Argatroban (argatroban), Orencia (abatacept), Humira (adalimumab), Cancidas (caspofungin acetate), Evicel—fibrin sealant (human), Artiss—fibrin sealant (human), Voluven—6% hydroxyethyl starch 130/0.4 in 0.9% sodium chloride injection, Reyataz (atazanavir sulfate), Kaletra (lopinavir/ ritonavir), Aptivus (tipranavir), Zetia (ezetimibe), Vytorin (ezetimibe/simvastatin), Ventolin HFA (albuterol sulfate). An update to address some of the committee's questions from the Pediatric Advisory Committee meeting of November 18, 2008, on atypical antipsychotic drugs will be provided. In addition to Abilify (aripiprazole), Risperidal (risperidone), Zyprexa (olanzapine), Geodon (ziprasidone), and Seroquel (quetiapine) will be included. Two products (Zemuron (rocuronium bromide) and Cardiolite (technetium Tc99m sestamibi) previously planned for presentation at this meeting are rescheduled for a later date.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to the advisory committees.

Dated: October 27, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–26262 Filed 10–30–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; AIDS Predoctoral and Postdoctoral Fellowship.

Date: December 2–3, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Hilary D. Sigmon, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, (301) 594–6377, *sigmonh@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Pharmacogenomics.

Date: December 3–4, 2009.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Michael K. Schmidt, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2214, MSC 7890, Bethesda, MD 20892, (301) 435–1147, *mschmidt@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Special Topics in Biological Sciences.

Date: December 3–4, 2009.

Time: 11 a.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Donald L. Schneider, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5160, MSC 7842, Bethesda, MD 20892, (301) 435–1727, *schneidd@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–OD–09–007: ARRA AREA Grants Panel 10.
Date: December 4, 2009.
Time: 8 a.m. to 7 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Maqsood A. Wani, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2114, MSC 7814, Bethesda, MD 20892, 301–435–2270, *wanimaqs@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Native American Research Centers for Health.
Date: December 7–8, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Najma Begum, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2186, MSC 7818, Bethesda, MD 20892, 301–435–1243, *begumn@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; P41 Center.
Date: December 8–10, 2009.
Time: 5 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Palomar, Los Angeles-Westwood, 10740 Wilshire Blvd., Los Angeles, CA 90024449.
Contact Person: Malgorzata Klosek, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7849, Bethesda, MD 20892, 301–435–2211, *klosekm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–OD–09–007: ARRA AREA Grants Panel 03.
Date: December 9, 2009.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.
Contact Person: Vonda K. Smith, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7806, Bethesda, MD 20892, 301–435–1789, *smithvo@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neurological Disorders, Bioengineering, and Neurogenetics.
Date: December 9, 2009.
Time: 1 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Vilen A. Movsesyan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040M, MSC 7806, Bethesda, MD 20892, 301–402–7278, *movsesyanv@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Research Resource in Cell Biology.
Date: December 10–11, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The St. Regis Washington DC, 923 16th Street, NW., Washington, DC 20006.
Contact Person: David Balasundaram, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5189, MSC 7840, Bethesda, MD 20892, 301–435–1022, *balasundaramd@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–OD–07–009: ARRA AREA Grants Panel 02.
Date: December 10, 2009.
Time: 8 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Ritz Carlton Hotel, 1150 22nd Street, NW., Washington, DC 20037.
Contact Person: Noni Byrnes, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5130, MSC 7840, Bethesda, MD 20892, 301–435–1023, *byrnesn@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RAID: Roadmap Initiative 2010/01B.
Date: December 16–18, 2009.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Steven J. Zullo, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7849, Bethesda, MD 20892, 301–435–2810, *zullost@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts in Biological Chemistry and Macromolecular Biophysics.
Date: December 17–18, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Donald L. Schneider, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5160, MSC 7842, Bethesda, MD 20892, 301–435–1727, *schneidd@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 27, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–26288 Filed 10–30–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Exploratory Behaviors HIV/AIDS.
Date: November 10, 2009.
Time: 11 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call)
Contact Person: Enid Light, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6132, MSC 9608, Bethesda, MD 20852–9608, 301–443–0322, *elight@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(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: October 26, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–26287 Filed 10–30–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Aging in Down Syndrome Adults.

Date: November 9, 2009.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call)

Contact Person: Norman Chang, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 496–1485, *changn@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 23, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–26286 Filed 10–30–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Subcommittee on Procedures Reviews, Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting for the aforementioned subcommittee:

Time and Date: 9:30 a.m.–5 p.m., November 17, 2009.

Place: Cincinnati Airport Marriott, 2395 Progress Drive, Hebron, Kentucky 41018. Telephone (859)334–4611, Fax (859)334–4619.

Status: Open to the public, but without a public comment period. To access by conference call, use the following information 1(866)659–0537, Participant Pass Code 9933701.

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2011.

Purpose: The Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class. The Subcommittee on Procedures Reviews was established to aid the Advisory Board in carrying out its duty to advise the Secretary, HHS, on dose reconstruction. It is responsible for overseeing, tracking, and participating in the reviews of all procedures used in the dose reconstruction process by the NIOSH Office of Compensation Analysis and Support (OCAS) and its dose reconstruction contractor.

Matters to be Discussed: The agenda for the Subcommittee meeting includes: Discussion of the following ORAU & OCAS procedures: OTIB–013 (''Special External Dose Reconstruction Considerations for Mallinckrodt Workers''), OTIB–014 (''Rocky Flats Internal Dosimetry Co-Worker Extension''), OTIB–0029 (''Internal Dosimetry Co-Worker Data for Y–12''), OTIB–0049 (''Estimating Doses for Plutonium Strongly Retained in the Lung''), OTIB–0051 (''Effect of Threshold Energy and Angular Response of NTA Film on Missed Neutron Dose at the Oak Ridge Y–12 Facility''), OTIB–0054 (''Fission and Activation Product Assignment for Internal Dose-Related Gross Beta and Gross Gamma Analyses''), and OTIB–0070 (''Dose Reconstruction During Residual Radioactivity Periods at Atomic Weapons Employer Facilities''); and a continuation of the comment-resolution process for other dose reconstruction procedures under review by the Subcommittee.

The agenda is subject to change as priorities dictate.

This meeting is open to the public, but without a public comment period. In the event an individual wishes to provide comments, written comments may be submitted. Any written comments received will be provided at the meeting and should be submitted to the contact person below in advance of the meeting.

Contact Person for More Information: Theodore Katz, Executive Secretary, NIOSH, CDC, 1600 Clifton Road, Mailstop E–20, Atlanta, GA 30333, Telephone (513) 533–6800, Toll Free 1 (800) CDC–INFO, E-mail *ocas@cdc.gov.*

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: October 27, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–26284 Filed 10–30–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): CDC Grants for Public Health Research Dissertation (Panel H), Funding Opportunity Announcement (FOA) PAR07–231, Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned SEP:

Time and Date: 12 p.m.–3 p.m., December 3, 2009 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''CDC Grants for Public Health Research Dissertation, FOA PAR07–231, Panel H.''

Contact Person for More Information: Sheree Marshall Williams, PhD., MSc, Scientific Review Administrator, CDC, 1600 Clifton Road, NE., Mailstop D73, Atlanta, GA 30333, Telephone 404–639–7742.

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: October 23, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–26280 Filed 10–30–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Neurological Devices Panel of the Medical Devices Advisory Committee; Notice of Postponement of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is postponing the meeting of the Neurological Devices Panel of the Medical Devices Advisory Committee scheduled for November 20, 2009. This meeting was announced in the **Federal Register** of October 16, 2009 (74 FR 53274). The postponement is due to a scheduling conflict. A future meeting date will be announced in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Deborah Falls, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–5620, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512513. Please call the Information Line for up-to-date information on this meeting.

Dated: October 27, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–26261 Filed 10–30–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2009–N155; 20124–1112–0000–F2]

Hays County Regional Habitat Conservation Plan, Hays County, TX

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: draft environmental impact statement, draft habitat conservation plan, permit application; and announcement of a public hearing.

SUMMARY: Hays County, Texas (Applicant), has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit (TE–220793–0) under the Endangered Species Act (Act) of 1973, as amended. The requested permit, which would be in effect for a period of 30 years if granted, would authorize incidental take of the following federally listed species: Golden-cheeked warbler (*Dendroica chrysoparia*) and black-capped vireo (*Vireo atricapilla*). The proposed take would occur in Hays County, Texas, as a result of activities including, but not limited to, public or private land development, transportation projects, or utility projects. Hays County has completed a draft Habitat Conservation Plan (dHCP) as part of the application package. We have issued a draft environmental impact statement (dEIS) that evaluates the impacts of, and alternatives to, possible issuance of an incidental take permit (ITP). We request public comments on the application, dHCP, and dEIS, and we announce our plan to hold public hearings.

DATES: *Public meetings:* We will accept oral and written comments at a public hearing to be held on Wednesday, November 18, 2009, from 6 p.m. to 8 p.m. CDT at the San Marcos Activity Center, Room #1, 501 E. Hopkins Street, San Marcos, TX 78666.

Comment-period end: To ensure consideration, please send your written comments by February 1, 2010.

ADDRESSES: For where to review documents and submit comments, and the public meeting location, see Reviewing Documents and Submitting Comments in **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Mr. Adam Zerrenner, Field Supervisor, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, TX 78758; telephone 512–490–0057.

SUPPLEMENTARY INFORMATION: Under the National Environmental Policy Act (NEPA), we announce that we have gathered the information necessary to determine impacts and formulate alternatives for the EIS related to the potential issuance of an incidental take permit (ITP) to Hays County; and that the Applicant has developed an HCP which describes the measures to undertake to minimize and mitigate the effects of incidental take of federally listed species to the maximum extent practicable, under section 10(a)(1)(B) of the Act (16 U.S.C. 1531 *et seq.*).

Background

The initial notice of intent to prepare an EIS and hold public scoping meetings published in the **Federal Register** on May 16, 2008 (73 FR 28497). A summary of comments provided during the 2008 scoping periods, which included a public meeting held June 18, 2008, in San Marcos, Texas, is available on the Hays County Regional Habitat Conservation Plan Web site at *http://www.hayscountyhcp.com.*

The Hays County draft Regional Habitat Conservation Plan (dRHCP) and the conservation program described in the plan were developed in a process involving participants and stakeholders from potentially affected or interested groups in Hays County. The groups are organized into a Citizens Advisory Committee and a Biological Advisory Team that have overseen the development of the RHCP. The RHCP Web site contains information on meetings, documents, and the status of the process.

Section 9 of the Act and its implementing regulations prohibit the

''taking'' of threatened or endangered species. However, under limited circumstances, we may issue permits to take listed wildlife species incidental to, and not the purpose of, otherwise lawful activities.

Proposed Action

The proposed action involves the issuance of an ITP by the Service for covered activities in Hays County, under section 10(a)(1)(B) of the Act. The activities that would be covered by the ITP are construction, use, or maintenance of public or private land development projects; construction, maintenance, or improvement of transportation infrastructure; installation or maintenance of utility infrastructure; construction, use, or maintenance of institutional projects or public infrastructure; and management activities in RHCP preserves necessary to manage habitat for the covered species. The requested ITP will cover Hays County, Texas. The requested term of the permit is 30 years.

To meet the requirements of a section 10(a)(1)(B) ITP, the Applicant has developed and will implement the dRHCP, which describes the conservation measures the Applicant has agreed to undertake to minimize and mitigate for incidental take of the golden-cheeked warbler and black-capped vireo to the maximum extent practicable, and anticipates that incidental take will not appreciably reduce the likelihood of the survival and recovery of these species in the wild.

Alternatives

We are considering three alternatives to the proposed action as part of this process:

1. *No Action*—No ITP would be issued. This alternative would require individuals to seek authorization through section 7 or section 10(a)(1)(B) to address incidental take resulting from their actions in Hays County or avoid taking actions that would result in incidental take of federally listed species.

2. *Moderate Preserve/Limited Take*—This alternative would create an RHCP for the golden-cheeked warbler and black-capped vireo, but would limit incidental take to no more than 3,600 acres of impact to habitat for these two species. A preserve system of 3,000 acres with a pre-determined location and configuration would mitigate for the impacts of the authorized take.

3. *Large-Scale Preserve System*—This alternative would create an RHCP for the golden-cheeked warbler and black-capped vireo, and would allow incidental take of any potential habitat for the covered species during the term of the ITP outside of a predetermined 30,000-acre preserve.

Reviewing Documents and Submitting Comments

Please refer to TE–220793–0 when requesting documents or submitting comments.

You may obtain copies of the dEIS and dRHCP by going to the Hays County Regional Habitat Conservation Plan Web site at *http://hayscountyhcp.com/documents.* Alternatively, you may obtain compact disks with electronic copies of these documents by writing to Mr. Adam Zerrenner, Field Supervisor, 10711 Burnet Road, Suite 200, Austin, TX 78758; telephone 512–490–0057; facsimile 512–490–0974. The application, dRHCP, and dEIS will also be available for public inspection, by appointment, during normal business hours (8 a.m. to 4:30 p.m.) at the Austin office. During the public comment period (see **DATES**), submit your written comments or data to the Field Supervisor at the Austin address.

A limited number of printed copies of the dEIS and dRHCP are also available for public inspection and review at the following locations (by appointment only at government offices):

- Department of the Interior, Natural Resources Library, 1849 C St., NW., Washington, DC 20240;
- U.S. Fish and Wildlife Service, 500 Gold Avenue, SW., Room 4012, Albuquerque, NM 87102;
- San Marcos Public Library, 625 E. Hopkins Street, San Marcos, TX;
- Hays County Precinct 3 Office, 14306 Ranch Rd 12, Wimberley, TX; and
- Hays County Precinct 4 Office, 195 Roger Hanks Parkway, Dripping Springs, TX.

Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4012, Albuquerque, NM 87103.

Public Meeting

A public meeting will take place on Wednesday, November 18, 2009, to be held at the San Marcos Activity Center (see **DATES**) from 6 p.m. to 8 p.m. CDT.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that the entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10(c) of the Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22) and NEPA (42 U.S.C. 4371 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Dated: August 20, 2009.

Brian A. Millsap,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. E9–26273 Filed 10–30–09; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

New Melones Lake Area Resource Management Plan, Tuolumne and Calaveras Counties, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of the Draft Resource Management Plan/Environmental Impact Statement (RMP/EIS) and notice of public meetings.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (as amended), the Bureau of Reclamation (Reclamation) has made available for public review and comment a Draft RMP/EIS for the New Melones Lake Area. The Draft RMP/EIS describes and presents the environmental effects of four alternatives, including no action, for future use of the project area for recreation and resource protection and management. The purpose of the public meetings is to provide the public with an opportunity to comment on management and environmental issues addressed in the Draft RMP/EIS. Written comments will be accepted from individuals and organizations on the Draft RMP/EIS.

DATES: Two public open houses will be held on Wednesday, December 2, 2009, one from 1 to 4 p.m. and the other from 6 to 9 p.m. in Sonora, California.

Submit written comments on the Draft RMP/EIS to Ms. Melissa Vignau at the address below by *January 4, 2010.*

ADDRESSES: The public open houses will be held at New Melones Visitor Center, 6850 Studhorse Flat Road, Sonora, California 95370.

Send written comments on the Draft RMP/EIS to Melissa Vignau, Natural Resources Specialist, 7794 Folsom Dam Road, Folsom, CA 95630. Send requests for a compact disk or a bound copy of the Draft RMP/EIS to Melissa Vignau, at the above address; telephone: 916–989–7182. Copies of the Draft RMP/EIS will be available for review at: *http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=2536.*

See **SUPPLEMENTARY INFORMATION** Section for locations where copies of the Draft RMP/EIS are available for public review.

FOR FURTHER INFORMATION CONTACT: Melissa Vignau, Natural Resources Specialist, Reclamation, at 916–989–7182 or Dan Holsapple, Acting New Melones Resource Manager, Reclamation, at 209–536–9094.

SUPPLEMENTARY INFORMATION: This planning activity encompasses approximately 30,000 acres of publicly accessible water and land owned and managed by Reclamation. The RMP, which will replace the New Melones Lake Area Master Plan of 1976, will be the primary management document for Reclamation's New Melones Lake Area, providing a defined purpose, vision, long-term goals, and management guidelines. It will be used by Reclamation as a framework for guiding decision-making related to future development potential, on-going management, public health and safety, and public use of the New Melones Lake Area.

The RMP attempts to enhance and expand the recreation opportunities while also providing more active protection and management of natural and cultural resources. The RMP is intended to be implemented over an extended period as determined by both user demand and need. To do so, the RMP provides goals and guidelines relating to natural, cultural and visual resources, water quality, circulation, visitor services, interpretation and operations.

The EIS is a program-level analysis of the potential environmental impacts associated with adoption of the RMP. The RMP is intended to be predominantly self-mitigating through implementation of RMP policies and management strategies, and the EIS will also includes measures intended to reduce the adverse effects of the RMP. Copies of the Draft EIS are available for public review at the following locations:

- Bureau of Reclamation, Central California Area Office, New Melones Lake Office, 6850 Studhorse Flat Road, Sonora, California 95370.
- City of Angels Camp, City Hall, 584 S. Main Street, Angels Camp, CA 95222.
- Calaveras Planning Department, Calaveras County Government Center, 891 Mountain Ranch Road, San Andreas, CA 95249.
- San Andreas Central Library, 1299 Gold Hunter Road, San Andreas, CA 95249.
- Tuolumne County Administrator's Office, Administration Building, 2 South Green St., 4th Floor, Sonora, CA 95370.
- Sonora Main Branch Library, 480 Greenley Rd., Sonora, CA 95370.

If special assistance is required at the public hearings, please contact Mrs. Melissa Vignau at 916–989–7182 (e-mail: *mbrockman@usbr.gov*). Please notify Mrs. Vignau as far in advance of the open houses as possible to enable Reclamation to secure the needed services. If a request cannot be honored, the requestor will be notified.

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: October 23, 2009.

Pablo R. Arroyave,

Deputy Regional Director, Mid-Pacific Region.

[FR Doc. E9–26320 Filed 10–30–09; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV930000–L14300000.LET0000; NVN–83979; 10–08807:TAS:14x1109]

Public Land Order No. 7737; Withdrawal of Public Lands, 24 Areas of Critical Environmental Concern, Clark and Nye Counties; NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws approximately 944,343 acres of public lands from location and entry under the United States mining laws for a period of 20 years to protect desert tortoise habitat, archaeological and cultural resources, and special wildlife and riparian values on 24 Areas of Critical Environmental Concern located in Clark and Nye Counties, Nevada.

DATES: *Effective Date:* October 30, 2009.

FOR FURTHER INFORMATION CONTACT: Jacqueline Gratton, Bureau of Land Management, Nevada State Office, (775) 861–6532.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2), to protect the following described Areas of Critical Environmental Concern (ACEC) sites:

Mount Diablo Meridian, Nevada

Amargosa Mesquite Trees ACEC (NVN 76865)

T. 16 S., R. 51 E.,
Sec. 35;
Sec. 36, SW¼.
T. 17 S., R. 51 E.,
Sec. 1, lots 3 and 4, S½NW¼, and S½;
Sec. 2;
Sec. 11, E½;
Secs. 12 and 13;
Sec. 14, E½;
Sec. 23, E½;
Secs. 24 and 25;
Sec. 26, E½;
Secs. 35 and 36.

