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

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AC23

Common Crop Insurance Regulations, Basic Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the Common Crop Insurance Regulations, Basic Provisions to revise enterprise unit provisions to protect the program from potential abuse as a result of the increased premium subsidies for enterprise and whole farm units provided by the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill).

DATES: *Effective Date:* This rule is effective December 23, 2009.

Applicability Date: The changes to the Common Crop Insurance Regulations, Basic Provisions required by this rule will apply for the 2011 and succeeding crop years for all crops with a 2011 contract change date on or after March 31, 2010, and for the 2012 and succeeding crop years for all crops with a 2011 contract change date prior to March 31, 2010.

FOR FURTHER INFORMATION CONTACT: Erin Albright, Risk Management Specialist, Product Management, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility—Mail Stop 0812, P.O. Box 419205, Kansas City, MO 64141–6205, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053 through March 31, 2012.

E-Government Act Compliance

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

Unfunded Mandates Reform Act of 1995

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

Executive Order 13132

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

Regulatory Flexibility Act

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

Federal Assistance Program

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

Executive Order 12372

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

Executive Order 12988

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

Environmental Evaluation

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

Background:

This rule finalizes changes to the Common Crop Insurance Regulations, Basic Provisions that were published by FCIC on June 15, 2009, as a notice of interim rulemaking in the **Federal Register** at 74 FR 28154–28156. The public was afforded 60 days to submit written comments and opinions.

A total of 14 comments were received from five commenters. The commenters were a reinsured company, an insurance service organization, and state departments of agriculture. The comments received and FCIC's responses are as follows:

Comment: A few commenters concurred with the intent to preserve program integrity and prevent abuse of the enterprise unit provisions. However, the commenters were concerned there may be unintended consequences from the added requirement that an enterprise unit have at least the lesser of 20 acres or 20 percent of the enterprise unit insured crop acreage in at least two sections, section equivalents, Farm Serial Numbers (FSNs), or units by written agreement, as allowed in the Common Crop Insurance Policy Basic Provisions. For example, a farmer with 10 acres planted in each of two sections would meet the 20 acre or 20 percent requirement for an enterprise unit, while another farmer with 10 acres planted in each of 10 sections would not. The added requirement might actually encourage farmers in the second situation to ''* * * manipulate their unit structure by making slight changes in their farming operation to gain additional benefits from the increased premium subsidy,'' shifting where they plant their acreage so as to have at least 20 acres or 20 percent of the insured crop acreage in at least two of the ten sections.

The commenters agreed some version of the 20 acre or 20 percent requirement is needed, though perhaps with some revision. One suggestion was for it to apply when the enterprise unit is comprised of only two separate sections (or other legal descriptions, as applicable) with planted acreage, but not when there are more (so it is unlikely the insured intentionally planted a few acres in a second section just to qualify). The commenters asked if RMA will review 2009 data to determine how many producers were affected by the new 20 acre or 20 percent requirement, and how they were affected, before this rule is incorporated into the forthcoming ''Combination'' Crop Insurance Policy.

Response: The intent of this provision was to prevent producers who usually produce the crop in one section from planting on a small number of acres in another section for the sole purpose to qualify for the enterprise unit and the new subsidy. For example, without the proposed revisions, a producer with 40 acres in one section could qualify for an enterprise unit by planting one acre or less in another section. The additional subsidy is intended to encourage producers to consolidate their acreage into larger units, which reduces the risk. The planting of a small number of acres in a separate section simply to obtain the subsidy defeats this purpose. However, this provision was never intended to prevent the producer that usually produces the crop on small acreages in a number of sections from qualifying for the enterprise unit. Therefore, FCIC agrees the provisions should allow enterprise units for producers who plant acreage in more than two sections, section equivalents, etc. and have acreage dispersed similar to producers who only have planted acreage in two sections. FCIC has revised the provisions to allow producers who plant in more than two sections, section equivalents, etc. to qualify for an enterprise unit if aggregating acreage in the sections, section equivalents, etc. would meet the minimum acreage requirement. FCIC cannot simply make the 20 acre or 20 percent requirement applicable only when the unit only has two sections because there may be situations where even the aggregation of acreage would not meet this minimum standard.