Ash Meadows ACEC (NVN 76868)

T. 17 S., R. 50 E.,
Secs. 7 and 8;
Sec. 9, lots 1 to 12, inclusive;
Sec. 10, lots 1 to 8, inclusive;
Sec. 11;
Sec. 12, lots 1 to 15, inclusive;
Sec. 13;
Sec. 14, lots 1 to 10, inclusive, and lots 12 to 16, inclusive;
Sec. 15, lots 1 to 4, inclusive;
Sec. 17, W½NE¼, NW¼, SW¼, and W¼SE¼;
Sec. 18;
Sec. 19, lots 1, 2, and lots 5 to 10, inclusive, SE¼NW¼, and N½NE¼;
Sec. 20, NW¼ and N½SW¼;
Sec. 23, lots 1, 2, 5, and 6, N½SE¼, E½SW¼SE¼, and SE¼SE¼;
Secs. 24 and 25;
Sec. 26, NE¼NE¼, E½NW¼NE¼, S½NE¼, SW¼NW¼, and S½SE¼NW¼;
Sec. 30, lots 3 to 10, inclusive, E½SW¼, and W½SE¼;
Sec. 31;
Sec. 32, W½W½;
Sec. 36, NE¼ and N½SE¼.
T. 18 S., R. 50 E.,
Sec. 5;
Sec. 6, lots 1 and 2, lots 8 to 12, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and W½W½SE¼;
Sec. 7, lots 4 to 10, inclusive, S½NE¼, E½NW¼, NE¼SW¼, and N½SE¼;
Sec. 8;
Sec. 9, W½NW¼ and SW¼;

Sec. 16, lot 2, W½NE¼, NW¼, N½SW¼, SE¼SW¼, and W½SE¼;
Secs. 17 to 22, inclusive;
Sec. 25, S½;
Sec. 26, W½;
Secs. 27, 28 and 29, and secs 33 to 36, inclusive.
T. 17 S., R. 51 E.,
Sec. 7;
Sec. 8, NW¼NE¼, W½SW¼NE¼, W½, and W½NW¼SE¼;
Sec. 17, S½NE¼NE¼, W½NE¼, SE¼NE¼, W½, and SE¼;
Secs. 18, 19, 20, 29 and 30;
Sec. 31, lots 1, 2, and 3, NE¼NE¼, W½NE¼, E½NW¼, NE¼SW¼, and SW¼SE¼;
Sec. 32, lots 1 to 4, inclusive, N½NW¼, and NE¼.
T. 18 S., R. 51 E.,
Sec. 17, E½E½;
Sec. 20, E½E½;
Sec. 29, S½ and E½NE¼;
Sec. 30, lots 3 and 4, E½SW¼ and SE¼;
Secs. 31 and 32.

Big Dune ACEC (NVN 76869)

T. 15 S., R. 48 E.,
Sec. 8, S½, unsurveyed;
Sec. 9, S½, unsurveyed;
Secs. 16 and 17, unsurveyed.

Arden Historic Sites ACEC (NVN 76866)

T. 22 S., R. 60 E.,
Sec. 32, W½NE¼NE¼NE¼, W½NE¼NE¼, SE¼NE¼NE¼, W½NE¼, W½NE¼SE¼NE¼, W½SE¼NE¼, W½NE¼NE¼NW¼, S½NE¼NW¼, E½NE¼NW¼NW¼, E½SW¼NW¼NW¼, W½SE¼NW¼NW¼, E½NE¼SW¼NW¼, W½SW¼NW¼, SE¼SW¼NW¼, W½NE¼SE¼NW¼, W½SE¼NW¼, SE¼SE¼NW¼, and S½;
Sec. 33, NE¼NE¼SW¼, W½NW¼NE¼SW¼, S½NE¼SW¼, NW¼SW¼, W½NE¼SW¼SW¼, W½SW¼SW¼, SE¼SW¼SW¼, E½NE¼SE¼SW¼, W½SE¼SW¼, W½SE¼SE¼SW¼, N½SE¼, SW¼SE¼, W½NE¼SE¼SE¼, and NW¼SE¼SE¼.
T. 23 S., R 60 E.,
Sec. 4, lots 1 to 4, inclusive, and S½N½;
Sec. 5, lots 1 to 4, inclusive, and S½N½.

Arrow Canyon ACEC (NVN 76867)

T. 14 S., R. 64 E.,
Sec. 10, NW¼, E½SW¼, and SE¼, unsurveyed;
Sec. 11, SW¼, unsurveyed;
Sec. 13, unsurveyed;
Sec. 14, N½ and SE¼, unsurveyed;
Sec. 15, NE¼ and E½NW¼, unsurveyed.
T. 14 S., R. 65 E.,
Sec. 7, lots 3 and 4, E½SW¼ and SE¼.

Bird Spring ACEC (NVN 76870)

T. 24 S., R. 59 E.,
Sec. 4, lots 1 and 2, and S½NE¼.

Coyote Springs Tortoise ACEC (NVN 76871)

T. 13 S., R. 63 E.,
Sec. 20, that part lying east of Right-of-Way Nev 060729 (U.S. Highway 93) and south of Right-of-Way Nev 065185 (Nevada State Highway 168);
Secs. 21, 22, 23, and 26, inclusive for those portions lying south of Right-of-Way Nev 065185 (Nevada State Highway 168);
Sec. 27;
Secs. 28, 29, and 33, inclusive for those portions lying east of U.S. Fish and Wildlife Service (FWS) Management Boundary;
Secs. 34 and 35.
T. 13½ S., R. 63 E.,
Sec. 33, that part lying east of FWS Management Boundary, unsurveyed;
Secs. 34 and 35, unsurveyed.
T. 14 S., R. 63.,
Secs. 2 and 3, unsurveyed;
Secs. 4 and 9, inclusive for those portions lying east of FWS Management Boundary, unsurveyed;
Secs. 10, 11, 14, and 15, unsurveyed;
Secs. 16 and 21, inclusive for those portions lying east of FWS Management Boundary, unsurveyed;
Secs. 22, 23, 26, and 27, unsurveyed;
Secs. 28 and 33, inclusive for those portions lying east of FWS Management Boundary, unsurveyed;
Secs. 34 and 35, unsurveyed.
T. 15 S., R. 63 E.,
Sec. 2, unsurveyed;
Secs. 3, 4, and 10, inclusive for those portions lying east of FWS Management Boundary, unsurveyed;
Secs. 11 and 14, unsurveyed;
Sec. 15, that part lying east of FWS Management Boundary, unsurveyed;
Secs. 18 to 21, inclusive for those portions lying south of FWS Management Boundary, unsurveyed;
Sec. 22, that part lying east and south of FWS Management Boundary, unsurveyed;
Secs. 27 to 34, inclusive, unsurveyed.
T. 16 S., R. 63 E.,
Secs. 3 to 10, inclusive, secs. 15 to 22, inclusive, and secs. 28 to 33, inclusive.
T. 17 S., R. 63 E.,
Secs. 7, 8, and 9, secs. 16 to 21, inclusive, and 28 to 31, inclusive;
Sec. 32, that part lying west of Powerline Right-of-Way NVN–53399.
T. 18 S., R. 63 E.,
Sec. 5, that part lying west of Powerline Right-of-Way NVN–53399;
Secs. 6, 7, 8, 17, 18, 19, 29, and 30, for those portions lying west of Powerline Right-of Way NVN–53399;
Sec. 31, lots 7, 8, 9, 15, 18, and NW¼NE¼.
T. 19 S., R. 63 E.,
Sec. 6, that part lying west of Powerline Right-of-Way NVN–53399.

Crescent Townsite ACEC (NVN 76872)

T. 28 S., R. 61 E.,
Sec. 29, SW¼ and W½SE¼, excluding patented lands;
Sec. 30, E½SE¼;
Sec. 32, W½NE¼ and E½NW¼.

Devil's Throat ACEC (NVN 76874)

T. 17 S., R. 70 E.,
Sec. 26.

Gold Butte Part A, ACEC (NVN 76875)

T. 14 S., R. 69 E.,
Secs. 24, 25, 26, 34, 35, and 36.
T. 15 S., R. 69 E.,
Secs. 1, 2, 3, 9, and 10;
Sec. 11, N½, N½SW¼, N½SE¼, SW¼SW¼, and SE¼SE¼;
Secs. 12 and 13;
Sec. 14, NE¼NE¼, S½NE¼, S½NW¼, NW¼NW¼, and S½;
Secs. 15 and 16;
Secs. 21 to 28, inclusive, and secs. 33 to 36, inclusive.
T. 16 S., R. 69 E.,
Secs. 1 to 4, inclusive, and 8 to 17, inclusive;
Secs. 20 to 28, inclusive, and 33 to 36, inclusive.
T. 17 S., R. 69 E.,
Secs. 1, 2, 3, and 11 to 14, inclusive;
Secs. 24, 25, and 36, excluding patented lands.
T. 18 S., R. 69 E.,
Sec. 1, excluding patented lands.
T. 14 S., R. 70 E.,
Sec. 1;
Secs. 10 to 36, inclusive.
T. 15 S., R. 70 E.,
Secs. 2 to 11, inclusive, and secs. 15 to 20, inclusive;
Secs. 21 and 22, excluding patented lands;
Secs. 28 to 33, inclusive.
T. 16 S., R. 70 E.,
Secs. 4 to 11, inclusive, and secs. 13 to 36, inclusive.
T. 17 S., R. 70 E.,
Secs. 1 to 36, inclusive.
T. 18 S., R. 70 E.,
Secs. 1 to 6, inclusive, secs. 10 to 15, inclusive, secs. 22 to 27, inclusive, secs. 34, 35, and 36, unsurveyed.
T. 13 S., R. 71 E.,
Secs. 32 and 33, that part lying west of Range Improvement (Fence) 0101.
T. 14 S., R. 71 E.,
Sec. 4, that part lying west of Range Improvement (Fence) 0101;
Secs. 5 to 8, inclusive;
Secs. 9, 10, and 15, inclusive for those portions lying west of Range Improvement (Fence) 0101;
Secs. 16 to 20, inclusive;
Sec. 21, that part lying northwest of NVCC 022455 Pipeline Right-of-Way;
Secs. 22 and 28, inclusive for those portions lying west of NVCC 022455 Pipeline Right-of-Way;
Secs. 29, 30, and 31.
T. 16 S., R. 71 E.,
Sec. 19;
Secs. 29 to 32, inclusive.
T. 17 S., R. 71 E.,
Secs. 4 to 10, inclusive, secs. 15 to 22, inclusive, and secs. 27 to 34, inclusive, unsurveyed.
T. 18 S., R. 71 E.,
Secs. 3 to 10, inclusive, secs. 15 to 22, inclusive, and secs. 27 to 34, inclusive, unsurveyed.
T. 19 S., R. 71 E.,
Secs. 3, 4, 9, 10, 15, 16, 21, and 22, unsurveyed;
Secs. 27 and 28, for those portions lying north of Withdrawal Reclamation Project (Wdl Recl Proj) of 1/31/1903.

Gold Butte Part B, ACEC (NVN 76876)

T. 17 S., R. 69 E.,
Secs. 22, 23, 26, 27, 34, and 35, excluding patented lands.

T. 18 S., R. 69 E.,
Secs. 2 and 3, excluding patented lands;
Secs 9 to 17, inclusive, excluding patented lands;
Secs. 20 to 29, inclusive, and secs. 32 to 36, inclusive.
T. 19 S., R. 69 E.,
Secs. 1 to 36, inclusive, excluding patented lands.
T. 20 S., R. 69 E.,
Secs. 1 to 17, inclusive;
Secs. 18, 19, and 20, inclusive for those portions lying northeast of the Bureau of Reclamation Project boundary;
Secs. 21 to 27, inclusive;
Secs. 28, 29, and 33, for those portions lying northeast of the Bureau of Reclamation Project boundary.
T. 18 S., R. 70 E.,
Secs. 7, 8, 9, secs. 16 to 21 inclusive, and secs. 28 to 33, inclusive, unsurveyed.
T. 19 S., R. 70 E.,
Secs. 1 to 36, inclusive, unsurveyed.
T. 20 S., R. 70 E.,
Secs. 1 to 11, inclusive, secs. 14 to 22, inclusive, and secs. 27 to 30, inclusive, unsurveyed.
T. 19 S., R. 71 E.,
Secs. 5 to 8, inclusive, secs. 17 to 20, inclusive, and secs. 29 and 30, unsurveyed;
Secs. 31 and 32, inclusive for those portions lying northeast of Bureau of Reclamation Project boundary.

Gold Butte Townsite ACEC (NVN 76877)

T. 19 S., R. 70 E.,
Sec. 17, S½NW¼ and N½SW¼, unsurveyed.

Hidden Valley ACEC (NVN 76878)

T. 18 S., R. 65 E.,
Sec. 26, W½, unsurveyed;
Sec. 27, E½, unsurveyed;
Secs. 34 and 35, unsurveyed.
T. 19 S., R. 65 E.,
Sec. 2, W½, unsurveyed;
Sec. 3, unsurveyed;
Sec. 10, N½, unsurveyed;
Sec. 11, NW¼, unsurveyed.

Keyhole Canyon ACEC (NVN 76879)

T. 26 S., R. 63 E.,
Sec. 3, lots 6, 7, and 8, and SW¼NE¼ and S½NW¼.

Mormon Mesa Tortoise ACEC (NVN 76880)

T. 13 S., R. 63 E.,
Sec. 25, lots 3, 4, 7, and 9, SW¼NW¼ and S½;
Sec. 36.
T. 13½ S., R. 63 E.,
Sec. 36, unsurveyed.
T. 14 S., R. 63 E.,
Sec. 1, unsurveyed.
T. 13 S., R. 64 E.,
Secs. 1 to 5, inclusive, unsurveyed;
Sec. 6, lots 1 and 2, S½NE¼ and SE¼, unsurveyed;
Sec. 7, NE¼ and E½SE¼, unsurveyed;
Secs. 8 to 17, inclusive, and secs. 20 to 29, inclusive, unsurveyed;
Sec. 30, that part lying south of Right-of-Way Nev 065185 (Nevada State Highway 168), unsurveyed;
Secs. 31 to 36, inclusive, unsurveyed.
T. 13½ S., R. 64 E.,
Secs. 31 to 35, inclusive, unsurveyed;
Sec. 36, that part lying north of Right-of-Way Nev 060130 (U.S. Highway 93), unsurveyed.
T. 14 S., R. 64 E.,
Secs. 2 to 6, inclusive, secs. 8 to 11, inclusive, and secs. 15 and 16, inclusive, unsurveyed.
T. 13 S., R. 65 E.,
Sec. 1, lots 2, 3, and 4, and SW¼NE¼, S½NW¼, SW¼, and W½SE¼;
Secs. 2 to 24, inclusive;
Sec. 26, N½;
Sec. 27, N½;
Sec. 28, N½ and SW¼;
Secs. 29 and 30;
Sec. 31, that part lying north of Right-of-Way Nev 060130 (U.S. Highway 93);
Sec. 32;
Sec. 33, W½.
T. 13 S., R. 66 E.,
Secs. 1 to 5, inclusive;
Sec. 6, lots 1 to 4, inclusive, and S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7 to 18, inclusive;
Sec. 19, lots 1 to 4, inclusive, SE¼NW¼, E½SW¼, and SW¼SE¼;
Secs. 20 to 24, inclusive.
T. 13 S., R. 67 E.,
Secs. 1 to 36, inclusive.
T. 14 S., R. 67 E.,
Secs. 1 to 5, inclusive;
Sec. 6, lots 1 and 2, and S½NE¼ and SE¼;
Sec. 7, NE¼;
Secs. 8 to 11, inclusive;
Secs. 12 to 15, inclusive for those portions lying north of Right-of-Way Nev 061478 (U.S. Interstate 15);
Sec. 16;
Sec. 17, N½ and SE¼;
Sec. 20, E½;
Secs. 21 and 22, inclusive for those portions lying north of Right-of-Way Nev 061478 (U.S. Interstate 15).
T. 13 S., R. 68 E.,
Secs. 1 to 32, inclusive;
Secs. 33 to 36, inclusive for those portions lying north of Right-of-Way Nev 061478 (U.S. Interstate 15).
T. 14 S., R. 68 E.,
Secs. 4 to 7, inclusive for those portions lying north of Right-of-Way Nev 061478 (U.S. Interstate 15).
T. 13 S., R. 69 E.,
Secs. 1 to 24, inclusive;
Sec. 25, lots 1, 3, 12, and 15, N½ and N½SE¼;
Sec. 26, lots 1, 5, 8, 10, 11, and 14, and N½NE¼, SE¼NE¼, and NE¼NW¼;
Sec. 27, lots 1, 3, 5, 7, and 9;
Sec. 28, lots 1, 3, 5, and 8, and N½N½;
Sec. 29, lots 1, 5, 8, 11, and 13, and N½NE¼, SW¼NE¼, and NW¼;
Sec. 30, lots 5 to 10, inclusive, lots 12 to 16, inclusive, lots 18, 20, 23, and 26, NE¼ and NW¼SE¼.
T. 13 S., R. 70 E.,
Secs. 4 and 5, west of Boundary Line; **
Secs. 6 and 7;
Secs. 8, 9, and 17, west of Boundary Line;
Secs. 18 and 19;
Secs. 20 and 29, west of Boundary Line;
Sec. 30, lots 5, 6, 7, 9, 12, 14, and 16;
Sec. 31, lots 9 and 11, both portions north of Right-of-Way Nev 064785 (U.S. Interstate 15) centerline;
Sec. 32, lot 9.

**The ''Boundary Line'' as denoted in the above legal descriptions for the Mormon Mesa ACEC refers to the eastern boundary line of the ACEC, which closely follows the edge of the Mormon Mesa and Toquop Wash. However, the line is not on the Mormon Mesa edge, nor Toquop Wash, but follows closely between the two. The ''Boundary Line'' denoted for the eastern edge of the ACEC is shown on the 7.5 minute U.S. Geological Survey Flat Top Mesa Topographic Map.

Piute/Eldorado Tortoise ACEC (NVN 76881)

T. 28 S., R. 60 E.,
Secs. 2, 3, 10, and 11;
Sec. 13, W½ and SE¼;
Secs. 14 to 17, inclusive, and secs. 21, 22, and 23;
Sec. 24, excluding patented lands;
Secs. 25 and 26, for both portions lying north of Right-of-Way Nev 058548 (Nevada State Highway 164);
Sec. 26, that part lying north of Right-of-Way Nev 058548 (Nevada State Highway 164);
Sec. 27.
T. 26 S., R. 61 E.,
Secs. 1 and 2, secs. 11 to 14, inclusive, and secs. 24, 25, and 36.
T. 27 S., R. 61 E.,
Secs. 1, 12, and 13, secs. 23 to 26, inclusive, secs. 35 and 36.
T. 28 S., R. 61 E.,
Secs. 1 and 2, and secs. 10 to 12, inclusive;
Secs. 13, 14, and 15, for those portions lying north of Right-of-Way Nev 058548 (Nevada State Highway 164);
Sec. 16;
Sec. 19, excluding patented lands;
Sec. 20, that part lying north of Right-of-Way Nev 058548 (Nevada State Highway 164) and excluding patented lands;
Secs. 21, 22, 29, and 30, inclusive for those portions lying north of Right-of-Way Nev 058548 (Nevada State Highway 164).
T. 29 S., R. 61 E.,
Sec. 36.
T. 26 S., R. 62 E.,
Secs. 3 to 10, inclusive, and secs. 15 to 20, inclusive;
Sec. 22, E½ and N½NW¼;
Secs. 23 to 26, inclusive;
Sec. 27, NE¼;
Secs. 29 to 32, inclusive, and secs. 35 and 36.
T. 27 S., R. 62 E.,
Sec. 1, secs. 5 to 8, inclusive, and sec.12;
Sec. 13, E½;
Secs. 17 to 20, inclusive;
Sec. 24, E½;
Sec. 25, E½;
Secs. 29 to 36, inclusive.
T. 28 S., R. 62 E.,
Secs. 1 to 17, inclusive;
Sec. 18, that part lying north of Right-of-Way Nev 058548 (Nevada State Highway 164);
Secs. 20 and 21;
Sec. 22, N½, N½SW¼ and SE¼;
Secs. 23 to 26, inclusive;
Sec. 27, NE¼, S½NW¼, and S½;
Secs. 28 and 29;
Sec. 31, lots 14 and 15, N½SE¼, excluding patented lands;

Secs. 32 to 36, inclusive.
T. 29 S., R. 62 E.,
Secs. 1 to 5, inclusive;
Sec. 6, E½;
Secs. 7 to 32, inclusive;
Sec. 33, NE¼NE¼ and NW¼NW¼;
Secs. 34 to 36, inclusive.
T. 30 S., R. 62 E.,
Secs. 1 and 2;
Secs. 11 to 14, inclusive.
T. 27 S., R. 62½ E.,
Secs. 1, 12, 13, 24, 25, and 36, unsurveyed.
T. 26 S., R. 63 E.,
Sec. 19;
Sec. 20, that part lying west of Right-of-Way NVCC 020733 (U.S. Highway 95) and south of Powerline Right-of-Way N–00869;
Secs. 21 to 25, inclusive for those portions lying south of Powerline Right-of-Way N–00869;
Secs. 26 to 36, inclusive.
T. 27 S., R. 63 E.,
Secs. 1 to 36, inclusive.
T. 28 S., R. 63 E.,
Secs. 1 to 11, inclusive excluding patented lands;
Sec. 12, lots 1 to 8, inclusive, and N½;
Sec. 13, lots 1, 2, and 3, and NW¼NE¼, S½NE¼, NW¼, N½SW¼, and SE¼;
Sec. 14, lots 1 and 8, and N½;
Sec. 15 to 20 inclusive excluding patented lands;
Sec. 29, that part lying north of Right-of-Way Nev 058548 (Nevada State Highway 164);
Sec. 30, excluding SE¼NE¼ that part lying south of Right-of-Way Nev 058548 (Nevada State Highway 164) and excluding E½SE¼;
Sec. 31;
Sec. 32, W½SW¼ and SE¼SW¼.
T. 29 S., R. 63 E.,
Secs. 5 to 10, inclusive, and secs. 15 to 22, inclusive;
Secs. 23, 24, and 25, for those portions lying west of Right-of-Way NVCC 020845 (U.S. Highway 95);
Secs. 26 to 36, inclusive.
T. 30 S., R. 63 E.,
Secs. 1 to 16, inclusive, and secs. 21 to 29, inclusive excluding patented lands;
Secs. 32 to 36, inclusive excluding patented lands.
T. 31 S., R. 63 E.,
Sec. 1, lots 3 and 4, and S½NW¼ and SW¼;
Sec. 2;
Sec. 3, lots 1, 2, and 3, and S½NE¼, SE¼NW¼, and S½;
Sec. 4, lot 4, and SW¼NW¼;
Secs. 5, 8, 10, and 11;
Sec. 12, W½ and W½SE¼;
Sec. 13, W½ and W½E½;
Secs. 14, 15, secs. 22 to 26, inclusive, and 36.
T. 26 S., R. 64 E.,
Secs. 29 and 30, inclusive for those portions lying south of Powerline Right-of-Way N–00869;
Secs. 31, 32, and 33.
T. 27 S., R. 64 E.,
Secs. 4 to 9, inclusive, and secs. 16 to 23, inclusive;
Secs. 25 to 36, inclusive, excluding patented lands.
T. 28 S., R. 64 E.,
Secs. 1 to 18, inclusive, excluding patented lands;
Secs. 21 to 26, inclusive, and 35 and 36.
T. 29 S., R. 64 E.,
Secs. 1, 2, 3, secs. 9 to 16, inclusive, secs. 21 to 28, inclusive, and secs. 31 to 36, inclusive.
T. 30 S., R. 64 E.,
Secs. 1 to 29, inclusive;
Sec. 31, lots 3 and 4, lots 13 to 68, inclusive, and E½NE¼, E½SW¼, and SE¼;
Secs. 32 to 36, inclusive.
T. 31 S., R. 64 E.,
Secs. 1 to 31, inclusive;
Sec. 32, N½ and SW¼;
Secs. 33 to 36, inclusive.
T. 32 S., R. 64 E.,
Secs. 1, 2, and 3;
Sec. 4, lots 1 and 2, lots 5 to 24, inclusive, lots 34 to 47, inclusive, lots 59 to 82, inclusive, and lots 84 to 128, inclusive, and S½SE¼NW¼, SW¼, S½NE¼SE¼, SE¼NW¼SE¼, E½SW¼SE¼, and SE¼SE¼;
Sec. 5, lots 6 to 9, inclusive, lots 12 and 13, lots 15 to 22, inclusive, lots 25 to 29, inclusive, lots 32 to 37, inclusive, lots 40 to 45, inclusive, lots 47 to 78, inclusive, and SW¼NE¼, SE¼NW¼, and NW¼SE¼;
Secs. 6 and 8;
Sec. 9, lots 1, 2, 7, and 8, lots 10 to 21, inclusive, lots 27 to 30, inclusive, lots 38 to 41, inclusive, lots 48, 49, 56, 63, 75, 76, 77, and lots 79 to 84, inclusive, and SW¼NE¼ and NW¼SE¼;
Secs. 10 to 16, inclusive, secs. 22 to 26, inclusive, and sec. 36.
T. 30 S., R. 65 E.,
Secs. 4 to 9, unsurveyed excluding patented lands;
Sec. 16, unsurveyed;
Secs. 17 and 18, inclusive, excluding patented lands, unsurveyed;
Secs. 19, 20, 21, 30 and 31, unsurveyed.
T. 31 S., R. 65 E.,
Sec. 6, and secs. 28 to 33, inclusive, unsurveyed.
T. 32 S., R. 65 E.,
Secs. 2 to 8, inclusive;
Secs. 9 to 12, inclusive for those portions lying north and west of Right-of-Way NVCC–022416 (Nevada State Highway 163);
Secs. 17 to 20, inclusive, and secs. 29 to 32, inclusive.
T. 33 S., R. 65 E.,
Sec. 5.

Rainbow Gardens ACEC (NVN 76882)

T. 20 S., R. 62 E.,
Sec. 12;
Sec. 13, lots 1, 2, 15, 16, 24, and 25;
Sec. 35, lots 1 to 4, inclusive;
Sec. 36.
T. 21 S., R. 62 E.,
Sec. 1, 12 and 13;
Sec. 14, E½.
T. 20 S., R. 63 E.,
Sec. 1, N½, NW¼NE¼SW¼, N½NW¼SW¼, SW¼NW¼SW¼, SW¼SW¼, and W½SE¼SW¼, unsurveyed;
Secs. 2 and 7, unsurveyed;
Sec. 8, W½, unsurveyed;
Sec. 11, excluding patented lands, unsurveyed;
Sec. 12, NW¼NW¼ and W½SW¼, unsurveyed;
Sec. 13, W½NE¼NW¼, W½NW¼, W½SE¼NW¼, SW¼, S½NE¼SE¼, W½NW¼SE¼, and S½SE¼, unsurveyed;
Secs. 14 to 34, inclusive, unsurveyed.
T. 21 S., R. 63 E.,
Sec. 3 to 10 inclusive, and Sec. 16 to 18, inclusive;
Sec. 19, N½ and SE¼;
Sec. 20;
Sec. 21, N½, SW¼, N½SE¼, and SW¼SE¼.
T. 20 S., R. 64 E.,
Sec. 4 and 5;
Sec. 8, N½ and SE¼;
Secs. 9 and 16;
Sec. 19, lots 7 and 8, and SE¼SW¼;
Sec. 20, S½NE¼, NE¼SW¼, S½SW¼, and SE¼;
Sec. 21;
Secs. 28, 29, and 30.

Red Rock Spring ACEC (NVN 76883)

T. 17 S., R. 70 E.,
Sec. 7, SE¼;
Sec. 8, SW¼;
Sec. 17, NW¼;
Sec. 18, NE¼.

River Mountains ACEC (NVN 76884)

T. 21 S., R. 63 E.,
Sec. 36, N½.
T. 22 S., R. 63 E.,
Secs. 11, 12, and 13;
Sec. 23, E½;
Secs. 24 and 25;
Sec. 26, E½;
Sec. 36.
T. 22 S., R. 63½ E.,
Secs. 12, 13, 24, 25, and 36.
T. 23 S., R. 63½ E.,
Sec. 1, lots 1 to 7, inclusive, and S½NE¼.

Sloan Rock Art ACEC (NVN 76885)

T. 23 S., R. 61 E.,
Sec. 35, S½S½.
T. 24 S., R. 61 E.,
Sec. 2, lots 1 to 4, inclusive.

Stump Spring ACEC (NVN 76886)

T. 22 S., R. 55 E.,
Sec. 32, S½.
T. 23 S., R. 55 E.,
Sec. 5, lots 1 to 4, inclusive, and S½N½.

Virgin Mountain (Gold Butte Part C) ACEC (NVN 76887)

T. 15 S., R. 70 E.,
Sec. 1;
Secs. 12, 13, and 14, Sec. 23 to 27, inclusive, and Sec. 34, 35, and 36.
T. 16 S., 70 E.,
Secs. 1, 2, 3, and 12.
T. 14 S., 71 E.,
Secs. 32, 33, and 34.
T. 15 S., 71 E.,
Secs. 3 to 10, inclusive, Sec. 15 to 22 inclusive, and Sec. 27 to 34, inclusive, unsurveyed.
T. 16 S., 71 E.,
Secs. 3 to 10, inclusive, and Sec. 15 to 18, inclusive;

Secs. 20 and 21;
Sec. 22, lots 1 and 2, E½NW¼ and NE¼SW¼;
Sec. 27, lots 2, 3, and 4, SE¼NW¼ and E½SW¼;
Secs. 28, 33, and 34.
T. 17 S., 71 E.,
Sec. 3, unsurveyed.

Virgin River ACEC (NVN 76888)

T. 14 S., R. 69 E.,
Sec. 11, SE¼;
Sec. 12, W½NE¼, NW¼, and NW¼SW¼;
Sec. 14, N½NE¼, NW¼, N½SW¼, and SE¼SW¼;
Sec. 15, SE¼;
Sec. 22, NE¼ and S½;
Secs. 26, 27, and 28, for those portions of public land lying north of Gold Butte Back Country Byway Road;***
Sec. 29, S½;
Sec. 32, N½, SW¼, and SE¼SE¼;
Sec. 33, public land lying north of Gold Butte Back Country Byway Road.
T. 13 S., R. 70 E.,
Sec. 27, lots 8, 10, 17, 19, and 21, and that part lying south of Right-of-Way Nev 065014 (U.S. Interstate 15);
Sec. 33, lots 1, 11, 13, 15, and 17, SW¼, N½SE¼, and SW¼SE¼, that part lying south of Right-of-Way Nev 065014 (U.S. Interstate 15);
Sec. 34, lots 1 to 4, inclusive, 6, 10, and 11 and NW¼NW¼, that part lying south of Right-of-Way Nev 65014 (U.S. Interstate 15) and north of Right-of-Way Nev 07490 (Nevada State Highway 170).
T. 14 S., R. 70 E.,
Sec. 3, lot 4, that portion lying north of Right-of-Way Nev 07490 (Nevada State Highway 170);
Secs. 4 and 5, those portions lying northwest of Right-of-Way Nev 07490 (Nevada State Highway 170);
Sec. 6, lots 1, 2, 6, and 7, S½NE¼, E½SW¼, and SE¼;
Secs. 7 and 8, those portions lying north of Right-of-Way Nev 07490 (Nevada State Highway 170);

***The Gold Butte Back Country Byway is a Clark County, Nevada Revised Statute 2477 road.

Whitney Pocket ACEC (NVN 76889)

T. 16 S., R. 70 E.,
Sec. 23, SE¼.

The areas described above aggregate approximately 944,343 acres in Clark and Nye Counties.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws. This Order also does not alter the applicability of the mineral leasing, geothermal leasing, or mineral materials laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: October 28, 2009.

Wilma A. Lewis,

Assistant Secretary, Land and Minerals Management.

[FR Doc. E9–26372 Filed 10–29–09; 11:15 am]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1059 (Review)]

Hand Trucks From China

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on hand trucks from China.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on hand trucks from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is December 2, 2009. Comments on the adequacy of responses may be filed with the Commission by January 15, 2010. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

DATES: *Effective Date:* November 2, 2009.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On December 2, 2004, the Department of Commerce issued an antidumping duty order on imports of hand trucks from China (69 FR 70122–70123). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination, the Commission found a single *Domestic Like Product* comprised of finished hand trucks and certain hand truck parts corresponding to Commerce's scope of investigation.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission found a single *Domestic Industry* consisting of all U.S. producers of the *Domestic Like Product* which, as stated above, consists of all finished hand trucks and hand truck parts corresponding to Commerce's scope of investigations.

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 10–5–205, expiration date June 30, 2011. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the Order Date is December 2, 2004.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register.** The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the ''same particular matter'' as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is December 2, 2009. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is January 15, 2010. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information to be Provided in Response to this Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the

United States or other countries since the *Order Date.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and E-mail address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2008, except as noted (report quantity data in units and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) Net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2008 (report quantity data in units and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2008 (report quantity data in units and value data in thousands of dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in the *Subject Country* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

Issued: October 26, 2009.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E9–26140 Filed 10–30–09; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–437 and 731–TA–1060–1061 (Review)]

Carbazole Violet Pigment 23 From China and India

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the countervailing duty order on carbazole violet pigment 23 from India and the antidumping duty orders on carbazole violet pigment 23 from China and India.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the

countervailing duty order on carbazole violet pigment 23 from India and the antidumping duty orders on carbazole violet pigment 23 from China and India would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is December 2, 2009. Comments on the adequacy of responses may be filed with the Commission by January 15, 2010. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

DATES: *Effective Date:* November 2, 2009.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—On December 29, 2004, the Department of Commerce issued a countervailing duty order on carbazole violet pigment 23 from India and antidumping duty orders on carbazole violet pigment 23 from China and India (69 FR 77987–77989 and 77995–77996). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or an expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are China and India.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determinations, the Commission found a single *Domestic Like Product* comprised of both crude violet pigment 23 and finished carbazole violet pigment 23 (in the form of presscake and dry color) that corresponds to Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the Domestic Industry to include all producers of crude and/or finished carbazole violet pigment 23.

(5) The *Order Date* is the date that the countervailing and antidumping duty orders under review became effective. In these reviews, the *Order Date* is December 29, 2004.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the ''same particular matter'' as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 10–5–204, expiration date June 30, 2011. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is December 2, 2009. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is January 15, 2010. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information to be Provided in Response to this Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country*; or produce *Subject Merchandise* in more than one *Subject Country*, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country*. As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the countervailing and antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date*.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and E-mail address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2008, except as noted (report quantity data in pounds of 100-percent pure pigment and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association. *As appropriate, for each of the following, please report separate data for crude violet 23 pigment, presscake, and dry color, to avoid double-counting*.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (*i.e.*, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) The value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country(ies)*, provide the following information on your firm's(s') operations on that product during calendar year 2008 (report quantity data in pounds of 100-percent pure pigment and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association. *As appropriate, for each of the following,*

please report separate data for crude violet 23 pigment, presscake, and dry color, to avoid double-counting.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country*; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country(ies*), provide the following information on your firm's(s') operations on that product during calendar year 2008 (report quantity data in pounds of 100-percent pure pigment and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association. *As appropriate, for each of the following, please report separate data for crude violet 23 pigment, presscake, and dry color, to avoid double-counting.*

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in each *Subject Country* (*i.e.*, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country(ies)* since the *Order Date*, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country(ies)*, and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: October 26, 2009.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E9–26141 Filed 10–30–09; 8:45 am]

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INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–753, 754, and 756 (Second Review)]

Cut-to-Length Carbon Steel Plate From China, Russia, and Ukraine

Determination

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675d(c)) (the Act), that revocation of the antidumping duty order on cut-to-length carbon steel plate from China, and termination of the suspended antidumping duty investigations on imports of cut-to-length carbon steel plate from Russia and Ukraine, would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on August 1, 2008 (73 FR 45071) and determined on November 4, 2008 that it would conduct full reviews (73 FR 70368, November 20, 2008). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on March 11, 2009 (74 FR 10614). The hearing was held in Washington, DC, on September 9, 2009, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in these reviews to the Secretary of Commerce on October 26, 2009. The views of the Commission are contained in USITC Publication 4103 (October 2009), entitled *Cut-to-Length Carbon Steel Plate from China, Russia, and Ukraine* (*Inv. Nos.* 731–TA–*753, 754, and 756 (Second Review)*).

By order of the Commission.

Issued: October 26, 2009.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E9–26143 Filed 10–30–09; 8:45 am]

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–244 (Third Review)]

Natural Bristle Paint Brushes From China

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on natural bristle paint brushes from China.

SUMMARY: The Commission hereby gives notice that it has instituted a review

pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on natural bristle paint brushes from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is December 2, 2009. Comments on the adequacy of responses may be filed with the Commission by January 15, 2010. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

DATES: *Effective Date:* November 2, 2009.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On February 14, 1986, the Department of Commerce issued an antidumping duty order on imports of natural bristle paint brushes from China (51 FR 5580). Following five-year reviews by Commerce and the Commission, effective June 10, 1999, Commerce issued a continuation of the antidumping duty order on imports of natural bristle paint brushes from China (64 FR 42911). Following second five-year reviews by Commerce and the Commission, effective December 2, 2004, Commerce issued a continuation of the antidumping duty order on imports of natural bristle paint brushes from China (69 FR 70122). The Commission is now conducting a third review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination and its expedited first five-year review determination, the Commission defined the *Domestic Like Product* as all domestically produced paint brushes (including natural bristle and synthetic filament paint brushes). In its expedited second five-year review determination, the Commission found that no additional information warranted a departure from the original definition and defined the *Domestic Like Product* as all paint brushes, whether composed of natural bristles, synthetic filaments, or a blend of the two.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its expedited first five-year review determination, the Commission defined the *Domestic Like Product* as all domestic producers of paint brushes. In its expedited second five-year review determination, the Commission defined the *Domestic Like Product* as all domestic producers of natural and synthetic bristle paint brushes.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register.** The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the ''same particular matter'' as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 10–5–206, expiration date June 30, 2011. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is December 2, 2009. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is January 15, 2010. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to this Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2003.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and E-mail address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2008, except as noted (report quantity data in units and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(d) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(e) The value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2008 (report quantity data in units and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2008 (report quantity data in units and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production; and

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in the *Subject Country* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2003, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: October 26, 2009.

By order of the Commission.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E9–26142 Filed 10–30–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0078]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Limited Permitee Transaction Record.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until January 4, 2010. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact William Miller, Explosives Industry Programs Branch, Room 6E405, 99 New York Avenue, NE., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

— Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

— Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

— Enhance the quality, utility, and clarity of the information to be collected; and

— Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Limited Permittee Transaction Record.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* Individuals or households. The purpose of this collection is to ensure that records are available for tracing explosive materials when necessary and to ensure that limited permittees do not exceed their maximum allotment of receipts of explosive materials.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 5,000 respondents will spend approximately 5

minutes to receive, file, and forward the appropriate documentation.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 12,000 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: October 28, 2009.

Lynn Bryant,

Department Clearance Officer, U.S. Department of Justice.

[FR Doc. E9–26341 Filed 10–30–09; 8:45 am]

BILLING CODE 4810–FY–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement—Production of Four Satellite/Internet Broadcasts and Produce Three Stand-Alone DVDs

AGENCY: National Institute of Corrections, Department of Justice.

ACTION: Solicitation for a Cooperative Agreement.