Comment: A few commenters opposed the new 20 acre or 20 percent requirement. A commenter stated it is another obstacle that could adversely impact small producers. Another commenter stated the changes were not in the best interest of farmers in certain states which have a large number of small farms, and will discriminate against small farmers and farmers who farm multiple small tracts of land. Another commenter stated the restrictions are viewed as discriminatory and are counterproductive when trying to increase participation in the crop insurance program, especially in Targeted States. The commenters recommended eliminating the current requirement to have at least 50 acres in an enterprise unit.

Response: As stated in the Interim Rule, without a requirement that a minimum amount of acreage be planted in at least two sections, section equivalents, FSA farm serial numbers, or units established by written agreement, the program is vulnerable to program abuse by producers who will plant only a small amount of acreage in an additional section, FSA farm serial number, etc., solely for the purpose of qualifying for an enterprise unit and the increased premium subsidy. A minimum acreage requirement in at least two separate parcels of land protects program integrity and helps ensure a certain level of risk reduction.

FCIC does not believe the 20 acre or 20 percent requirement discriminates against producers who farm a very small number of acres. While drafting the Interim Rule, FCIC considered the impact on producers who farm a small number of acres. FCIC opted to use the requirement of ''the lesser of 20 acres or 20 percent of the acreage'' with those producers in mind. Under this rule, a producer who only farms 10 acres (for example, five acres in two separate sections) would only have to have planted two acres in two sections or two aggregated parcels, while a producer who farmed a large number of acres would have to have planted at least 20 acres in two sections or two aggregated parcels.

The Interim Rule amended the Common Crop Insurance Policy Basic Provisions, and does not contain a minimum 50 acre requirement. The Crop Revenue Coverage (CRC) policies are the only policies under the Federal crop insurance program that require a minimum 50 acres to qualify for an enterprise unit, and those policies are not included in this rule. Therefore, no change is made in this Final Rule in response to this comment. However, FCIC will review the minimum 50 acre requirement contained in the current CRC policies, giving consideration to the impact on producers of small acreage and Targeted States, and make any changes that are necessary.

Comment: A commenter did not take issue with FCIC using the policy definition(s) (*i.e.,* requiring consolidation that would otherwise be separate basic or optional units located in different sections and FSA farm serial numbers, *etc.*) and requiring greater than 50 acres for the actuarial discounts listed on the actuarial tables, in order for a producer to qualify for the acreage consolidation discounts listed on the actuarial table. However, in view of the emphasis, throughout the Farm Bill, to be more helpful to many non-traditional growers (*i.e.,* organic, direct marketing

etc.), the commenter urged FCIC to make it easier for them to qualify for the enterprise and whole farm unit premium subsidy.

Response: As stated above, FCIC has added the flexibility of being able to aggregate acreage when the unit contains acreage in more than two sections. This should assist producers who farm a small amount of acreage and non-traditional producers. Further, the 50 acre minimum is not applicable under this rule.

Comment: A few commenters stated the restrictions reach beyond the requirements of the authorizing legislative language.

Response: The 20 acre or 20 percent requirement does not go beyond the legislative authority. The Federal Crop Insurance Act (Act) allows the increased premium subsidies for enterprise units, but does not specify how enterprise units are to be established. As stated in the Interim Rule, FCIC became aware that a program vulnerability existed in cases where producers were planting a small amount of acreage in one additional parcel of land, solely to benefit from the higher enterprise unit premium subsidy. FCIC has an obligation under the Act to protect program integrity and maintain actuarial soundness. No change has been made.

Comment: A commenter recommended allowing the enhanced premium subsidy only on CRC and Revenue Assurance (RA) policies. Another commenter recommended allowing the enterprise unit premium subsidy for all insurance plans.

Response: FCIC does not agree the enhanced premium subsidy for enterprise units should be allowed only for CRC and RA policies. The 2008 Farm Bill did not limit the availability of the increased premium subsidy for enterprise units to any particular plan of insurance and FCIC is unaware of a rational basis to limit the benefit to only CRC and RA policies, especially as such policies are in the process of being combined with the production based plans of insurance. The increased premium subsidy is available for any plan of insurance that offers enterprise units. To the extent that a plan of insurance may not currently have enterprise units available, FCIC will review such plans the next time they are revised to determine the feasibility of adding such enterprise units. No change has been made.

Comment: A commenter stated at a time when we are mandated to establish programs for under-served producers, it makes good sense to extend the option of enterprise units (without acreage and other current limitations) and the corresponding premium subsidy to these producers. Having crop insurance could guarantee some level of success for small and/or new producers and providing enterprise units with the increased federal premium subsidy could result in: (1) Insurance affordability for more producers; (2) more producers eligible for SURE; (3) higher levels of coverage which results in better crop insurance protection and higher SURE guarantees; and (4) producers considering crop insurance as more of an insurance plan instead of a Federal payout.