SUMMARY: The Department of Justice (DOJ), National Institute of Corrections (NIC) announces the availability of funds in FY 2010 for a cooperative agreement to fund the production of four satellite/internet broadcasts and produce three DVDs. Three of the proposed satellite programs are nationwide satellite/internet broadcasts (three hours each). One of the programs is eight-hours in length and will be a live broadcast for trainers and facilitators on ''How to Use the Developed DVD.''

DATES: Applications must be received by 4 p.m. (EDT) on Tuesday, December 1, 2009.

ADDRESSES: Mailed applications must be sent to: Director, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534. Applicants are encouraged to use Federal Express, UPS, or similar service to ensure delivery by the due date.

Hand delivered applications should be brought to 500 First Street, NW., Washington, DC 20534. At the front desk, dial 7–3106, extension 0 for pickup.

Faxed applications will not be accepted. Electronic applications can be submitted via *http://www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: All technical and/or programmatic questions concerning this announcement should be directed to Ed Wolahan, Corrections Program Specialist, at 791 Chambers Road, Aurora, CO 80011, or by calling 800–995–6429, ext 4419, or by e-mail at *ewolahan@bop.gov.*

SUPPLEMENTARY INFORMATION:

Background: Satellite/Internet Broadcasting is defined as a training/education process transpiring between trainers/teachers at one location and participants/students at other locations via technology. NIC is using satellite broadcasting and the internet to economically reach more criminal justice staff in federal, state and local agencies.

Another strong benefit of satellite delivery is its ability to broadcast programs conducted by experts in the correctional field, thus reaching the entire audience at the same time with exactly the same information. In addition, NIC is creating stand-alone training programs on DVDs.

Purpose: The purpose of funding this initiative is to produce four satellite/internet broadcasts, disseminating current information to the criminal justice community. Three will be three hours in length, one will be eight-hours in length. We will also develop and produce the stand alone DVDs.

Scope of Work: To address the scope of work for this project, the following will be needed:

(1) *Producer Consultation and Creative Services:* The producer will: Consult and collaborate with NIC's Distance Learning Administrator (Executive Producer) on program design, program coordination, design of field segments and content development; work with each consultant/trainer to develop their modules for delivery using the satellite/internet format and/or the teleconference format; help develop scripts, graphic design, production elements and rehearsals for each module of the site coordinators' training and the satellite/internet training programs; and use their expertise in designing creative ways to deliver satellite teleconferencing. The producer will also be responsible for attending planning meetings and assisting in the videotaping of testimonials at conferences.

(2) *Pre-Production Video:* The producer will supervise the production of vignettes to be used in each of the satellite/Internet broadcasts, as well as each DVD production. NIC presenters (content experts) will draft outlines of the scripts for each vignette. From the outlines, scripts will be developed by the producer (script writing expert) and approved by NIC's Distance Learning Administrator. Professional actors will play the parts designated by the script. Story boards for each production will be written by NIC's Distance Learning Administrator. A total of between 18 and 25 vignettes will be created under this cooperative agreement. The producer will supervise camera and audio crews to capture testimonials from leaders in the criminal justice field at designated conferences. (There will be four such conferences in 2010.) The producer will coordinate all planning of the production and post-production for each of the seven satellite/Internet broadcasts.

(3) *Video Production:* Video production for each teleconference will consist of videotaping content-related events in the field, editing existing video, and videotaping experts for testimonial presentations. It will also include voice over, audio and music if necessary, for each video. Blank tapes and narration for field shooting will be purchased for each site. The format for all field shooting will be either Beta Cam, DVD Pro Digital and/or Mini DVD.

(4) *Post Production (Studio):* Innovative and thought-provoking opening sequences will be produced for each teleconference. In addition, graphics will be utilized to enhance the learning in each module. The producer will coordinate art direction, lighting, set design, and furniture for all teleconference segments. (Set design should change periodically throughout the award period.) The set will be customized to each topic. The producer will organize and supervise the complete production crew on rehearsal and production days, per the schedules below. This will also include the production of DVDs for each broadcast and the editing necessary for a final and approved cut.

(5) *Production:* The production group will set up and maintain studio lighting, adjust audio, and have a complete production crew for the days and hours set by the Distance Learning Administrator. A production crew shall include the following: Director, Audio Operator, Video Operator, Character Generator Operator, Floor Director, Four (4) Camera Operators, Teleprompter Operator, On-Line Internet Coordinator, Make-Up Artist (production time only), and Interactive Assistance Personnel (fax, e-mail, and telephone). Each production shall also have closed captioning for all programs.

After each production, the studio will provide 12 DVD copies to NIC and the

Master on Beta Cam and DVD. The DVD will have a splash page that will break down each module, each day, and the vignettes that have been produced for each program.

For each three-hour program, NIC will receive one DVD with splash page. For the eight-hour program, NIC will receive two DVDs and, for the sixteen-hour program, four DVDs will be provided, with splash page on each. Each DVD will be edited to provide the necessary content under the direction of the Distance Learning Administrator.

(6) *Transmission:* The producer will: Purchase satellite uplink time that will include the footprints of Alaska, Hawaii, Virgin Islands, and the Continental United States; acquire downlink transponder time for KU–Band; purchase internet streaming of 200 simultaneous feeds for each program; be able to provide closed captioning on the final edited DVD on all production.

(7) *Equipment:* Applicants must have a minimum of the following equipment: Broadcast studio of approximately 2,000 square feet, with an area for a studio audience of between 15 and 20 people; Four Digital Studio Cameras (one of which must be an overhead camera with robotic control); Chroma Key: at least one wall with chroma key capability, along with a digital ultimate keying system; A tape operation facility providing playback/record in various formats, including DV, Betacam, Betacam SP, SVHS, VHS, U–Matic 3/4 & SP; Advit or comparable editing bay; Three-dimensional animation with computer graphics; Internet streaming capacity for several hundred simultaneous downloads in both G2 Real Player and Microsoft Media Player—Capture Closed Captioning; ability to archive four selected satellite/internet broadcasts from FY 2009 and all four broadcasts from FY 2010; Computer Teleprompter for at least three studio cameras; Interruptible Fold Back (IFB) or In Ear Monitor (IEM) for all presenters and the moderator during the three hour programs and an (IFB) for each presenter during the eight-hour program; individual control from control room to the Distance Learning Administrator; Wireless microphones for each presenter during the three-, eight-, and sixteen-hour programs; Microphones for the studio audience at each round table (should be able to pick up audio during the training program); Satellite Uplink and Transponder: KU–Band Digital with the footprints of Alaska, Hawaii, Virgin Islands, and the Continental United States; Portable Field Equipment—Digital Video Cameras with recording decks, portable lighting kits, microphones (both hand-held and lapel), field monitors, audio mixers, and camera tripods.

(8) *Personnel:* Applicants must have a minimum of the following qualified personnel: Producer/Director; Script Writer; Set Designer; Lighting Designer; Audio Operator; Graphics Operator; Graphics Artist; Floor Manager; Studio Camera Operators (4); Tape Operator; Location Camera Operator; Teleprompter Operator; Clerical/Administrative Support; Makeup Artist (as needed during production); Closed Caption Operator (as needed during production).

Application Requirements: Applications should be concisely written, typed double spaced and reference the project by the ''NIC Opportunity Number'' and Title in this announcement. The package must include: a cover letter that identifies the audit agency responsible for the applicant's financial accounts as well as the audit period or fiscal year that the applicant operates under (*e.g.,* July 1 through June 30); a program narrative in response to the statement of work and a budget narrative explaining projected costs. The following forms must also be included: OMB Standard Form 424, Application for Federal Assistance; OMB Standard Form 424A, Budget Information—Non-Construction Programs; OMB Standard Form 424B, Assurances—Non-Construction Programs (these forms are available at *http://www.grants.gov*) and DOJ/NIC Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and the Drug-Free Workplace Requirements (available at: *http://www.nicic.gov/Downloads/PDF/certif-frm.pdf.*)

Applications may be submitted in hard copy, or electronically via *http://www.grants.gov.* If submitted in hard copy, there must to be an original and three copies of the full proposal (program and budget narratives, application forms and assurances). The original should have the applicant's signature in blue ink.

Authority: Public Law 93–415.

Funds Available: NIC is seeking the applicants' best ideas regarding accomplishment of the scope of work and the related costs for achieving the goals of this solicitation. Funds may only be used for activities that are linked to the desired outcome of the project.

This project will be a collaborative venture with the NIC Academy Division.

Eligibility of Applicants: An eligible applicant is any public or private agency, educational institution, organization, individual or team with expertise in the described areas.

Review Considerations: Applications received under this announcement will be subjected to an NIC three- to five-member review panel.

Note: NIC will NOT award a cooperative agreement to an applicant who does not have a Dun and Bradstreet Database Universal Number (DUNS) and is not registered in the Central Contractor Registry (CCR).

A DUNS number can be received at no cost by calling the dedicated toll-free DUNS number request line at 1–800–333–0505 (if you are a sole proprietor, you would dial 1–866–705–5711 and select option 1).

Registration in the CRR can be done online at the CRR Web site: *http://www.crr.gov.* A CRR Handbook and worksheet can also be reviewed at the Web site.

Number of Awards: One (1).

NIC Opportunity Number: 10A59. This number should appear as a reference line in your cover letter, where indicated on Standard Form 424, and outside of the envelope in which the application is sent.

Catalog of Federal Domestic Assistance Number: 16.601.

Executive Order 12372: This program is not subject to the provisions of Executive Order 12372.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. E9–26293 Filed 10–30–09; 8:45 am]

BILLING CODE 4410–36–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Data Users Advisory Committee; Notice of Meeting and Agenda

The Data Users Advisory Committee will meet on Tuesday, November 17, 2009. The meeting will be held in the Postal Square Building, 2 Massachusetts Avenue, NE., Washington, DC.

The Data Users Advisory Committee is a technical committee composed of data users from various sectors of the U.S. economy, including labor, business, research, academic and government communities. Committee members are called upon to provide advice on technical matters related to the collection, tabulation, and analysis of the Bureau's statistics, on its published reports, and on the broader aspects of its overall mission and function.

The meeting will be held in Meeting Room 3 of the Postal Square Building Conference Center. The schedule and agenda for the meeting are as follows:

8:30 Registration.
9:00 The State of BLS: Commissioner's report.
9:45 Strategic planning: Information gathering and analysis.
11:15 Employment projections: Status of program initiatives.
1:30 Green jobs: Plans for measurement.
2:30 Alleged undercount in the Survey of Occupational Injuries and Illnesses: The debate to date and current research plans.
3:30 BLS Outreach: Development of metrics.
4:45 Conclusion.

The meeting is open to the public. Any questions concerning the meeting should be directed to Tracy A. Jack, Data Users Advisory Committee, on 202–691–5869. Individuals with disabilities, who need special accommodations, should contact Ms. Jack at least two days prior to the meeting date.

Signed at Washington, DC the 27th day of October 2009.

Philip L. Rones,

Deputy Commissioner, Bureau of Labor Statistics.

[FR Doc. E9–26222 Filed 10–30–09; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings; Notice

The National Science Board's Committee on Audit and Oversight, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of National Science Board business and other matters specified, as follows:

DATE AND TIME: Friday, November 6, 2009 at 12 p.m.

SUBJECT MATTER: Specific staffing or personnel issues and/or Office of the Inspector General investigations.

STATUS: Closed.

This meeting will be held by teleconference originating at the National Science Board Office, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Please refer to the National Science Board Web site (*http://www.nsf.gov/nsb*) for information or schedule updates, or contact: Kim Silverman, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Ann Ferrante,

Technical Writer/Editor.

[FR Doc. E9–26321 Filed 10–29–09; 4:15 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0481]

Draft Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Draft Regulatory Guide, DG–1217 ''Protection Against Turbine Missiles''.

FOR FURTHER INFORMATION CONTACT: Simon Sheng, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *telephone:* (301) 415–2280, e-mail *Simon.Sheng@nrc.gov*, or R.A. Jervey, *telephone:* (301) 251–7404, e-mail *RAJ@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft guide in the agency's ''Regulatory Guide'' series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC'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.

The draft regulatory guide (DG) is temporarily identified by its task number, DG–1217, which should be mentioned in all related correspondence. DG–1217 is proposed Revision 2 of Regulatory Guide 1.115, Revision 1, dated July 1977.

This guide describes methods acceptable to the NRC staff for protecting safety-related structures, systems, and components against missiles resulting from turbine failure by the appropriate orientation and placement of the turbine-generator set, the management of the probability of turbine missile generation, and the use of missile barriers.

General Design Criterion 4, ''Environmental and Dynamic Effects Design Bases,'' of Appendix A, ''General Design Criteria for Nuclear Power Plants,'' to Title 10 of the Code of Federal Regulations (10 CFR) Part 50, ''Domestic Licensing of Production and Utilization Facilities,'' requires, in part, that structures, systems, and components important to safety be appropriately protected against the effects of missiles that might result from equipment failures. Failures that could occur in the large steam turbines of the main turbine-generator sets have the potential for producing large high-energy missiles.

II. Further Information

The NRC staff is soliciting comments on DG–1217. Comments may be accompanied by relevant information or supporting data and should mention DG–1217 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed. You may submit comments by any of the following methods:

1. *Mail comments to:* Rulemaking and Directives Branch, Mail Stop: TWB–05–B01M, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

2. *Federal e-Rulemaking Portal:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID [NRC–2009–0481]. Address questions about NRC dockets to Carol Gallagher, (301) 492–3668; e-mail *Carol.Gallagher@nrc.gov.*

3. *Fax comments to:* Rulemaking and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 492–3446.

Requests for technical information about DG–1217 may be directed to the NRC contact, Simon Sheng at (301) 415–2280 or e-mail *Simon.Sheng@nrc.gov.*

Comments would be most helpful if received by December 22, 2009. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments

received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of DG–1217 are available through the NRC's public Web site under Draft Regulatory Guides in the ''Regulatory Guides'' collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/*. Electronic copies are also available in ADAMS (*http://www.nrc.gov/reading-rm/adams.html*), under Accession No. ML092250316.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR) located at 11555 Rockville Pike, Rockville, Maryland. 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) 397–4205, by fax at (301) 415–3548, and by e-mail to *pdr.resource@nrc.gov*.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 26th day of October, 2009.

For the Nuclear Regulatory Commission.

John N. Ridgely,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E9–26282 Filed 10–30–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0176]

Notice of Issuance of Regulatory Guide

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance and availability of Regulatory Guide 1.189, Revision 2.

FOR FURTHER INFORMATION CONTACT: R.A. Jervey, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 251–7404 or e-mail to *RAJ@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing a revision to an existing 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.

Revision 2 of Regulatory Guide 1.189, ''Fire Protection for Nuclear Power Plants,'' was issued with a temporary identification as Draft Regulatory Guide, DG–1214. The NRC staff developed this regulatory guide to provide a comprehensive fire protection guidance document and to identify the scope and depth of fire protection program (FPP) that the staff would consider acceptable for nuclear power plants. This revision incorporates guidance developed to address and close previously unresolved issues including spurious actuation of components as a result of fire affecting electrical circuits.

The regulatory framework that the U.S. Nuclear Regulatory Commission (NRC) has established for nuclear plant FPPs consists of a number of regulations and supporting guidelines, including, but not limited to, Title 10 of the Code of Federal Regulations, Part 50, ''Domestic Licensing of Production and Utilization Facilities,'' (10 CFR part 50), Appendix A, ''General Design Criteria for Nuclear Power Plants,'' General Design Criterion (GDC) 3, ''Fire Protection''; 10 CFR 50.48, ''Fire Protection''; Appendix R, ''Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979,'' to 10 CFR part 50; regulatory guides; generic communications (e.g., generic letters [GLs], regulatory issue summaries [RISs], bulletins, and information notices [INs]); NUREG–series reports, including NUREG–0800, ''Standard Review Plan [SRP] for the Review of Safety Analysis Reports for Nuclear Power Plants''; and industry standards. Not all fire protection regulations promulgated by the NRC apply to all plants. Regulatory guides do not always refer to regulations as requirements. Licensees should refer to their plant-specific licensing bases to determine the applicability of a specific regulation to a specific plant.

II. Further Information

In April 2009, DG–1214 was published with a public comment period of 60 days from the issuance of the guide. The public comment period closed on May 29, 2009. The staff's responses to the public comments are located in NRC's Agencywide Documents Access and Management System under accession number ML092580570. The regulatory analysis included within DG–1214 is valid and applicable to the issue of this revision. Electronic copies of Regulatory Guide 1.189, Revision 2 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) 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 26th day of October, 2009.

For the Nuclear Regulatory Commission.

John N. Ridgely,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E9–26278 Filed 10–30–09; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

[OMB Control No. 3206–0212; Forms RI 38–117, RI 38–118, and RI 37–22]

Submission for OMB Review; Request for Comments on a Revised Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a revised information collection. This information collection, ''Rollover Election'' (OMB Control No. 3206–0212, Form RI 38–117), is used to collect information from each payee affected by a change in the tax code so that OPM can make payment in accordance with the wishes of the payee. ''Rollover Information'' (OMB Control No. 3206–0212, Form RI 38–118), explains the election. ''Special Tax Notice Regarding Rollovers'' (OMB Control No. 3206–0212, Form RI 37–22), provides more detailed information.

The estimated number of respondents is 1,500. We estimate it takes

approximately 30 minutes to complete the form. The annual burden is 750 hours.

For copies of this proposal, contact Cyrus S. Benson on (202) 606–0623, FAX (202) 606–0910 or via E-mail to *Cyrus.Benson@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—James K. Freiert, Deputy Assistant Director, Retirement Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500 and OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 10235, Washington, DC 20503.

For information regarding administrative coordination contact: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, U.S. Office of Personnel Management, 1900 E Street, NW., Room 4H28, Washington, DC 20415, (202) 606–0623.

John Berry,

Director, U.S. Office of Personnel Management.

[FR Doc. E9–26314 Filed 10–30–09; 8:45 am]

BILLING CODE 6325–38–P

RAILROAD RETIREMENT BOARD

2010 Railroad Experience Rating Proclamations, Monthly Compensation Base and Other Determinations

AGENCY: Railroad Retirement Board.

ACTION: Notice.

SUMMARY: Pursuant to section 8(c)(2) and section 12(r)(3) of the Railroad Unemployment Insurance Act (Act) (45 U.S.C. 358(c)(2) and 45 U.S.C. 362(r)(3), respectively), the Board gives notice of the following:

1. The balance to the credit of the Railroad Unemployment Insurance (RUI) Account, as of June 30, 2009, is $73,515,830.17;

2. The September 30, 2009, balance of any new loans to the RUI Account, including accrued interest, is zero;

3. The system compensation base is $3,712,573,424.54 as of June 30, 2009;

4. The cumulative system unallocated charge balance is ($319,754,784.70) as of June 30, 2009;

5. The pooled credit ratio for calendar year 2010 is zero;

6. The pooled charged ratio for calendar year 2010 is zero;

7. The surcharge rate for calendar year 2010 is 1.5 percent;

8. The monthly compensation base under section 1(i) of the Act is $1,330 for months in calendar year 2010;

9. The amount described in sections 1(k) and 3 of the Act as ''2.5 times the monthly compensation base'' is $3,325 for base year (calendar year) 2010;

10. The amount described in section 4(a–2)(i)(A) of the Act as ''2.5 times the monthly compensation base'' is $3,325 with respect to disqualifications ending in calendar year 2010;

11. The amount described in section 2(c) of the Act as ''an amount that bears the same ratio to $775 as the monthly compensation base for that year as computed under section 1(i) of this Act bears to $600'' is $1,718 for months in calendar year 2010;

12. The maximum daily benefit rate under section 2(a)(3) of the Act is $66 with respect to days of unemployment and days of sickness in registration periods beginning after June 30, 2010.

DATES: The balance in notice (1) and the determinations made in notices (3) through (7) are based on data as of June 30, 2009. The balance in notice (2) is based on data as of September 30, 2009. The determinations made in notices (5) through (7) apply to the calculation, under section 8(a)(1)(C) of the Act, of employer contribution rates for 2010. The determinations made in notices (8) through (11) are effective January 1, 2010. The determination made in notice (12) is effective for registration periods beginning after June 30, 2010.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Marla L. Huddleston, Bureau of the Actuary, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611–2092, telephone (312) 751–4779.

SUPPLEMENTARY INFORMATION: The RRB is required by section 8(c)(1) of the Railroad Unemployment Insurance Act (Act) (45 U.S.C. 358(c)(1)) as amended by Public Law 100–647, to proclaim by October 15 of each year certain system-wide factors used in calculating experience-based employer contribution rates for the following year. The RRB is further required by section 8(c)(2) of the Act (45 U.S.C. 358(c)(2)) to publish the amounts so determined and proclaimed. The RRB is required by section 12(r)(3) of the Act (45 U.S.C. 362(r)(3)) to publish by December 11, 2009, the computation of the calendar year 2010 monthly compensation base (section 1(i) of the Act) and amounts described in sections 1(k), 2(c), 3 and 4(a–2)(i)(A) of the Act which are related to changes in the monthly compensation base. Also, the RRB is required to publish, by June 11, 2010, the maximum daily benefit rate under section 2(a)(3) of the Act for days of unemployment and days of sickness in registration periods beginning after June 30, 2010.

Surcharge Rate

A surcharge is added in the calculation of each employer's contribution rate, subject to the applicable maximum rate, for a calendar year whenever the balance to the credit of the RUI Account on the preceding June 30 is less than the greater of $100 million or the amount that bears the same ratio to $100 million as the system compensation base for that June 30 bears to the system compensation base as of June 30, 1991. If the RUI Account balance is less than $100 million (as indexed), but at least $50 million (as indexed), the surcharge will be 1.5 percent. If the RUI Account balance is less than $50 million (as indexed), but greater than zero, the surcharge will be 2.5 percent. The maximum surcharge of 3.5 percent applies if the RUI Account balance is less than zero.

The system compensation base as of June 30, 1991 was $2,763,287,237.04. The system compensation base for June 30, 2009 was $3,712,573,424.54. The ratio of $3,712,573,424.54 to $2,763,287,237.04 is 1.34353511. Multiplying 1.34353511 by $100 million yields $134,353,511. Multiplying $50 million by 1.34353511 produces $67,176,756. The Account balance on June 30, 2009, was $73,515,830.17. Accordingly, the surcharge rate for calendar year 2010 is 1.5 percent.

Monthly Compensation Base

For years after 1988, section 1(i) of the Act contains a formula for determining the monthly compensation base. Under the prescribed formula, the monthly compensation base increases by approximately two-thirds of the cumulative growth in average national wages since 1984. The monthly compensation base for months in calendar year 2010 shall be equal to the greater of (a) $600 or (b) $600 [1 + {(A—37,800)/56,700}], where A equals the amount of the applicable base with respect to tier 1 taxes for 2010 under section 3231(e)(2) of the Internal Revenue Code of 1986. Section 1(i) further provides that if the amount so determined is not a multiple of $5, it shall be rounded to the nearest multiple of $5.

The calendar year 2010 tier 1 tax base is $106,800. Subtracting $37,800 from

$106,800 produces $69,000. Dividing $69,000 by $56,700 yields a ratio of 1.21693122. Adding one gives 2.21693122. Multiplying $600 by the amount 2.21693122 produces the amount of $1,330.16, which must then be rounded to $1,330. Accordingly, the monthly compensation base is determined to be $1,330 for months in calendar year 2010.

Amounts Related to Changes in Monthly Compensation Base

For years after 1988, sections 1(k), 3, 4(a–2)(i)(A) and 2(c) of the Act contain formulas for determining amounts related to the monthly compensation base.

Under section 1(k), remuneration earned from employment covered under the Act cannot be considered subsidiary remuneration if the employee's base year compensation is less than 2.5 times the monthly compensation base for months in such base year. Under section 3, an employee shall be a ''qualified employee'' if his/her base year compensation is not less than 2.5 times the monthly compensation base for months in such base year. Under section 4(a–2)(i)(A), an employee who leaves work voluntarily without good cause is disqualified from receiving unemployment benefits until he has been paid compensation of not less than 2.5 times the monthly compensation base for months in the calendar year in which the disqualification ends.

Multiplying 2.5 by the calendar year 2010 monthly compensation base of $1,330 produces $3,325. Accordingly, the amount determined under sections 1(k), 3 and 4(a–2)(i)(A) is $3,325 for calendar year 2010.

Under section 2(c), the maximum amount of normal benefits paid for days of unemployment within a benefit year and the maximum amount of normal benefits paid for days of sickness within a benefit year shall not exceed an employee's compensation in the base year. In determining an employee's base year compensation, any money remuneration in a month not in excess of an amount that bears the same ratio to $775 as the monthly compensation base for that year bears to $600 shall be taken into account.

The calendar year 2010 monthly compensation base is $1,330. The ratio of $1,330 to $600 is 2.21666667. Multiplying 2.21666667 by $775 produces $1,718. Accordingly, the amount determined under section 2(c) is $1,718 for months in calendar year 2010.

Maximum Daily Benefit Rate

Section 2(a)(3) contains a formula for determining the maximum daily benefit rate for registration periods beginning after June 30, 1989, and after each June 30 thereafter. Legislation enacted on October 9, 1996, revised the formula for indexing maximum daily benefit rates. Under the prescribed formula, the maximum daily benefit rate increases by approximately two-thirds of the cumulative growth in average national wages since 1984. The maximum daily benefit rate for registration periods beginning after June 30, 2010, shall be equal to 5 percent of the monthly compensation base for the base year immediately preceding the beginning of the benefit year. Section 2(a)(3) further provides that if the amount so computed is not a multiple of $1, it shall be rounded down to the nearest multiple of $1.

The calendar year 2009 monthly compensation base is $1,330. Multiplying $1,330 by 0.05 yields $66.50, which must then be rounded down to $66. Accordingly, the maximum daily benefit rate for days of unemployment and days of sickness beginning in registration periods after June 30, 2010, is determined to be $66.

Dated: October 27, 2009.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. E9–26298 Filed 10–30–09; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60873; File No. SR–Phlx–2009–91]

Self-Regulatory Organizations; The NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Expansion and Extension of the Exchange's Penny Pilot Program

October 23, 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 October 16, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by 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 is filing with the Commission a proposal to amend its Rule 1034 to: (1) Extend through December 31, 2010, the Penny Pilot in options classes in certain issues (''Pilot Program'' or ''Pilot''); (2) expand the number of issues included in the Pilot Program; and (3) replace, on a semi-annual basis, any Pilot Program issues that have been delisted.[3]

The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b–4(f)(6)(iii).[4]

The text of the proposed rule change is available on the Exchange's Website at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposal is to: Extend the time period of the Pilot Program, which is currently scheduled to expire on October 31, 2009, through December 31, 2010; expand the number of issues included in the Pilot Program; and enable the Exchange to replace, on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR–Phlx–2006–74) (notice of filing and approval order establishing Penny Pilot). *See also* Securities Exchange Act Release No. 60211 (January 1, 2009), 74 FR 33001 (January 9, 2009) (SR–Phlx–2009–51) (notice of filing and immediate effectiveness extending Penny Pilot through October 31, 2009).

[4] 17 CFR 240.19b–4(f)(6)(iii).

a semi-annual basis, any Pilot Program issues that have been delisted.

Top 300

Phlx proposes to add the top 300 most actively traded multiply listed options classes that are not yet included in the Pilot Program (the ''Top 300''). The Exchange proposes to determine the identity of the Top 300 based on national average daily volume (''ADV'') in the prior six calendar months preceding their addition to the Pilot Program, except that the month immediately preceding their addition to the Pilot Program would not be utilized for purposes of the analysis.[5] In determining the identity of the Top 300, the Exchange will exclude options classes with high premiums. Pursuant to Rule 1034(a)(i)(B), the Pilot Program issues will be announced to the Exchange's membership via an Options Trader Alert (''OTA'') posted by the Exchange on its Web site.[6] This will bring the total number of options classes traded pursuant to the Pilot Program to 363. Phlx represents that the Exchange has the necessary system capacity to support any additional series listed as part of the Pilot Program.

Phlx believes that it is appropriate to exclude high priced underlying securities, as the benefit to the public from including such issues is minimal because of the high price of ''at-the-money'' options.[7] The Exchange believes an appropriate threshold for designation as ''high priced'' at the time of selection of new issues to be included in the Pilot is $200 per share or a calculated index value of 200. At $200 per share strike prices are in $10 increments, and at a calculated index value of 200 strike prices are in $5 increments,[8] so the at-the-money strike is more likely to carry an intrinsic value of $3 or more, and thus not trade in a penny increment. With a greater distance between strikes, there are generally fewer series that are actively traded. The determination of whether a security is trading above $200 or above a calculated index value of 200 shall be based on the price at the close of trading on the Expiration Friday prior to being added to the Pilot.

Phased Implementation

The Exchange proposes to phase-in the additional classes to the Pilot Program over four successive quarters. Specifically, the Exchange proposes to add 75 classes in November 2009, February 2010, May 2010, and August 2010. In order to reduce operational confusion and provide for appropriate time to update databases, the Exchange proposes to add the eligible issues to the Pilot Program effective for trading on the Monday ten days after Expiration Friday. Thus, the quarterly additions would be effective on November 2, 2009; February 1, 2010; May 3, 2010; and August 2, 2010. For purposes of identifying the issues to be added per quarter, the Exchange shall use data from the prior six calendar months preceding the implementation month, except that the month immediately preceding their addition to the Pilot Program would not be utilized for purposes of the analysis.[9]

Delistings

Additionally, the Exchange proposes that any Pilot Program issues that have been delisted may be replaced on a semi-annual basis by the next most actively traded multiply listed options classes that are not yet included in the Pilot, based on trading activity in the previous six months. The replacement issues would be added to the Pilot on the second trading day following January 1, 2010, and July 1, 2010.[10] The Exchange will employ the same parameters in respect of prospective replacement issues as approved and applicable under the Pilot Program, including excluding high-priced underlying securities.

Reports

The Exchange agrees to submit semi-annual reports to the Commission that will include sample data and analysis of information collected from April 1 through September 30, and from October 1 through March 31, for each year, for the ten most active and twenty least active options classes added to the Pilot Program.[11] As the Pilot Program matures and expands, the Exchange believes that this proposed sampling approach provides an appropriate means by which to monitor and assess the Pilot Program's impact. The Exchange will also identify, for comparison purposes, a control group consisting of the ten least active options classes from the existing 63 Pilot Program classes. This report will include, but is not limited to: (1) Data and analysis on the number of quotations generated for options included in the report; (2) an assessment of the quotation spreads for the options included in the report; (3) an assessment of the impact of the Pilot Program on the capacity of Phlx's automated systems; (4) data reflecting the size and depth of markets; and (5) any capacity problems or other problems that arose related to the operation of the Pilot Program and how the Exchange addressed them.

The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

2. *Statutory Basis*

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[12] in general, and furthers the objectives of Section 6(b)(5) of the Act[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. The Exchange believes that the Pilot Program promotes just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options.

[5] The Exchange will not include options classes in which the issuer of the underlying security is subject to an announced merger or is in the process of being acquired by another company, or if the issuer is in bankruptcy. For purposes of assessing ADV, the Exchange will use data compiled and disseminated by The Options Clearing Corporation (''OCC'').

[6] The Exchange shall also identify the classes to be added to the Pilot Program, per each phase, in a filing with the Commission.

[7] For instance, as of August 12, 2009, the near term at-the-money call in GOOG (August 460 Calls) was trading at $6.50 with the underlying at $459.84. The lowest strike price September call trading below $3 (with the underlying at the same price) was the September 500 Call.

[8] Regarding strike price increments for non-index options, *see* Commentary .05 to Rule 1012. Regarding strike price increments for index options, *see* Rule 1101A(a).

[9] The issues to be added on November 2, 2009, will be based on the most actively traded multiply listed issues for the six month period from April 1, 2009, through September 30, 2009. The issues to be added on February 1, 2010, will be based on the most actively traded multiply listed issues for the six month period from July 1, 2009, through December 31, 2009. The issues to be added on May 3, 2010, will be based on the most actively traded multiply listed issues for the six month period from October 1, 2009, through March 31, 2010. And the issues to be added on August 2, 2010, will be based on the most actively traded multiply listed issues for the six month period from January 1, 2010, through June 30, 2010.

[10] The replacement issues will be announced to the Exchange's membership via an OTA posted on the Exchange's Web site.

[11] The Exchange will continue to provide data concerning the existing 63 Pilot Program classes.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

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 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 either solicited or received.

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 [14] and Rule 19b–4(f)(6) thereunder.[15] 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 [16] and Rule 19b–4(f)(6)(iii) thereunder.[17]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing.[18] However, pursuant to Rule 19b–4(f)(6)(iii),[19] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that the proposed rule change is substantially similar to a proposal submitted by another options exchange that was recently approved by the Commission and also incorporates a change to the initial expansion date filed by the other exchange. The Exchange further states that waiving the 30-day operative delay will allow the Pilot Program to continue uninterrupted and allow Nasdaq to adopt the same expansion schedule as other exchanges.

The Commission believes waiving the 30-day operative delay [20] is consistent with the protection of investors and the public interest because such waiver will allow Nasdaq to implement the 75 additional classes on November 2, 2009 and permit the Pilot Program to continue uninterrupted, consistent with other exchanges.[21] For these reasons, the Commission designates the proposal to be operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2009–91 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–Phlx–2009–91. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2009–91 and should be submitted on or before November 23, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Florence E. Harmon,

Deputy Secretary.

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[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6)(iii). 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 the 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 pre-filing requirement.

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78(c)(f).

[21] *See* Securities Exchange Act Release Nos. 60711 (September 23, 2009), 74 FR 49419 (September 28, 2009) (SR–NYSEArca–2009–44); and 60833 (October 16, 2009), 74 FR 54617 (October 22, 2009) (SR–NYSEArca–2009–91).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60880; File No. SR–NASDAQ–2009–090]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Permit Listing Option Series That Are Restricted to Closing Transactions if Such Series Are Listed and Restricted to Closing Transactions on Another National Securities Exchange

October 26, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1], and Rule 19b–4 [2] thereunder, notice is hereby given that on October 16, 2009, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal as

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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

NASDAQ is filing a proposal for the NASDAQ Options Market (''NOM'' or ''Exchange'') to amend its Chapter IV, Section 4 (Withdrawal of Approval of Underlying Securities) to permit the Exchange to list option series that are restricted to closing transactions if such series are listed and restricted to closing transactions on another exchange. The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b–4(f)(6)(iii).[5]

The text of the proposed rule change is available from Nasdaq's Web site at *http://nasdaq.cchwallstreet.com,* at Nasdaq's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend NOM Chapter IV, Section 4 to permit the Exchange to list option series that are restricted to closing transactions if such series are listed and restricted to closing transactions on another exchange.

This filing is based on a similar immediately effective filing recently filed by another options exchange, Chicago Board Options Exchange (''CBOE'').[6] In that filing, it was noted that the impetus for the filing was a customer request for it to list a series of options that was previously delisted by the filing exchange but listed on another exchange and restricted to closing transactions, a situation that may equally occur on NOM as well as other options exchanges.

Chapter IV, Section 3 (Criteria for Underlying Securities) sets forth the requirements or criteria that underlying securities must meet before the Exchange may initially list options on such securities. Chapter IV, Section 4 sets forth listing maintenance and delisting criteria in respect of securities underlying options listed on the Exchange that are used by the Exchange to determine whether such listing status should be continued. These rules do not have provisions for listing option series that are restricted to closing transactions where such series are listed on another exchange.

The Exchange proposes to add new subsection (m) to Chapter IV, Section 4 to provide that if an option series is listed but restricted to closing transactions on another national securities exchange, the Exchange may list such series (even if such series would not otherwise be eligible for listing under the Exchange's rules), which shall also be restricted to closing transactions on the Exchange.[7] No restrictions will be in place with respect to the exercise of any restricted series.

The Exchange believes that the proposed rule change should encourage competition and be beneficial to traders and market participants by providing them with a means to trade on the Exchange securities that are listed and traded on other exchanges.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. Permitting the Exchange to accommodate possible customer requests and allow execution of trades on the Exchange will encourage competition and not harm investors or the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange believes that the foregoing proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)[10] of the Act and Rule 19b–4(f)(6)(iii) thereunder[11] because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest.[12]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay period. The Commission believes that waiver of the 30-day operative delay period is consistent with the protection of investors and the public interest. In particular, the Exchange would be permitted to list the restricted

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] 17 CFR 240.19b–4(f)(6)(iii).

[6] *See* Securities Exchange Act Release No. 60625 (September 4, 2009), 74 FR 46825 (September 11, 2009) (SR–CBOE–2009–066) (notice of filing and immediate effectiveness).

[7] The parenthetical text is being proposed to eliminate ambiguity about the Exchange's ability to list a restricted series pursuant to proposed subsection (m) to Chapter IV, Section 4 in the event other Exchange rules would otherwise prohibit the listing of that series.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Nasdaq has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6)(iii).

series solely for the purpose of closing transactions as long as the restricted series is listed on another national securities exchange. In addition, the proposed rule change is substantially similar to the rules of CBOE.[14] The Commission therefore designates the proposal operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[16]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2009–090 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–NASDAQ–2009–090. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2009–090 and should be submitted on or before November 23, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

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[14] *See* CBOE Rule 5.4.12(b).

[15] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78s(b)(3)(C).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60878; No. SR–FINRA–2009–041]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend Rules 12100, 12506, and 12902 of the Code of Arbitration Procedure for Customer Disputes and Rule 13100 of the Code of Arbitration Procedure for Industry Disputes To Implement Conforming Changes

October 26, 2009.

I. Introduction

On June 5, 2009, Financial Industry Regulatory Authority, Inc. (''FINRA'' or the ''Corporation'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rules 12100(r), 12506(a), and 12902(a) of the Code of Arbitration Procedure for Customer Disputes (''Customer Code'') and Rule 13100(r) of the Code of Arbitration Procedure for Industry Disputes (''Industry Code'') to amend the definition of ''associated person,'' streamline case administration procedure, and clarify that customers could be assessed hearing session fees based on their own claims for relief in connection with an industry claim. The proposed rule change was published for comment in the **Federal Register** on July 2, 2009.[3] The Commission received one comment on the proposed rule change.[4] On August 10, 2009, FINRA responded to the comment letter.[5] On October 16, 2009, FINRA filed Amendment No. 1 to the proposed rule change.[6] The Commission is publishing this notice and order to solicit comments on Amendment No. 1 and to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of Proposed Rule Change

On January 24, 2007, the SEC approved amendments to the NASD Code of Arbitration Procedure (''old Code'') in connection with rules applicable to customer disputes and to industry disputes,[7] a final step in the reorganization of the old Code into three separate procedural codes: The Customer Code, the Industry Code, and the Mediation Code (the ''Code Revision'').[8] The Code Revision simplified the language of the old Code, codified current dispute resolution practices, and implemented several substantive changes to dispute resolution rules. Since the SEC approved the Code Revision, Dispute Resolution staff (''staff'') has found rule language that was omitted inadvertently from the Customer Code and the Industry Code (collectively, ''Codes''), as well as rule language that could be improved to better convey FINRA's

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 60159 (June 22, 2009), 74 FR 31779 (''Notice'').