A commenter stated all producers believe they should be eligible for enterprise units by merely choosing to combine acreage of a crop that would otherwise qualify for two or more basic or optional units into one, regardless of the crop or insurance plan. The commenter added producers reason that they do not control which plans of insurance are available to them for the various crops and therefore should not miss out on the higher premium subsidy for enterprise units. The commenter stated if a decision is made to generally continue the additional restrictions to qualify for the additional premium subsidy on enterprise and whole farm insurance units, that a pilot program should be implemented in Targeted States that would remove the minimum 50 acre requirement and make it easier for producers to qualify for the enterprise and whole farm unit premium subsidy. The commenter believes doing so would greatly enhance the success of the educational mandate of the Farm Bill and as included in RMA, RME Crop Insurance Education Requirements Announcement for Targeted States.

Another commenter recommends Targeted States be subject to a pilot program that removes the minimum 50 acre and 20 acre or 20 percent requirement.

A commenter stated they seem to have hit a plateau in participation rates in their State. They feel this is not so much due to policy issues as it is in unaffordable premium cost. They believe enterprise units (with up to an 80 percent premium subsidy) is probably *the* single most important thing that could have broad sweeping results by making crop insurance more affordable for these targeted groups.

Response: FCIC is trying to reach under-served producers and Targeted States to meet their risk management needs. However, as stated above, the requirement that a minimum amount of acreage be planted in at least two sections, FSA farm serial numbers, *etc.* is necessary to protect program integrity. Therefore, the limitations cannot be removed but as stated above, they have been revised to provide more flexibility to qualify for enterprise units. Further, since FCIC chose to use the ''lesser of 20 acres or 20 percent'' producers of small farms should not be impacted to any greater degree than producers of large farms. The 50 acre limitation does not apply to this rule. It only applies to the CRC policy, which is not affected by this rule. However, FCIC will consider the current 50 acre requirement contained in the CRC policies and the impact on producers of small acreage, and those in Targeted States, and will make necessary changes.

Comment: A commenter requested an exception for a Targeted State that would reduce the 50 acre minimum requirement to 20 acres. The commenter also requested the 20 acre or 20 percent requirement be reduced to 10 acres or 10 percent, which in Targeted States, will uphold the program intent sought by the FCIC and at the same time provide equality for beginning, socially disadvantaged and farmers in transition in converting production or marketing systems. The commenter stated the underlying factor in support of this request is the high percentage of farms under the 50 acre minimum and the number of limited resource farms in their State.

Response: As stated above, the 50 acre requirement is not contained in or part of this rule. However, FCIC will consider the impact of the 50 acre requirement that is currently contained in the CRC policies and make any necessary changes. Also, as stated above, FCIC does not believe the 20 acre or 20 percent requirement will adversely impact producers who farm small amounts of acreage, or beginning, socially disadvantaged, or limited resource farmers. The purpose of enterprise units is to reduce the risk through the consolidation of acreage into larger units. FCIC did not consider 10 acres or 10 percent of the acres in a unit to be sufficient to achieve the desired result. No change has been made.

Comment: A commenter stated although the 50 acre minimum requirement for an enterprise unit under the CRC plan of insurance is not a part of the enterprise unit changes in this Interim Rule (perhaps because it is not in the enterprise unit provisions of the Common Crop Insurance Policy Basic Provisions), the commenter suggested that consideration be given to including it in the ''Combo'' Policy, although some adjustments would be needed for small-acreage crops such as tobacco.

Response: The commenter is correct that the 50 acre minimum requirement is not a part of this rule. FCIC published a proposed rule with request for comments in the **Federal Register** on July 14, 2006, to combine various plans of insurance into one single policy commonly referred to as the ''Combo'' policy. Since FCIC has not yet published that Final Rule, FCIC cannot comment on that rule at this time.

Comment: A few commenters stated some clarification is needed regarding the statement ''At least two of the sections, section equivalents, FSA farm serial numbers, or units established by written agreement making up the basic or optional units * * *rdquo; The commenters noted that based on answers to questions regarding unit structure in an Arkansas county that has sections under the Rectangular Survey System but where a Special Provisions statement establishes optional units by FSN instead of by section, it was determined that insureds could qualify for an enterprise unit by having planted acreage (20 acres or 20 percent, as applicable) in at least two sections, even though the underlying optional units are by FSN rather than by section and that planted acreage in at least two FSNs also would qualify for the enterprise unit. The commenters stated they have also been advised that the reverse is also true. For example:

- In an Iowa county where optional units are established by section, insureds would be able to qualify for enterprise unit coverage if they have one basic unit with planted acreage all in one section but there are at least 20 acres or 20 percent of the insured crop acreage in two separate FSNs within that section.
- Insureds who previously established optional units by written unit agreement (or a Unit Division Option) would be able to qualify for enterprise unit with 20 acres or 20 percent of the insured crop acreage in at least two FSNs or regular sections, even though those are not the basis of the underlying optional units.

The commenters stated the rationale behind this answer was that paragraph (1)(i) of the definition of ''enterprise unit'' refers to ''One or more basic units that are LOCATED IN two or more separate sections, section equivalents, FSA farm serial numbers, or units established by written agreement'' [emphasis added], unlike (1)(ii), which requires ''Two or more optional units ESTABLISHED BY * * *'' those legal descriptions [emphasis added]. Therefore, the subdivisions of the basic units do not have to be the same as those on which the underlying optional units must be based.

The commenters believed this needs to be reconsidered and/or clarified, since it is likely that most people reading the enterprise unit provisions would have expected the 20 acre or 20 percent requirement to be based on the applicable legal description on which the underlying optional units would be based (in the Arkansas example, requiring 20 acres or 20 percent of the insured crop acreage in at least two FSNs, not two sections).

A commenter stated allowing use of other legal descriptions that are available in the county seems counterintuitive since it brings in something other than what is the basis of the underlying unit structures from optional to basic to enterprise. The commenter stated it also adds complexity to the process of determining whether a policy qualifies for an enterprise unit since the 20 acre or 20 percent requirement would have to be applied to all available legal descriptions for the crop/county, separate from (and possibly unrelated to) establishing and/or updating the APH databases for any underlying basic/optional units.

The commenter suggested that if all of these are allowed, it might help to revise paragraph (2) of the definition of ''enterprise unit'' [as in the Interim Rule] to clarify that ''At least two of the available sections, section equivalents, FSA farm serial numbers, or units established by written agreement making up the basic or optional units in paragraph (1) of this definition must each have * * *'' [or perhaps ''At least two of the sections, * * * making up the basic or optional units in paragraph (1) of this definition (as available) must each have * * *'']. The commenter stated that if it is not intended to allow use of whatever legal descriptions are available in a county, then paragraph (2) might be clarified as ''At least two of the applicable sections * * *,'' etc. The commenter believes this would seem to be the more logical application of the underlying unit structures.

Response: FCIC agrees the provision should be reconsidered and clarified. After additional consideration, FCIC agrees the basis used to qualify for an enterprise unit should be the same as that used to establish optional units where the insured acreage is located. The provisions have been revised accordingly. For example, if sections are the basis for optional units where the insured acreage is located, a producer must have at least two sections with the required minimum number of planted acres in each section to qualify for an enterprise unit. In addition, FCIC has revised the provisions to allow qualification for an enterprise unit when a producer has only one section, section equivalent, or FSA farm serial number provided there are at least 660 planted acres of the insured crop in such section, section equivalent, or FSA farm serial number. To ensure equitable treatment to all producers and in particular those that may have only one large section, section equivalent or FSA farm serial number, FCIC determined that by assuring there were at least 660 planted acres there would be more than a standard section which is generally 640 acres and it would be equivalent to assuring there are at least 20 planted acres in more than one parcel (*i.e.* equivalent to two sections).

Comment: A commenter stated regarding the enterprise unit requirement in the Common Crop Insurance Policy Basic Provisions and Revenue Assurance (RA) Basic Provisions of one or more basic units (as opposed to the Crop Revenue Coverage (CRC) Basic Provisions, which requires two or more basic units), it is unclear why an insured with one basic unit, who chooses NOT to subdivide that basic unit into two or more optional units by section or applicable legal description, should be allowed to call that single unit an enterprise unit rather than a basic unit, and get an additional enterprise unit discount when no additional risk has been given up in exchange. The commenter stated that the ''Background'' section of the Interim Rule states that, ''The new premium subsidy amounts are intended only for producers who are willing to combine optional or basic units, not for those who manipulate unit structures solely to benefit from the higher premium subsidy. * * *'' The additional 20 acre or 20 percent requirement was added '' * * * to protect program integrity * * *'' The commenter questioned if an insured who could qualify for optional units by section, and plants acres in two sections but chooses to insure all the acreage as one unit, shouldn't have a basic unit, rather than skipping over the basic unit designation and calling it an enterprise unit. The commenter stated that if the ''Combo'' Policy adopts the CRC requirement of two or more basic units, this will no longer be an issue, but the 7/14/06 Proposed Rule still required only one or more basic units.)