[4] *See* letter from Brian M. Smiley, Public Investors Arbitration Bar Association, to Elizabeth M. Murphy, Secretary, Commission, dated July 29, 2009 (''PIABA Letter'').

[5] *See* letter from Mignon McLemore, FINRA Dispute Resolution, to Elizabeth M. Murphy, Secretary, Commission, dated August 10, 2009 (''FINRA Response'').

[6] Amendment No. 1 was a partial amendment that made minor technical edits to the rule text and the description of the proposal, and therefore does not require notice and comment.

[7] *See* Securities Exchange Act Release No. 55158 (January 24, 2007), 72 FR 4574 (January 31, 2007) (File Nos. SR–NASD–2003–158 and SR–NASD–2004–011).

[8] The Mediation Code was filed separately with the Commission as SR–NASD–2004–013. The Commission approved the Mediation Code on October 31, 2005, and it became effective on January 30, 2006. *See* Securities Exchange Act Rel. No. 52705 (October 31, 2005), 70 FR 67525 (November 7, 2005) (SR–NASD–2004–013).

intent or to clarify current practice regarding certain dispute resolution rules. To address these concerns, FINRA proposed to amend:

- Rules 12100(r) and 13100(r) of the Codes (the definition of ''person associated with a member'') so that the definition in the Codes conforms to the definition in FINRA's By-Laws;
- Rule 12506(a) of the Customer Code (Document Production Lists) to encourage parties to download the Discovery Guide from FINRA's Web site instead of having a copy mailed to them automatically when a claim is filed; and
- Rule 12902(a) of the Customer Code (Hearing Session Fees, and Other Costs and Expenses) to clarify that the arbitrators may assess hearing session fees against a customer in connection with a claim filed by a member against a customer in cases where there is also a responsive customer claim.

A discussion of the proposed amendments to each rule follows.

Rules 12100(r) and 13100(r)—Person Associated With a Member

As defined by Rules 12100(r) and 13100(r), a ''person associated with a member'' or an ''associated person'' generally is an individual who is licensed by FINRA to buy and sell securities for a FINRA member and its customers.[9] This associated person works for a member and, in most cases, is the individual with whom customers communicate to discuss their accounts or securities transactions.

FINRA stated that it intended the definition of associated person in the Codes to match the By-Laws definition,[10] except for one phrase relating only to Procedural Rule 8210. To that end, FINRA proposed to amend Rules 12100(r) and 13100(r) of the Codes to make these definitions consistent with the definition in FINRA's By-Laws. The proposal would amend the definition of ''person associated with a member'' in the Codes to: (1) Insert the word ''other'' before the second reference to ''natural person'' to clarify that the definition does not include corporate entities; and (2) insert the criterion that a natural person includes someone who has applied for registration.

FINRA stated that it believes that amending the definition in Rules 12100(r) and 13100(r) to clearly exclude corporate entities from the definition of associated person would remove any ambiguity concerning how the definition will be applied. Further, amending these rules to expand the forum's jurisdiction to natural persons who have applied for registration would ensure that these individuals, who may be working in some capacity with a firm while awaiting their license, are subject to FINRA's rules, and hence would be required to arbitrate should a dispute involving them arise. Moreover, FINRA noted that this amendment would conform the definitions under the Codes to the Corporation's definition of person associated with a member.[11]

Rule 12506—Document Production Lists

During the arbitration process, parties can request discovery of documents, names of witnesses, and other information from each other to prepare their cases for the arbitration hearing. To help parties understand what information they should disclose, FINRA staff provides a copy of the FINRA Discovery Guide[12] to parties when the Director serves the statement of claim. The Discovery Guide provides parties in customer cases with guidance on which documents they should exchange without arbitrator or staff intervention (called Document Production Lists)[13] and provides guidance to arbitrators in determining which documents parties are presumptively required to produce.[14]

Rule 12506 of the Customer Code states that when the Director serves the statement of claim, ''the Director will provide the FINRA Discovery Guide and Document Production Lists to the parties.'' In light of the availability of Dispute Resolution forms, guides and the claim filing system on FINRA's Web site, FINRA stated that it believes that it is no longer necessary to disseminate the Discovery Guide to parties automatically when they file a claim in the dispute resolution forum. Further, many parties and counsel who use FINRA's arbitration forum are repeat users who are likely to have a current copy of the Discovery Guide in their files. Due to these circumstances, FINRA believes that automatic distribution of the Discovery Guide is not an efficient use of resources.

Therefore, FINRA proposed to amend Rule 12506(a) to state that, when the Director serves the statement of claim, the Director will notify parties of the location of the Discovery Guide (which includes the Document Production Lists) on FINRA's Web site, but will not provide a copy except upon request. FINRA stated that it believes the proposed change would enhance the efficiency of the case administration process, and would reduce FINRA's printing and mailing costs. Moreover, FINRA stated that the proposal would encourage parties, especially those who frequently use the forum, to download relevant information from FINRA's Web site as needed.

Rule 12902—Hearing Session Fees, and Other Costs and Expenses

Under the old Code, arbitrators could allocate hearing session fees against any party. Rule 10332(c)[15] of the old Code protected customers from potentially higher forum fees (now hearing session fees) triggered by amounts sought in industry claims by prohibiting the arbitrators from assessing forum fees against customers if the industry claim was dismissed. Moreover, the rule protected customers from higher forum fees by requiring the amount of the

[9] Rules 12100(r) and 13100(r) define ''person associated with a member'' to mean:

(1) A natural person registered under the Rules of FINRA; or

(2) A sole proprietor, partner, officer, director, or branch manager of a member, or a natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with FINRA under the By-Laws or the Rules of FINRA.

For purposes of the Code, a person formerly associated with a member is a person associated with a member.

[10] FINRA's By-Laws define ''person associated with a member or associated person of a member'' as:

(1) A natural person who is registered or has applied for registration under the Rules of the Corporation; (2) a sole proprietor, partner, officer, director, or branch manager of a member, or other natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with the Corporation under these By-Laws or the Rules of the Corporation; and (3) for purposes of Rule 8210, any other person listed in Schedule A of Form BD of a member.

See By-Laws of the Corporation, Article I, Definitions (rr).

[11] *See supra* note 10.

[12] In January 1996, FINRA (then-NASD) created a Discovery Guide to assist customers in an arbitration with directing discovery and resolving discovery disputes. The Discovery Guide was approved by the SEC after a public comment period, *see* Securities Exchange Act Release No. 41833 (September 2, 1999), 64 FR 49256 (September 10, 1999). and was made available for use in arbitration proceedings involving customer disputes upon the publication of *Notice to Members* 99–90 (November 1999).

[13] Many of the provisions of the Discovery Guide were incorporated into the Codes as part of the Code Revision. *See supra* note 7.

[14] Although there are discovery rules in each Code, the Discovery Guide applies only in customer arbitration disputes.

[15] Rule 10332(c) of the old Code stated, in relevant part, that ''no fees shall be assessed against a customer in connection with an industry claim that is dismissed; however, in cases where there is also a customer claim, the customer may be assessed forum fees based on the customer claim.''

forum fees to be based on the amount awarded to an industry party and not on the amount of damages requested by the industry claim. However, Rule 10332(c) also provided that customers could be fairly subject to potential forum fees based on their own claims for relief in connection with the industry claim.[16]

During the Code Revision, FINRA inadvertently omitted from the corresponding provision, Rule 12902(a)(4) of the Customer Code, the provision in old Rule 10332(c) that permitted the forum to assess fees against the customer based on the customer's claim in an industry dispute. Thus, FINRA proposed to amend Rule 12902(a)(4) to incorporate the omitted language at the end of the rule to state specifically that ''in cases where there is also a customer claim, the customer may be assessed a filing fee under Rule 12900(a), and may be subject to hearing session fees.''

FINRA noted that the proposed amendment does not reflect a change in FINRA's stated policy or practice. Under the Customer Code, if a customer files a claim, counterclaim, cross claim or third party claim, Rule 12900(a)(1) requires the customer to pay a filing fee. Moreover, the first sentence of Rule 12902(a)(4) addresses the instance in which a customer may be assessed hearing session fees in connection with a claim filed by a member or associated person.[17] Similarly, the proposed amendment to Rule 12902(a)(4) would make clear to customers that if they file a claim in connection with a claim filed by a member, they may be subject to filing fees and hearing session fees based on their own claim for relief.[18]

FINRA stated that it believes the proposed amendment would clarify the forum's policy concerning fees in connection with a customer counterclaim for relief and make the Code easier to administer for staff.

III. Summary of Comments and Amendment No. 1

The Commission received one comment in response to the proposed rule change.[19] The commenter supported the proposed amendments to Rules 12100(r) and 13100(r), and noted that the changes would help to clarify which disputes are subject to FINRA's jurisdiction. The commenter also supported the proposed amendment to Rule 12506(a), which would encourage parties to download the Discovery Guide from the FINRA Web site.[20]

In Amendment No. 1, FINRA proposed a limited amendment to the proposed amendment of Rule 12902 to remove a potentially confusing internal reference.

IV. Discussion and Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[21] In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[22] which requires, among other things, that the Association's 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. The proposed rule change would ensure that individuals who have applied for registration are bound by FINRA's rules, and therefore subject to the jurisdiction of the dispute resolution forum. It would also assist in the efficient administration of the arbitration process by streamlining certain procedures and clarifying the allocation of hearing fees.

V. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[23] for approving the proposed rule change, as amended by Amendment No. 2 thereto, prior to the 30th day after the date of publication in the **Federal Register**. The changes proposed in Amendment No. 1 are minor and technical in nature. Accordingly, the Commission finds that good cause exists to approve the proposal, as modified by Amendment No. 1, on an accelerated basis.

VI. 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

[16] For example, if a member filed a claim against a customer, and the arbitrators dismissed the claim, the customer would not be assessed any forum fees. However, if, in connection with the industry claim, the customer filed a counterclaim against the member, the customer would be subject to potential forum fees based on the customer's own claim for relief.

[17] Rule 12902(a)(4) maintains the protection of old Rule 10332(c) by requiring that ''the amount of hearing session fees the customer must pay must be based on the amount actually awarded to the member or associated person, rather than on the amount claimed by the member or associated person.''

[18] Rule 12900(a)(1) provides, in part, that:

Customers, associated persons, and other non-members who file a claim, counterclaim, cross claim or third party claim must pay a filing fee * * *. The Director may defer payment of all or part of the filing fee on a showing of financial hardship.

FINRA staff explained that the reference to Rule 12900(a) was intended to assist customers, and that the language of Rule 12902(a)(4) coupled with the reference to Rule 12900(a) should communicate the requirement that in industry cases in which there is also a customer claim, the customer will be assessed a filing fee, the payment of which may be deferred in whole or part upon a showing of financial hardship. Telephone call between Kenneth Andrichik and Mignon McLemore, FINRA Dispute Resolution, and Paula Jenson and Joanne Rutkowski, Division of Trading and Markets, Commission, September 17, 2009.

[19] PIABA Letter.

[20] The commenter suggested that FINRA continue to make parties and their attorneys aware of the Discovery Guide, and to provide a copy of the Discovery Guide to a party upon request. In response, FINRA noted that, when a claim is filed in its arbitration forum, staff sends a letter to the parties notifying them of case administration procedures and other information. If the proposed rule change is approved, FINRA will include in the letter a link to the Discovery Guide on FINRA's Web site. The proposed change to Rule 12506(a) states that ''the director will notify parties of the location of the FINRA Discovery Guide and Document Production Lists on FINRA's Web site, but will provide a copy to the parties upon request.''

The commenter also asked FINRA to ensure the version of the Discovery Guide that is posted ''is actually the version that was disseminated by way of Notice to Members 99–90.'' PIABA Letter. In response, FINRA explained that there are two versions of the Discovery Guide, one for claims filed prior to April 16, 2007, and one for claims filed thereafter. Both are published on the FINRA Web site, and each is conspicuously labeled with the relevant date of applicability. FINRA stated that the 1999 version of the Discovery Guide was re-formatted and re-designed in March 2003 but substantively is the same document that was the subject of Notice to Members 99–90. FINRA Response.

Finally, the commenter opposed the proposed change to Rule 12902 because the ''new language could discourage customers from filing counterclaims.'' PIABA Letter. In response, FINRA explained that the proposed amendment does not represent a new fee to be imposed on customers. Rule 12902(a)(4) still restricts the hearing session fees that arbitrators may assess against customers in claims brought by member firms. If a customer files a claim, counterclaim, cross claim or third party claim, Rule 12900(a)(1) requires customers to pay a filing fee, and if that claim is heard by an arbitrator or arbitrators, Rule 12902(a)(4) contemplates that hearing session fees may be allocated against the customer. FINRA stated that the proposed amendment to Rule 12902(a)(4) reflects current practice and is intended to clarify that if customers file a claim in connection with a claim filed by a member, the customers may be subject to filing fees and hearing session fees based on their own claim for relief. FINRA Response.

[21] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[22] 15 U.S.C. 78o–3(b)(6).

[23] 15 U.S.C. 78o–3(b)(5).

Number SR–FINRA–2009–041 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–2009–041. 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. 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 the File Number SR–FINRA–2009–041 and should be submitted on or before November 23, 2009.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[24] that the proposed rule change (SR–FINRA–2009–041), as amended, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–26254 Filed 10–30–09; 8:45 am]

BILLING CODE 8011–01–P

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60874; File No. SR–NASDAQ–2009–091]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Expansion and Extension of the Exchange's Penny Pilot Program

October 23, 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 October 16, 2009, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. 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

Nasdaq is filing a proposal for the NASDAQ Options Market (''NOM'' or ''Exchange'') amend its Chapter VI, Section 5 to: (1) Extend through December 31, 2010, the Penny Pilot in options classes in certain issues (''Pilot Program'' or ''Pilot''); (2) expand the number of issues included in the Pilot Program; and (3) replace, on a semi-annual basis, any Pilot Program issues that have been delisted.[3]

The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b–4(f)(6)(iii).[4]

The text of the proposed rule change is available from Nasdaq's Web site at *http://nasdaq.cchwallstreet.com,* at Nasdaq's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposal is to: Extend the time period of the Pilot Program, which is currently scheduled to expire on October 31, 2009, through December 31, 2010; expand the number of issues included in the Pilot Program; and enable the Exchange to replace, on a semi-annual basis, any Pilot Program issues that have been delisted.

Top 300

NASDAQ proposes to add the top 300 most actively traded multiply listed options classes that are not yet included in the Pilot Program (the ''Top 300''). The Exchange proposes to determine the identity of the Top 300 based on national average daily volume (''ADV'') in the prior six calendar months preceding their addition to the Pilot Program, except that the month immediately preceding their addition to the Pilot Program would not be utilized for purposes of the analysis.[5] In determining the identity of the Top 300, the Exchange will exclude options classes with high premiums. Pursuant to Chapter VI, Section 5(a)(3), the Pilot Program issues will be announced to the Exchange's membership via an Options Trader Alert (''OTA'') posted by the Exchange on its Web site.[6] This will bring the total number of options classes traded pursuant to the Pilot Program to 363. NASDAQ represents that the Exchange has the necessary system

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008) (SR–NASDAQ–2008–026) (notice of filing and immediate effectiveness establishing Penny Pilot). *See also* Securities Exchange Act Release No. 60212 (July 1, 2009), 74 FR 33000 (July 9, 2009) (SR–NASDAQ–2009–061) (notice of filing and immediate effectiveness extending Penny Pilot through October 31, 2009).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] The Exchange will not include options classes in which the issuer of the underlying security is subject to an announced merger or is in the process of being acquired by another company, or if the issuer is in bankruptcy. For purposes of assessing ADV, the Exchange will use data compiled and disseminated by The Options Clearing Corporation (''OCC'').

[6] The Exchange shall also identify the classes to be added to the Pilot Program, per each phase, in a filing with the Commission. The Exchange proposes to clarify in its Chapter VI Section 5 that a list of options in the Penny Pilot shall be communicated to membership via an Options Trader Alert (''OTA'') posted on the Exchange's Web site; and that certain options, such as for example the QQQQs, will be traded in penny increments regardless of price. This is similar to Phlx Rule 1034(a)(i)(B).

capacity to support any additional series listed as part of the Pilot Program.

NASDAQ believes that it is appropriate to exclude high priced underlying securities, as the benefit to the public from including such issues is minimal because of the high price of ''at-the-money'' options.[7] The Exchange believes an appropriate threshold for designation as ''high priced'' at the time of selection of new issues to be included in the Pilot is $200 per share or a calculated index value of 200. At $200 per share strike prices are in $10 increments, and at a calculated index value of 200 strike prices are in $5 increments,[8] so the at-the-money strike is more likely to carry an intrinsic value of $3 or more, and thus not trade in a penny increment. With a greater distance between strikes, there are generally fewer series that are actively traded. The determination of whether a security is trading above $200 or above a calculated index value of 200 shall be based on the price at the close of trading on the Expiration Friday prior to being added to the Pilot.

Phased Implementation

The Exchange proposes to phase-in the additional classes to the Pilot Program over four successive quarters. Specifically, the Exchange proposes to add 75 classes in November 2009, February 2010, May 2010, and August 2010. In order to reduce operational confusion and provide for appropriate time to update databases, the Exchange proposes to add the eligible issues to the Pilot Program effective for trading on the Monday ten days after Expiration Friday. Thus, the quarterly additions would be effective on November 2, 2009; February 1, 2010; May 3, 2010; and August 2, 2010. For purposes of identifying the issues to be added per quarter, the Exchange shall use data from the prior six calendar months preceding the implementation month, except that the month immediately preceding their addition to the Pilot Program would not be utilized for purposes of the analysis.[9]

Delistings

Additionally, the Exchange proposes that any Pilot Program issues that have been delisted may be replaced on a semi-annual basis by the next most actively traded multiply listed options classes that are not yet included in the Pilot, based on trading activity in the previous six months. The replacement issues would be added to the Pilot on the second trading day following January 1, 2010, and July 1, 2010.[10] The Exchange will employ the same parameters in respect of prospective replacement issues as approved and applicable under the Pilot Program, including excluding high-priced underlying securities.

Reports

The Exchange agrees to submit semi-annual reports to the Commission that will include sample data and analysis of information collected from April 1 through September 30, and from October 1 through March 31, for each year, for the ten most active and twenty least active options classes added to the Pilot Program.[11] As the Pilot Program matures and expands, the Exchange believes that this proposed sampling approach provides an appropriate means by which to monitor and assess the Pilot Program's impact. The Exchange will also identify, for comparison purposes, a control group consisting of the ten least active options classes from the existing 63 Pilot Program classes. This report will include, but is not limited to: (1) Data and analysis on the number of quotations generated for options included in the report; (2) an assessment of the quotation spreads for the options included in the report; (3) an assessment of the impact of the Pilot Program on the capacity of NASDAQ's automated systems; (4) data reflecting the size and depth of markets, and (5) any capacity problems or other problems that arose related to the operation of the Pilot Program and how the Exchange addressed them.

The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[12] in general, and furthers the objectives of Section 6(b)(5) of the Act[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. The Exchange believes that the Pilot Program promotes just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

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[14] and Rule 19b–4(f)(6) thereunder.[15] 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[16] and Rule 19b–4(f)(6)(iii) thereunder.[17]

[7] For instance, as of August 12, 2009, the near term at-the-money call in GOOG (August 460 Calls) was trading at $6.50 with the underlying at $459.84. The lowest strike price September call trading below $3 (with the underlying at the same price) was the September 500 Call.

[8] Regarding strike price increments for non-index options, *see* Chapter IV, Section 6(d). Regarding strike price increments for index options, *see* Chapter XIV, Section 11(c).