The commenter stated perhaps the requirement of ''one or more basic units'' (with planted acreage in at least two sections, *etc.*) is intended to allow a farmer with 100% share in the entire farming operation to qualify for enterprise unit as long as he/she has

planted acres in at least two sections, instead of reserving enterprise unit coverage for farmers with different share arrangements who might have fewer acres overall but can meet the enterprise unit requirements. But if that is the case, it would appear the purpose of the enterprise unit is to encompass acreage in different sections, etc. rather than to combine units, especially if it is allowed to count any of the available legal descriptions and not just the one on which optional units are based for the crop/county.

The commenter stated if the enterprise unit is supposed to build on top of the same unit structure pyramid of the underlying basic units that in turn could be divided into optional units by the applicable legal description for the crop/county (which is the logical sequence), then an enterprise unit should be comprised of at least two basic units. An enterprise unit that contains only one basic unit, with planted acreage in at least two sections, is no different than the actual basic unit (with the insured choosing not to have optional units); however, the insured receives the additional enterprise unit discount without giving up any more separate units.

Response: The question of reduced risk for enterprise units involves dispersion of the risk over a wider area. This is embodied in the definition of an enterprise unit which requires acreage in separate sections or other legal descriptions. However, it is possible that producers may have basic units that qualify for enterprise units but for some reason the producer has not established the enterprise unit and taken advantage of the premium discount to which they could be entitled. For example, if a producer owns all the acreage farmed in the county, the acreage qualifies as a single basic unit. If the acreage is dispersed into qualifying legal descriptions that would qualify for an enterprise unit, the risk is still reduced. To penalize the producer because the producer failed to establish smaller units would be discriminatory. If the insured acreage qualifies as an enterprise unit, the producer should be able to establish the enterprise unit. In addition, and as stated above, producers who have only one large section, section equivalent or FSA farm serial number should also be able to qualify for an enterprise unit provided there are at least 660 planted acres in such parcel. Because 660 acres is more than a standard section which is generally 640 acres, it would be equivalent to assuring there are at least 20 planted acres in more than one parcel (i.e. equivalent to two sections) and would have adequate dispersion. No change has been made in response to this comment.

Comment: A commenter stated a point that needs consideration and possible revision is when land is farmed across a section line. The current interpretation is that, although the acreage is farmed as one field, it is (according to a literal reading of the policy language) LOCATED in two separate sections and therefore would meet the requirement of having one basic unit with planted acreage in at least two separate sections to qualify for an enterprise unit. But since this field cannot qualify as two separate optional units (because it is farmed as one field), logic would dictate that it should not count as two sections for enterprise unit purposes.

Response: As stated above, a producer with one basic unit can qualify for an enterprise unit by having acreage located in two separate sections, FSA farm serial numbers, *etc.,* provided such division is the basis for optional units where the insured acreage is located. However, when determining whether acreage qualifies for an enterprise unit, it is necessary to determine if at least two of the sections, FSA farm serial numbers, etc. contains at least 20 acres or 20 percent of the planted acreage in the unit. This means that the field that is located in two sections must have at least 20 acres or 20 percent of the acreage located in each of the sections. If it is unclear where the section line is in the field and this determination cannot be made, the acreage does not qualify for an enterprise unit. No change has been made in response to this comment.

Comment: A commenter stated the policy and procedure need to clarify when/if prevented planting acres count toward the enterprise unit requirements and the calculations for the enterprise unit discount and the 20 acre or 20 percent requirement.

The commenter stated some of the current language indicates the enterprise unit discount applies only to planted acreage, but this conflicts with section 17(c) of the Common Crop Insurance Policy Basic Provisions, which states ''The premium amount for acreage that is prevented from being planted will be the same as that for timely planted acreage except as specified in section 15(f). * * *'' and the conflict was resolved in favor of the insured. The commenter hoped the language in the ''Combo'' Policy is revised one way or the other to eliminate that conflict. The commenter noted that the proposed Combo Policy included some changes that might address this, including adding a reference in section 17(c) to new section 34(f) as well, stating ''Any unit discounts contained in the actuarial documents will only apply to planted acreage in the applicable unit. A unit discount will not apply to any prevented planting acreage.'' However, the commenter is concerned that a lot could have changed since then.