[9] The issues to be added on November 2, 2009, will be based on the most actively traded multiply listed issues for the six month period from April 1, 2009, through September 30, 2009. The issues to be added on February 1, 2010, will be based on the most actively traded multiply listed issues for the six month period from July 1, 2009, through December 31, 2009. The issues to be added on May 3, 2010, will be based on the most actively traded multiply listed issues for the six month period from October 1, 2009, through March 31, 2010. And the issues to be added on August 2, 2010, will be based on the most actively traded multiply listed issues for the six month period from January 1, 2010, through June 30, 2010.

[10] The replacement issues will be announced to the Exchange's membership via an OTA posted on the Exchange's Web site.

[11] The Exchange will continue to provide data concerning the existing 63 Pilot Program classes.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent

Continued

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing.[18] However, pursuant to Rule 19b–4(f)(6)(iii),[19] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that the proposed rule change is substantially similar to a proposal submitted by another options exchange that was recently approved by the Commission and also incorporates a change to the initial expansion date filed by the other exchange. The Exchange further states that waiving the 30-day operative delay will allow the Pilot Program to continue uninterrupted and allow Nasdaq to adopt the same expansion schedule as other exchanges. For these reasons, the Commission designates the proposal to be operative upon filing with the Commission.

The Commission believes waiving the 30-day operative delay[20] is consistent with the protection of investors and the public interest because such waiver will allow Nasdaq to implement the 75 additional classes on November 2, 2009 and permit the Pilot Program to continue uninterrupted, consistent with other exchanges.[21] For these reasons, the Commission designates the proposal to be operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2009–091 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–NASDAQ–2009–091. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASDAQ–2009–091 and should be submitted on or before November 23, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Florence E. Harmon,

Deputy Secretary.

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to file the proposed rule change along with a brief description and the 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 pre-filing requirement.

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78(c)(f).

[21] *See* Securities Exchange Act Release Nos. 60711 (September 23, 2009), 74 FR 49419 (September 28, 2009) (SR–NYSEArca–2009–44); and 60833 (October 16, 2009), 74 FR 54617 (October 22, 2009) (SR–NYSEArca–2009–91).

[22] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6783]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Friday, November 13, 2009, in Room 1303 of the United States Coast Guard Headquarters Building, 2100 Second Street, SW., Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the twenty sixth Session of the International Maritime Organization (IMO) Assembly (A 26) to be held at the IMO Headquarters, United Kingdom from November 23 to December 4, 2009 and the twenty fifth Session of the IMO Council Extraordinary Session (C ES 25) to be held at the IMO Headquarters, United Kingdom, from November 19 to November 20, 2009.

The primary matters to be considered include:

Twenty-Sixth Session of Assembly

1. Adoption of the agenda.
2. Election of the President and the Vice-Presidents of the Assembly.
3. Consideration of proposed amendments to the Rules of Procedure of the Assembly.
4. Application of Article 61 of the IMO Convention. Report of the Council to the Assembly on any requests by Members for waiver.
5. Establishment of committees of the Assembly.
6. Consideration of the reports of the committees of the Assembly.
7. Report of the Council to the Assembly on the work of the Organization since the twenty-fifth regular session of the Assembly.
8. Strategy and planning.
9. Voluntary IMO Member State Audit Scheme.
10. Consideration of the reports and recommendations of the Maritime Safety Committee.
11. Consideration of the reports and recommendations of the Legal Committee.
12. Consideration of the reports and recommendations of the Marine Environment Protection Committee.
13. Consideration of the reports and recommendations of the Technical Co-operation Committee.
14. Consideration of the reports and recommendations of the Facilitation Committee.
15. Report on the 2009 International Conference on the Safe and Environmentally Sound Recycling of Ships.

16. Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters.
17. Resource management.
18. Maritime training programmes.
19. External relations.
20. Report on the status of the Convention and membership of the Organization.
21. Report on the status of conventions and other multilateral instruments in respect of which the Organization performs functions.
22. Election of Members of the Council, as provided for in Articles 16 and 17 of the IMO Convention.
23. Election of Members of the IMO Staff Pension Committee.
24. Date and place of the twenty-seventh regular session of the Assembly.

Twenty-Fifth Extraordinary Session of Council

1. Adoption of the agenda.
2. Report of the Secretary-General on credentials.
3. Strategy and planning.
4. Organizational reforms.
5. Resource management:
6. Voluntary IMO Member State Audit Scheme.
7. Results-based budget for the twenty-sixth financial period 2010–2011.
8. Consideration of the report of the Marine Environment Protection Committee.
9. Consideration of the report of the Legal Committee.
10. Report on the 31st Consultative Meeting of Contracting Parties to the London Convention 1972 and the 4th Meeting of Contracting Parties to the 1996 Protocol to the London Convention.
11. World Maritime University.
12. Protection of vital shipping lanes.
13. Report of the Council to the Assembly on the work of the Organization since the twenty-fifth regular session of the Assembly.
14. External relations:
15. Report on the status of the Convention and membership of the Organization.
16. Report on the status of conventions and other multilateral instruments in respect of which the Organization performs functions.
17. Supplementary agenda items, if any.

Members of the public may attend this meeting up to the seating capacity of the room. To facilitate the building security process, those who plan to attend should contact the meeting coordinator; LCDR Jason Smith by e-mail at *jason.e.smith2@uscg.mil,* by phone at (202) 372–1376, by fax at (202) 372–1925, or in writing at Commandant (CG–5212), U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Room 1308, Washington, DC 20593–0001 not later than 72 hours before the meeting. Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Headquarters building. The Headquarters building is accessible by taxi and privately owned conveyance (public transportation is not generally available). However, parking in the vicinity of the building is extremely limited.

This announcement might appear in the **Federal Register** less than 15 days prior to the meeting. The Department of State finds that there is an exceptional circumstance in that this advisory committee meeting must be held on November 13th in order to prepare for the IMO Assembly to be convened on November 23rd.

Dated: October 23, 2009.

J. Trent Warner,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. E9–26317 Filed 10–30–09; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–57 (Sub-No. 58X)]

Soo Line Railroad Company d/b/a Canadian Pacific Railway Company—Abandonment Exemption—in Waukesha and Milwaukee Counties, WI

Soo Line Railroad Company d/b/a Canadian Pacific Railway Company (CPR) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon a line of railroad approximately 4,458 feet in length between milepost 94.04 +/− (southeast of Watertown Plank Road) and milepost 93.2 +/− (approximately 1,100 feet southeast of West Bluemound Road), in Waukesha and Milwaukee Counties, WI. The line traverses United States Postal Service Zip Codes 53005, 53122, and 53226.

CPR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) all overhead traffic can and has been 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 report), 49 CFR 1105.8 (historic report), 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 December 2, 2009, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 12, 2009. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 23, 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 CPR's representative: W. Karl Hansen, Leonard, Street and Deinard, 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

CPR has filed a combined environmental and historic report addressing the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by November 6, 2009. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC

[1] 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.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,500. *See* 49 CFR 1002.2(f)(25).

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), CPR 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 CPR's filing of a notice of consummation by November 2, 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: October 27, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–26210 Filed 10–30–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition

AGENCY: National Highway Traffic Safety Administration, (NHTSA), Department of Transportation.

ACTION: Denial of a petition for a defect investigation.

SUMMARY: This notice sets forth the reasons for the denial of a petition (Defect Petition DP09–001) submitted by Mr. Jeffrey A. Pepski (petitioner) to the Administrator of NHTSA by a letter dated March 13, 2009, under 49 CFR part 552. The petitioner requests additional investigations of: (1) The unwanted and unintended acceleration of model year 2007 Lexus ES350 vehicles and (2) model years 2002–2003 Lexus ES300 for long duration incidents involving uncontrolled acceleration where brake pedal application had no effect.

After conducting a technical review of the material cited and provided by the petitioner, material contained within investigations cited by petitioner, information relevant to material cited by petitioner, and conducting interviews with complainants and manufacturer representatives, and taking into account several considerations, including, among others, a recent safety recall by Toyota (NHTSA Recall 09V–388), allocation of agency resources, agency priorities, and the likelihood that additional investigations would result in a finding that a defect related to motor vehicle safety exists, NHTSA has concluded that further investigation of the issues raised by the petition is not warranted. The agency accordingly has denied the petition.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen McHenry, Vehicle Control Division, Office of Defects Investigation, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone 202–366–0139. E-mail *stephen.mchenry@dot.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

Interested persons may petition NHTSA requesting that the agency initiate an investigation to determine whether a motor vehicle or item of replacement equipment does not comply with an applicable motor vehicle safety standard or contains a defect that relates to motor vehicle safety. 49 CFR 552.1. Upon receipt of a properly filed petition the agency conducts a technical review of the petition, material submitted with the petition, and any additional information. § 552.6. After considering the technical review and taking into account appropriate factors, which may include, among others, allocation of agency resources, agency priorities, and the likelihood of success in litigation that might arise from a determination of a noncompliance or a defect related to motor vehicle safety, the agency will grant or deny the petition. § 552.8.

II. Defect Petition Background Information

The petitioner, Mr. Jeffrey Pepski of Plymouth, Minnesota, owns a model year (MY) 2007 Lexus ES350 (VIN JTHBJ46G072131671). On March 12, 2009, Mr. Pepski filed a complaint with NHTSA (ODI No. 10261660) alleging a ''sudden and uncontrollable surge in acceleration'' while driving home from work on February 3, 2009:

Driving home from work, I experienced a sudden uncontrollable surge in acceleration causing my speed to increase from about 60 mph to 80+ mph. Immediately I began to brake hard as I was rapidly approaching traffic just ahead of me. Fortunately the inside left lane was unoccupied and I was able to make an immediate lane change. Initially I depressed the brake pedal as hard as I could using both feet but only managed to slow the vehicle to 40–45 mph. With my speed reduced, I alternated between pumping the accelerator pedal and pulling up on it from the underside with my right foot as it became clear that the throttle was stuck in an open position. The vehicle continued to speed back up to over 65 mph with less pressure on the brake pedal.

With traffic just ahead of me, I moved over to the left shoulder next to the center barrier and continued to try to release the open throttle. There were clouds of smoke around the vehicle and the smell of burning materials from the overheating brakes. After finally getting the vehicle slowed down to about 25–30 mph, I shifted into ''Neutral'' and depressed the start/stop push button a number of times hoping to stop the engine but nothing happened. Instead the RPMs moved up into the redline range on the tachometer. I quickly shifted back into ''Drive''; the vehicle jolted and rapidly accelerated to 60+ mph.

As the brakes were fading quickly, I was certain that I would need to shift back into ''Neutral'' and let the engine blow up to stop the vehicle. Suddenly the acceleration surge stopped and I was able to bring the vehicle to a stop about 1½ to 2 miles from where it had started. I quickly shifted into ''Park'' and depressed the start/stop push button to turn off the engine. The vehicle seemed to shutter as I did so. Upon restarting the car, I drove cautiously to Lexus of Wayzata a short distance away fully prepared to shift into ''Neutral'' if the acceleration repeated. The car remains there over 5 weeks later.

Following the incident, Mr. Pepski submitted a complaint to Toyota and a claim to the Lexus Customer Satisfaction Department, requesting that Lexus repurchase his vehicle. According to Toyota, the Lexus dealer service technician who inspected Mr. Pepski's vehicle after the incident observed that the driver's side floor mat retaining clips were not properly secured and ''the floor mat was in a position where it could interfere with the operation and travel of the accelerator pedal.'' [1] Toyota denied Mr. Pepski's claim on March 10, 2009, concluding that the event was caused by an out-of-position floor mat: [2] [3]

The inspection of your vehicle revealed no evidence of any vehicle defects or malfunction. The throttle assembly and accelerator pedal were operating as designed, with no binding or sticking of any of the components. The brakes showed signs of excessive wear which is consistent with what you described happened to you.

[1] Chris Tinto, Toyota Motor North America, Inc., letter to Kathleen DeMeter, ODI, May 14, 2009, *Response to the Petition for a Defect Investigation Submitted by Jeffrey Pepski* (see public file for DP09–001).

[2] Troy Higa, Toyota Motor Sales, U.S.A., Inc., letter to Jeff Pepski, March 10, 2009 (see public file for DP09–001).

[3] The issue of accelerator pedal entrapment by an unsecured floor mat in the subject vehicles is addressed by Recall 09V–388.

The inspection also revealed that the floor mat was in a position where it could interfere with the operation and travel of the accelerator pedal. When the vehicle was taken in to the dealership, the floor mat retaining clips were not properly secured which allowed the floor mat to move out of position. While we understand that you feel the floor mat was not the problem, the evidence revealed during our inspection showed otherwise.

On March 12, 2009, Mr. Pepski reported his initial complaint to NHTSA and on March 13, 2009, he sent a defect petition to NHTSA that was received by the Office of Defects Investigation (ODI) on March 19, 2009 (ODI No. 10263408). On May 1, 2009, ODI investigator Stephen McHenry and Vehicle Research Test Center engineer Mr. William Collins met with the petitioner at Lexus of Wayzata in Wayzata, Minnesota. Also in attendance was Mr. Mike Zarnecki, Field Technical Specialist from the Lexus Central Area Office in Naperville, Illinois. The petitioner was interviewed and the petitioner's vehicle was test driven. No functional abnormalities were noted during the test drive. According to Mr. Zarnecki and notes from the dealership's work order, no fault codes were found in the vehicle's powertrain computer system. Toyota concluded that the incident was caused by an improperly installed floor mat.

The petition requests additional investigations of (1) unwanted and unintended acceleration in MY 2007 Lexus ES350 vehicles, previously investigated by ODI in PE07–016 and EA07–010; and (2) longer duration incidents of unintended acceleration where brake pedal application allegedly was ineffective in MY 2002 and 2003 Lexus ES300 vehicles, previously investigated by ODI in PE04–021.

The petitioner cites seven issues in support of the petition to investigate the MY 2007 Lexus ES350:

Issue #1. Proper Party to Preliminary Evaluation PE07–016;
Issue #2. Toyota's Response—Causes of Alleged Defect;
Issue #3. Narrow Scope of Preliminary Evaluation PE07–016;
Issue #4. Vehicle Certification Label—Compliance with Federal Safety Standard No. 124;
Issue #5. Adequacy of Service Brakes;
Issue #6. Ignition/Engine Switch; and
Issue #7. ECM and ECUs—Lack of Inputs and Receipt of Contradictory Inputs.

The petitioner contends that expanding the investigation to include MY 2002 and 2003 Lexus ES300 vehicles is necessary because ''reviewing all pertinent data across model years will better indicate the existence of any pattern.''

III. ODI Analysis of the Petition Request for Additional Investigation of MY 2007 Lexus ES350 Vehicles

Background

On March 29, 2007, ODI opened Preliminary Evaluation PE07–016 to investigate the potential for accessory all-weather floor mats sold by Toyota to interfere with the accelerator pedal in MY 2007 Lexus ES350 vehicles. The investigation was based on a thorough review of complaints involving unintended acceleration that identified five incidents that likely were caused by interference between Toyota's accessory all-weather floor mat and the accelerator pedal. ODI upgraded the investigation to Engineering Analysis EA07–010 on August 8, 2007, and expanded the population to include MY 2007 and 2008 Lexus ES, ES350, and Toyota Camry vehicles. At that time, ODI had identified 17 complaints related to floor mat interference with the accelerator pedal in the subject vehicles.

ODI closed the investigation on October 11, 2007, after Toyota decided to conduct a recall of the accessory all-weather floor mats. Toyota's recall provided for the replacement of the accessory all-weather floor mats with mats that were redesigned to reduce the potential for pedal interference in the event that they were installed incorrectly. When EA07–010 was closed, ODI was aware of 26 Vehicle Owner Questionnaires (''VOQs'' or ''complaints'') concerning incidents of unwanted acceleration involving accessory all-weather floor mat interference in MY 2007 and 2008 Lexus ES, ES350, and Toyota Camry vehicles, including seven crashes. Twenty of the complaints involved MY 2007 Lexus ES350 vehicles.

The following summarizes the issues cited by the petitioner as the bases for opening the requested investigations and ODI's assessment of each issue.

Issue #1: Toyota's response to ODI's April 5, 2007, information request (IR) letter in PE07–016 ''may have been limited in some manner'' by the definition of ''Toyota'' used in the IR

The petitioner contends that since ODI's April 7, 2007, letter to Toyota requesting information in support of PE07–016 defined ''Toyota'' as ''Toyota Motor North America, Inc.'' rather than ''Toyota Motor Corporation,'' Toyota's responses ''may have been limited in some manner by the failure to properly address the appropriate parties to the investigation.''

The petitioner's concern is unfounded. In a May 14, 2009, letter responding to Mr. Pepski's petition, Toyota confirmed that it ''construed the request to apply to all Toyota entities, including the entities identified by Mr. Pepski, and that its earlier responses included all non-privileged responsive information and documents in the possession of all of those Toyota entities.''

Issue #2 and Issue #3: The Agency failed to investigate allegations of unwanted acceleration that were not related to improper installation of the accessory all-weather floor mats

In Issue #2, the petitioner contends that NHTSA should have investigated incidents of unintended acceleration that it determined were unrelated to improper installation of the accessory all-weather floor mat. In Issue #3, the petitioner contends that the scope of PE07–016 should have been ''broadened or increased for additional causes beyond the all-weather floor mats'' based on (1) information submitted by Toyota in its June 11, 2007, letter responding to ODI's information request, (2) additional complaints received by ODI after PE07–016 was opened; and (3) the results of a survey conducted for ODI by NHTSA's Vehicle Research and Test Center (VRTC) which ''identified vehicles without all-weather car mats experiencing unintended acceleration.'' ODI interprets these issues as one in the same—an allegation that the Agency failed to investigate complaints by subject vehicle owners that petitioner claims are unrelated to the recalled accessory all-weather floor mats.

ODI reviewed each complaint submitted by Toyota in its response to the PE07–016 IR and identified a safety defect trend related to interference between the accessory all-weather floor mat and the accelerator pedal that could trap the pedal near the floor during certain accelerator pedal applications (e.g., hard pedal applications while passing slower traffic, accelerating into traffic, and/or accelerating up grades). ODI carefully analyzed that data during the prior investigation and again during the review of this petition, including detailed interviews of drivers and, in some cases, field investigations to inspect vehicles and incident scenes. ODI determined that floor mat interference was the condition warranting investigation based on frequency of occurrence and nature of the events.

The petitioner identified ten complaints as evidence that ''not all these incidents are related to an

accessory all weather floor mat entrapping the throttle pedal.'' These complaints are presented in Table 1. The petitioner contends that the complaints that have a number marked with an asterisk are ''five other VOQs where floor mats were not involved in the unwanted acceleration.''

Contrary to the petitioner's contention, six of the VOQs were related to floor mat interference (four of the five that petitioner singled out as unrelated to floor mats were related to floor mats). Three of the remaining four complaints involved incidents occurring during low-speed close-quarter driving maneuvers—circumstances that are not similar to those complained of by petitioner; the other complaint does not indicate an unintended acceleration event.

TABLE 1—TEN VOQS IDENTIFIED IN THE PETITION AS EVIDENCE OF UNINTENDED ACCELERATION EXPERIENCE NOT RELATED TO FLOOR MATS

Evidence of Floor Mat Interference	ODI File Number	Description
Yes	*10199857	Unsecured floor mat discovered and corrected during dealer inspection.
	*10203221	All-weather accessory floor mat improperly ''stacked'' on top of carpet mat.
	10218118	Unsecured floor mat slid forward and interfered with accelerator pedal return.
	10223792	Passenger side floor mats improperly placed on driver side, resulting in accelerator pedal interference.
	*10230560	Floor mats were not returned to proper position after oil change, resulting in accelerator pedal interference.
	*10230929	All-weather accessory floor mat improperly ''stacked'' on top of carpet mat.
No	10192384	Single incident of alleged engine surge while parking in garage. No trouble found by dealer.
	10218961	Driver concerned that vehicle accelerated more quickly than expected when the accelerator pedal was depressed.
	10219328	Single incident of alleged engine surge while parking vehicle. No trouble found by dealer.
	*10226564	Alleged idle flare when idling. Dealer reprogrammed transmission control unit.