The commenter stated this also has led to questions as to whether the enterprise unit discount is determined based on prevented planting as well as planted acres. Based on the policy and procedure language, FCIC has confirmed that the answer is no. Any clarification of the policy and procedure language should be sure to keep this in line accordingly. This would apply as well to the question of whether or not prevented planting acreage should count toward the 20 acre or 20 percent requirement, and the language revised as needed.

The commenter stated some feel strongly that prevented planting acreage should never get the enterprise unit discount (and presumably the same would apply regarding the 20 acre or 20 percent requirement). Prevented planting acres always involve a loss so they do not lessen the risk for loss. In fact, in some respects they increase the chance of a payable loss because of the 20 acre or 20 percent requirement. Therefore, the enterprise unit discount should apply only to planted acres (which would require some revision to the existing prevented planting provision in section 17(c), as noted above).

Response: The interim rule is clear that at least the lesser of 20 acres or 20 percent of the insured crop acreage in the enterprise unit must be planted. Therefore, prevented planting acreage will not be considered when determining whether the 20 acre or 20 percent requirement has been met. Provisions currently contained in section 34(a)(2)(vii) of the Basic Provisions specify the enterprise unit discount will only apply to acreage in the enterprise unit that has been planted. However, FCIC determined the provision conflicts with other provisions currently contained in sections 16(c) and 17(c) of the Basic Provisions, which specify the premium for late planted and prevented planting acreage will be the same as that for timely planted acreage. Therefore, FCIC issued Informational Memorandum R&D–05–028 stating the enterprise unit discount will apply to both planted and prevented planting acres. Once the 20 acre or 20 percent requirement has been met, all acreage in the enterprise unit will receive the enterprise unit discount

and premium subsidy, including both the planted and prevented planting acreage. Currently, the discount for an enterprise unit is based on the total number of acres in the enterprise unit (both planted and prevented planting acres). FCIC has determined there is no clear rational basis there should be a difference in the unit discount provided for prevented planting acreage and planted acreage. Therefore, FCIC has removed section 34(a)(2)(vii) in this rule. When finalizing the proposed ''combo'' policy, FCIC will ensure that all provisions are consistent.

List of Subjects in 7 CFR Part 457

Crop insurance, Reporting and recordkeeping requirements.

Final Rule

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation adopts as final the interim rule published at 74 FR 28154 on June 15, 2009, as final with the following changes:

PART 457—COMMON CROP INSURANCE REGULATIONS

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

Authority: 7 U.S.C. 1506(1), 1506(o).

■ 2. In § 457.8, paragraph (b) is amended as follows:

■ a. By revising the definition of ''Enterprise unit'' in section 1;

■ b. By removing ''; and'' and adding ''.'' in its place in section 34(a)(2)(vi); and

■ c. By removing section 34(a)(2)(vii).

The revised text reads as follows:

§ 457.8 The application and policy.

* * * * *

(b) * * *

1. Definitions.

* * * * *

Enterprise unit. All insurable acreage of the insured crop in the county in which you have a share on the date coverage begins for the crop year. To qualify:

(1) An enterprise unit must contain all of the insurable acreage of the same insured crop in:

(i) Two or more sections, if sections are the basis for optional units where the insured acreage is located;

(ii) Two or more section equivalents determined in accordance with FCIC issued procedures, if section equivalents are the basis for optional units where the insured acreage is located or are applicable to the insured acreage;

(iii) Two or more FSA farm serial numbers, if FSA farm serial numbers are the basis for optional units where the insured acreage is located;

(iv) Any combination of two or more sections, section equivalents, or FSA farm serial numbers, if more than one of these are the basis for optional units where the acreage is located or are applicable to the insured acreage (*e.g.,* if a portion of your acreage is located where sections are the basis for optional units and another portion of your acreage is located where FSA farm serial numbers are the basis for optional units, you may qualify for an enterprise unit based on a combination of these two parcels);

(v) One section, section equivalent, or FSA farm serial number that contains at least 660 planted acres of the insured crop. You may qualify under this paragraph based only on the type of parcel that is utilized to establish optional units where your insured acreage is located (*e.g.,* if having two or more sections is the basis for optional units where the insured acreage is located, you may qualify for an enterprise unit if you have at least 660 planted acres of the insured crop in one section); or

(vi) Two or more units established by written agreement; and

(2) At least two of the sections, section equivalents, FSA farm serial numbers, or units established by written agreement in paragraphs (1)(i), (ii), (iii), (iv), or (vi) of this definition must each have planted acreage that constitutes at least the lesser of 20 acres or 20 percent of the insured crop acreage in the enterprise unit. If there is planted acreage in more than two sections, section equivalents, FSA farm serial numbers or units established by written agreement in paragraphs (1)(i), (ii), (iii), (iv), or (vi), these can be aggregated to form at least two parcels to meet this requirement. For example, if sections are the basis for optional units where the insured acreage is located and you have 80 planted acres in section one, 10 planted acres in section two, and 10 planted acres in section three, you may aggregate sections two and three to meet this requirement.

* * * * *

Signed in Washington, DC, on November 16, 2009.

William J. Murphy,

Manager, Federal Crop Insurance Corporation.

[FR Doc. E9–27987 Filed 11–20–09; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1070; Directorate Identifier 2009–NM–180–AD; Amendment 39–16089; AD 2008–06–20 R1]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070, 0100, 1000, 2000, 3000, and 4000 Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above that would revise an existing AD. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Subsequent to accidents involving Fuel Tank System explosions in flight * * * and on ground, * * * Special Federal Aviation Regulation 88 (SFAR88) * * * required a safety review of the aircraft Fuel Tank System * * *.

* * * * *

Fuel Airworthiness Limitations are items arising from a systems safety analysis that have been shown to have failure mode(s) associated with an 'unsafe condition' * * *. These are identified in Failure Conditions for which an unacceptable probability of ignition risk could exist if specific tasks and/or practices are not performed in accordance with the manufacturers' requirements.

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective December 8, 2009.

On April 23, 2008 (73 FR 14661, March 19, 2008), the Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD.

We must receive comments on this AD by January 7, 2010.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

• *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands; telephone +31 (0)252–627–350; fax +31 (0)252–627–211; e-mail *technicalservices.fokkerservices@stork.com;* Internet *http://www.myfokkerfleet.com.*

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

On March 9, 2008, we issued AD 2008–06–20, Amendment 39–15432 (73 FR 14661, March 19, 2008). That AD applied to certain Fokker Model F.28 Mark 0070, 0100, 1000, 2000, 3000, and 4000 airplanes. That AD required revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness for certain airplanes, and the FAA-approved maintenance program for certain other airplanes, to incorporate new limitations for fuel tank systems.

Critical design configuration control limitations (CDCCLs) are limitation requirements to preserve a critical ignition source prevention feature of the fuel tank system design that is necessary to prevent the occurrence of an unsafe condition. The purpose of a CDCCL is to provide instruction to retain the critical ignition source prevention feature during configuration change that may be caused by alterations, repairs, or maintenance actions. A CDCCL is not a periodic inspection.

Since we issued that AD, we have determined that it is necessary to clarify the AD's intended effect on spare and on-airplane fuel tank system components, regarding the use of maintenance manuals and instructions for continued airworthiness.

Section 91.403(c) of the Federal Aviation Regulations (14 CFR 91.403(c)) specifies the following:

> No person may operate an aircraft for which a manufacturer's maintenance manual or instructions for continued airworthiness has been issued that contains an airworthiness limitation section unless the mandatory * * * procedures * * * have been complied with.

Some operators have questioned whether existing components affected by the new CDCCLs must be reworked. We did not intend for the AD to retroactively require rework of components that had been maintained using acceptable methods before the effective date of the AD. Owners and operators of the affected airplanes therefore are not required to rework affected components identified as airworthy or installed on the affected airplanes before the required revisions of the ALS for certain airplanes, and the FAA-approved maintenance program for certain other airplanes, to incorporate new limitations for fuel tank systems. But once the CDCCLs are incorporated into the ALS for certain airplanes, and the FAA-approved maintenance program for certain other airplanes, to incorporate new limitations for fuel tank systems, future maintenance actions on components must be done in accordance with those CDCCLs.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. This new AD retains the requirements of the existing AD, and adds a new note to clarify the intended effect of the AD on spare and on-airplane fuel tank system components. We have renumbered subsequent notes accordingly.