In addition to the analyses of the complaint and survey data, ODI and VRTC also conducted design reviews and testing to evaluate the possibility of other potential causes of unintended acceleration in the subject vehicles. Some of this work is summarized in the following excerpt from the VRTC test report: [4]

The Vehicle Research and Test Center obtained a Lexus ES350 for testing. The vehicle was fully instrumented to monitor and acquire data relating to yaw rate, speed, acceleration, deceleration, brake pedal effort, brake line hydraulic pressure, brake pad temperature, engine vacuum, brake booster vacuum, throttle plate position, and accelerator pedal position. Multiple electrical signals were introduced into the electrical system to test the robustness of the electronics against single point failures due to electrical interference. The system proved to have multiple redundancies and showed no vulnerabilities to electrical signal activities. Magnetic fields were introduced in proximity to the throttle body and accelerator pedal potentiometers and did result in an increase in engine revolutions per minute (RPM) of up to approximately 1,000 RPM, similar to a cold-idle engine RPM level. Mechanical interferences at the throttle body caused the engine to shut down.

Petitioner's assertion that the Agency failed to investigate other causes of unintended acceleration and, as a result, may have failed to identify other causes of unintended acceleration is unsupported. Several complaints identified by the petitioner as unrelated to interference between the floor mat and accelerator pedal, in fact, involved this problem. We note that Toyota has initiated a safety recall program to address the potential for unwanted acceleration due to accelerator pedal entrapment by floor mats in approximately 3.8 million vehicles, including the subject vehicles. Analysis of the remaining complaints identified by the petitioner failed to identify a defect trend unrelated to this issue.

Issue #4: The subject vehicles do not comply with FMVSS No. 124

The petitioner contends that the subject vehicles do not satisfy requirements of Federal Motor Vehicle Safety Standard (FMVSS) 124, Accelerator control systems. Specifically, the petitioner contends that the subject vehicles do not comply with paragraph S5.3, which requires the throttle to return to the idle position within one second, and paragraph S5.1, which requires at least two independent sources of energy capable of returning the throttle to the idle position within the time requirements of paragraph S5.3. The petitioner's concerns with the subject vehicles' compliance with FMVSS 124 are apparently based upon his belief that the rule requires a vehicle equipped with a throttle position or accelerator pedal position sensor that measures ''any force/pressure to the driver-operated control or any release of the actuating force to the driver-operated control (i.e., accelerator pedal).''

As an initial matter, FMVSS 124 does not require a particular design to meet its requirements; it is a performance standard. It is the responsibility of a manufacturer of vehicles and/or items of motor vehicle equipment to manufacture and sell vehicles that comply with applicable motor vehicle safety standards and to certify that each motor vehicle and/or equipment item is in compliance with applicable FMVSSs. This is a self-certification process. This usually means testing by the manufacturer in accordance with the FMVSS to ensure that its vehicles and equipment comply with the FMVSS.

Petitioner's basis for this issue is unsupported as there is no indication that the subject vehicles are not fully compliant with FMVSS 124.[5] Paragraph S5.3 does not mandate compliance with any specific design feature, including a throttle position or accelerator pedal position sensor. In its May 14, 2009, letter responding to Mr. Pepski's petition, Toyota states, ''the throttle control system in the subject vehicles

[4] VRTC Memorandum Report EA07–010, VRTC–DCD–7113, *2007 Lexus ES–350 Unintended Acceleration,* Section 3.1 Dynamic Vehicle Testing, April 30, 2008.

[5] The petitioner maintains that, because of the alleged non-compliance with FMVSS 124 and Toyota's knowledge thereof, the Vehicle Certification label on all MY 2007 Lexus ES350 vehicles does not comply with sections 30112(a)(1) and 30115(a) of Title 49 of the U.S. Code. As Toyota states in its May 14, 2009, letter, ''[b]ecause the vehicles fully comply with the standard, * * * there is no merit to Mr. Pepski's allegations that Toyota violated 49 U.S.C. 30112(a) when it sold those vehicles, or that it violated 49 U.S.C. 30115(a) when it certified them as complying with all applicable FMVSSs.''

fully complies with the requirements of FMVSS No. 124, as demonstrated by tests conducted in the manner specified in the laboratory test procedure issued by NHTSA's Office of Vehicle Safety Compliance, TP–124–06 (April 20, 2000).'' Regarding paragraph S5.1, the pedal assembly on the subject vehicles is biased to the ''up,'' or idle, position by two independent springs.[6]

Issue #5: The subject vehicles do not comply with FMVSS No. 135

The petitioner questions whether the service brakes of the subject vehicles are capable of meeting the performance requirements of FMVSS 135, Light-vehicle brake systems, with a throttle that has been stuck in an open position. The petitioner interprets complaints received by ODI of instances where a subject vehicle operator was unable to prevent a vehicle with a stuck accelerator pedal from traveling a ''significant distance'' as a functional failure as defined in paragraph S4 of FMVSS 135. Petitioner contends that, due to the significant distances travelled by subject vehicles with stuck accelerator pedals, compliance with the stopping distance requirement under paragraph S7.11.4 of FMVSS 135 is ''unlikely''.

Petitioner's contentions regarding compliance with FMVSS 135 are without merit and there is no indication that the subject vehicles are not fully compliant with FMVSS 135. The stopping distance of a subject vehicle with a throttle stuck in an open position is irrelevant with respect to whether the vehicle is compliant with paragraph S7.11.4 of FMVSS 135. Pursuant to paragraph S7.11.2(b), the stopping distances required under paragraph S7.11.4 must be met by a vehicle with its transmission position in neutral. The complaints referenced by the petitioner stem from incidents occurring on subject vehicles with a transmission position in drive.

Testing conducted by VRTC determined that the brake pedal force required to stop a subject vehicle with a wide open throttle was significantly greater than when the vehicle is operating with a closed throttle.

Significant brake pedal force in excess of 150 pounds was required to stop the vehicle, compared to 30 pounds required when the vehicle is operating normally. Stopping distances increased from less than 200 feet to more than 1,000 feet. [7]

Many of the incident drivers interviewed by ODI have stated that application of the brakes reduced acceleration but did not stop the vehicle. In assessing these complaints ODI notes that brake effectiveness in controlling a stuck open throttle event is significantly reduced once the vacuum reserve of the vacuum boosted power assist system is depleted.[8] The friction generated from brake application with the wheels driven by full engine power results in significant heating of the brake components. Continued operation in this mode causes degradation of the brake friction materials, further reducing brake effectiveness and the ability of the driver to control vehicle speed.

ODI notes that the petitioner confuses the Brake Assist system referenced in the Owner's Manual with the brake power assist system. Brake Assist is a computer controlled automobile braking technology that increases braking pressure in an emergency situation (e.g., crash avoidance braking). The Brake Assist technology used by Toyota in the subject vehicles detects an emergency situation by monitoring the rate of change of brake hydraulic pressure from the master cylinder. Based on the information gathered by ODI in interviews of incident drivers, there is no reason to believe that Brake Assist was activated during the unwanted acceleration events.[9] While virtually all of the drivers indicated that they applied a great deal of force to the brake pedal in an effort to slow and stop the vehicle, it is possible that the manner (i.e., rate) in which the force was applied, or the absence of the amplifying vacuum boost, did not produce a brake system pressure pulse that is necessary to activate the Brake Assist system.

Issue #6: Operation of the subject vehicles' Ignition/Engine Switch poses a safety issue

Petitioner contends that, according to the description of operation in the subject vehicle Owner's Manual, the engine cannot be switched off during an unintended acceleration event as the vehicle is not in Park.[10] Petitioner contends further that if the engine can be switched off during an unintended acceleration event, doing so would lock the steering wheel and move it up and away from the driver.[11] The petitioner concludes that ''the inability to turn off the engine in a safe manner is a significant safety issue with this 'push button' ignition issue.''

The petitioner is incorrect in his description of the function of the ignition switch and steering column safety features. The engine can be turned off while in motion by pressing and holding the ignition push-button start/stop switch for at least three seconds. The press and hold function is meant to avoid inadvertent engine shut-off while in motion. Turning off the engine in this manner puts the vehicle electrical system in Accessory (''ACC'') mode, in which the steering wheel does not lock or retract (as opposed to putting the vehicle in ''OFF'' mode, which can only occur when the vehicle is in Park).[12]

Issue #7: Contradictory sensor data logic should resolve on the side of safety

The petitioner posits that ''contradictory sensor data (e.g., open throttle and sustained extreme brake pressure) should error on the side of caution and safety.'' The petitioner correctly notes that the subject vehicle's throttle control logic does not change with brake application. However, while in certain circumstances it may be

[6] ODI notes that the petitioner's description of his attempts to ''dislodge the throttle by alternatively pumping the accelerator pedal and pulling up on it from the underside'' strongly suggest an accelerator pedal that is being physically ''trapped'' by some foreign object, such as the floor mat (in his case the original equipment carpet).

When ODI and VRTC investigators met with the petitioner and inspected his vehicle the accelerator pedal assembly was functioning properly and there were no anomalies noted in the return springs. Wear marks were noted at the leading edge of the front right edge of the carpet mat, which may have been an indication of contact between the mat and the bottom edge of the accelerator pedal. ODI confirmed that the pedal is such that it can be held down by the mat. Once trapped, the pedal can remain trapped after repeated efforts to ''pump'' the pedal.

[7] VRTC Memorandum Report EA07–010, VRTC–DCD–7113, *2007 Lexus ES–350 Unintended Acceleration,* Section 3.3.1 Application of the brake, April 30, 2008.

[8] The petitioner also incorrectly interprets the loss of vacuum during operation at wide-open throttle as a ''Functional Failure'' of the brake power assist unit as defined in S4 of FMVSS 135. VRTC's testing demonstrates that the braking performance described by drivers of incident vehicles is consistent with open throttle braking with depleted vacuum in the vacuum boosted power assist system. Consequently, the petitioner's concerns with the adequacy of the service braking in the subject vehicles do not provide any basis for further investigation.

[9] It is not possible to determine whether Brake Assist was activated for any length of time during any of the unwanted acceleration incidents ODI investigated in the subject vehicle population.

[10] Petitioner cites the following language to support this claim: ''The engine cannot be switched to OFF unless the shift lever is in P.'' Toyota has indicated that this should be changed to the vehicle cannot be switched OFF until the shift lever is in Park.''

[11] Petitioner references the following language: ''When the engine switch is turned OFF, the steering wheel returns to its stowed position by moving up and away to enable easier driver entry and exit. Switching to ACC or IG–ON mode will return the steering wheel to the original position.''

[12] In its May 14, 2009, letter, Toyota admits that its description of the function of these features, even though ''technically correct,'' is confusing. Toyota states that it plans to revise this portion of the manual to address any confusion.

desirable for the vehicle throttle control system to respond to simultaneous applications of brake and accelerator pedals by prioritizing the braking command and limiting throttle opening, the absence of this function in the Toyota designs does not render the vehicles noncompliant with any applicable FMVSS and further investigation at this time is not likely to result in identification of a defect trend.

Current VOQ Status. The petitioner states that at the time the petition was sent there were ''at least 45 VOQs on record with respect to vehicle speed control involving unwanted acceleration in MY 2007 Lexus ES350.'' Table 2 provides a breakdown of complaints to ODI relating to unintended acceleration in MY 2007 Lexus ES350 vehicles by category and date of receipt relative to completion of the prior investigation.

Analysis of the VOQs cited by the petitioner do not indicate a defect trend other than that involving the accelerator pedal as held down by a floor mat. The complaints ODI deemed related to floor mat interference outnumbered all other reports of alleged sudden and uncontrollable surge in acceleration reported during and subsequent to the ODI investigation. As previously noted, Toyota has initiated a safety recall to address the potential for unwanted acceleration due to accelerator pedal entrapment by floor mats in approximately 3.8 million vehicles, including the subject vehicles.

TABLE 2—VEHICLE OWNER QUESTIONNAIRES TO ODI RELATED TO UNINTENDED ACCELERATION INCIDENTS IN MY 2007 LEXUS ES350 VEHICLES

Unintended acceleration category	Prior to EA07–010 closing	Since EA07–010 closing	Total
Floor mat interference:			
—Recalled accessory all-weather mats	22	11	33
—Other floor mats	3	9	12
—Consistent with mat interference (mat unknown)	1	4	5
Subtotal, floor mat interference	26	24	50
Other:			
—Transmission shift quality	—	3	3
—Parking lot type maneuvers	2	6	8
—Throttle response	—	1	1
—Cruise control sensitivity	1	—	1
—Other	—	1	1
Subtotal, other	3	11	14
Total	29	35	64

IV. ODI Analysis of the Petition Request for an Investigation of MY 2002 Through 2003 Lexus ES300 Vehicles

Petitioner requests that ODI investigate MY 2002 through 2003 Lexus ES300 vehicles for complaints related to the petition for MY 2007 Lexus ES350 vehicles. Petitioner cites an earlier ODI investigation, PE04–021, during which 26 complaints initially considered by the Agency as part of that investigation later were determined to be outside the scope of that investigation. Petitioner states, ''Reviewing all pertinent data across model years will better indicate the existence of any pattern.''

On March 3, 2004, ODI opened Preliminary Evaluation PE04–021 to investigate allegations of vehicle surge during low speed driving maneuvers (such as parking) in MY 2002 through 2003 Toyota Camry, Camry Solara, and Lexus ES300 vehicles (approximately 980,000 vehicles). ODI opened PE04–021 based on owner reports alleging either an engine speed increase occurring without pressing on the accelerator pedal or the engine speed failing to decrease when the accelerator pedal was released. When PE04–021 was opened, ODI counted 37 complaints, including 30 reported crashes and 5 alleged injuries, potentially related to the alleged defect.

Upon further investigation, ODI determined that 26 of the 37 complaints fell outside the scope of PE04–021. ODI determined that these complaints related to longer duration incidents involving uncontrollable acceleration where brake pedal application allegedly had no effect and thus were not within the scope of the investigation. The investigation focused on incidents where the subject vehicle throttle control system opened the throttle valve without driver intent. ODI believed that the resultant vehicle surge could result in a momentary loss of vehicle control, often resulting in crashes of varying severity as the drivers were unable to react in time to apply the brakes effectively.

None of the complaints identified by the petitioner and received by ODI would fall within the scope of the investigation requested by the petitioner, nor do they indicate a defect trend unrelated to the accelerator pedal. In consideration of Mr. Pepski's petition, ODI conducted a review of the 26 VOQs it determined outside the scope of PE04–021 as well as any other MY 2002–2003 Lexus ES300 VOQ received by ODI from the time of the opening of PE04–021 to the receipt of Mr. Pepski's petition. Of the 26 VOQs outside the scope of PE04–021, only 2 involved MY 2002–2003 ES300 vehicles (VOQ 10032815 and 8017143).[13] Neither of these VOQs involved longer duration incidents of unintended acceleration where brake pedal application allegedly was ineffective in MY 2002 and 2003 Lexus ES300 vehicles. Likewise, none of the remaining VOQs reviewed by ODI in response to Mr. Pepski's petition fit into that classification.

V. Conclusion

Toyota has initiated a safety recall (Recall 09V–388) to address concerns with potential accelerator pedal entrapment by floor mats in

[13] VOQ 10032815 states that a MY 2002 ES300 was pulling into a parking space at less than 10 miles per hour when the car suddenly accelerated. VOQ 8017143 states that a MY 2002 ES300 was pulling into a parking space with the driver's foot on the brake when it suddenly accelerated and hit a tree. It also noted that while driving with the cruise control on the driver tapped the brakes to disengage the cruise control and the vehicle suddenly accelerated.

approximately 3.8 million vehicles, including the subject vehicles. Except insofar as the petitioner's contentions relate to that recall, the factual bases of the petitioner's contentions that any further investigation is necessary are unsupported. In our view, additional investigation is unlikely to result in a finding that a defect related to motor vehicle safety exists or a NHTSA order for the notification and remedy of a safety-related defect as alleged by the petitioner at the conclusion of the requested investigation. Therefore, in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied. This action does not constitute a finding by NHTSA that a safety-related defect does not exist. The agency will take further action if warranted by future circumstances.

Authority: 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8.

Issued on: October 20, 2009.

Kathleen C. DeMeter,

Director, Office of Defects Investigation.

[FR Doc. E9–26265 Filed 10–28–09; 11:15 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Passenger Facility Charge (PFC) Application 10–15–C–00–OAK, To Impose a PFC at Metropolitan Oakland International Airport, Oakland, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at Metropolitan Oakland International Airport, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before December 2, 2009.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Room 3012, Lawndale, CA 90261. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Deborah Ale-Flint, Acting Director of Aviation, Oakland International Airport, at the following address: Port of Oakland, 530 Water Street, Oakland, California 94607. Air carriers and foreign air carriers may submit copies of written comments previously provided to the Port of Oakland under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Arlene Draper, Acting Manager, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (650) 876–2778, extension 601. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at Metropolitan Oakland International Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On October 21, 2009, the FAA determined that the application to impose PFC submitted by the Port of Oakland was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 17, 2010.

The following is a brief overview of the impose application No. 10–15–C–00–OAK:

Proposed charge effective date: June 1, 2021.

Proposed charge expiration date: August 1, 2023.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $70,259,000.

Description of proposed project:

Impose only: San Francisco Bay Area Rapid Transit District (BART) Airport Connector—The project will provide a direct people mover connection between the Coliseum BART station and Metropolitan Oakland International Airport.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Nonscheduled/On-demand Air Carriers filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Room 3012, Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Port of Oakland.

Issued in Lawndale, California, on October 21, 2009.

Debbie Roth,

Acting Manager, Airports Division, Western-Pacific Region.

[FR Doc. E9–26405 Filed 10–29–09; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8816

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8816, Special Loss Discount Account and Special Estimated Tax Payments for Insurance Companies.

DATES: Written comments should be received on or before January 4, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6242, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Special Loss Discount Account and Special Estimated Tax Payments for Insurance Companies.

OMB Number: 1545–1130.

Form Number: 8816.

Abstract: Form 8816 is used by insurance companies claiming an additional deduction under Internal Revenue Code section 847 to reconcile estimated tax payments and to determine their tax benefit associated with the deduction. The information is needed by the IRS to determine that the

proper additional deduction was claimed and to insure the proper amount of special estimated tax was computed and deposited.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 3,000.

Estimated Time per Respondent: 6 hr., 37 minutes.

Estimated Total Annual Burden Hours: 19,830.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 21, 2009.

R. Joseph Durbala,

IRS Supervisory Tax Analyst.

[FR Doc. E9–26011 Filed 10–30–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Partners Bank, Naples, FL; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Federal Deposit Insurance Corporation as sole Receiver for Partners Bank, Naples, Florida (OTS No. 17991) on October 23, 2009.

Dated: October 27, 2009.

By the Office of Thrift Supervision.

Sandra E. Evans,

Federal Register Liaison.

[FR Doc. E9–26188 Filed 10–30–09; 8:45 am]

BILLING CODE 6720–01–M

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Federal Register

Vol. 74, No. 210

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CFR PARTS AFFECTED DURING NOVEMBER

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.

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*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 621/P.L. 111–86
Girl Scouts USA Centennial Commemorative Coin Act (Oct. 29, 2009; 123 Stat. 2881)

Last List October 30, 2009

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TABLE OF EFFECTIVE DATES AND TIME PERIODS—NOVEMBER 2009

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

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