Explanation of Additional Change to AD

AD 2008–06–20 allowed the use of an alternative inspection, inspection interval, or CDCCL if it is part of a later revision of the of Fokker 70/100 Fuel Airworthiness Limitation Items (ALI) and CDCCL Report SE–672, Issue 2, dated December 1, 2006; or Fokker Service Bulletin SBF28–28–050, Revision 1, dated January 8, 2008. That provision has been removed from this AD. Allowing the use of ''a later revision'' of specific service document violates Office of the Federal Register policies for approving materials that are incorporated by reference. Affected operators, however, may request approval to use a later revision of the referenced service documents as an alternative method of compliance, under the provisions of paragraph (g)(1) of this AD.

Differences Between the AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

This revision imposes no additional economic burden. The current costs for this AD are repeated for the convenience of affected operators, as follows:

We estimate that this AD will affect 18 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $1,440, or $80 per product.

FAA's Justification and Determination of the Effective Date

This revision merely clarifies the intended effect on spare and on-airplane fuel tank system components, and makes no substantive change to the AD's requirements. For this reason, it is found that notice and opportunity for prior public comment for this action are unnecessary, and good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–1070; Directorate Identifier 2009–NM–180–AD'' at the beginning of your comments. We specifically invite comments on the

overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing amendment 39–15432 (73 FR 14661, March 19, 2008) and adding the following new AD:

2008–06–20 R1 Fokker Services B.V.: Amendment 39–16089. Docket No. FAA–2009–1070; Directorate Identifier 2009–NM–180–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 8, 2009.

Affected ADs

(b) This AD revises AD 2008–06–20, Amendment 39–15432.

Applicability

(c) This AD applies to Fokker Model F.28 Mark 0070 and 0100 airplanes, all serial numbers, certificated in any category; and Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes, serial numbers 11003 through 11241 inclusive, and 11991 and 11992, certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (g)(1) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Subject

(d) Transport Association (ATA) of America Code 28: Fuel.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Subsequent to accidents involving Fuel Tank System explosions in flight * * * and on ground, the FAA published Special Federal Aviation Regulation 88 (SFAR 88) in June 2001. SFAR 88 required a safety review of the aircraft Fuel Tank System to determine that the design meets the requirements of FAR (Federal Aviation Regulation) § 25.901 and § 25.981(a) and (b).

A similar regulation has been recommended by the JAA (Joint Aviation Authorities) to the European National Aviation Authorities in JAA letter 04/00/02/07/03–L024 of 3 February 2003. The review was requested to be mandated by NAA's (National Aviation Authorities) using JAR (Joint Aviation Regulation) § 25.901(c), § 25.1309.

In August 2005 EASA published a policy statement on the process for developing instructions for maintenance and inspection of Fuel Tank System ignition source prevention (EASA D 2005/CPRO, *www.easa.eu.int/home/cert_policy_statements_en.html*) that also included the EASA expectations with regard to compliance times of the corrective actions on the unsafe and the not unsafe part of the harmonised design review results. On a global scale the TC (type certificate) holders committed themselves to the EASA published compliance dates (see EASA policy statement). The EASA policy statement has been revised in March 2006: the date of 31–12–2005 for the unsafe related actions has now been set at 01–07–2006.

Fuel Airworthiness Limitations are items arising from a systems safety analysis that have been shown to have failure mode(s) associated with an 'unsafe condition' as defined in FAA's memo 2003–112–15 'SFAR 88—Mandatory Action Decision Criteria'. These are identified in Failure Conditions for which an unacceptable probability of ignition risk could exist if specific tasks and/or practices are not performed in accordance with the manufacturers' requirements.

This EASA Airworthiness Directive mandates the Fuel System Airworthiness Limitations, comprising maintenance/inspection tasks and Critical Design Configuration Control Limitations (CDCCL) for the type of aircraft, that resulted from the design reviews and the JAA recommendation and EASA policy statement mentioned above.

The corrective action includes revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness for certain airplanes, and the FAA-approved maintenance program for certain other airplanes, to incorporate new limitations for fuel tank systems.

Restatement of Requirements of AD 2008–06–20, With Change to Compliance Method

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Within 3 months after April 23, 2008 (the effective date of AD 2008–06–20), do the action in paragraph (f)(1)(i) or (f)(1)(ii) of this AD, as applicable. For all identified tasks, the initial compliance time starts from April 23, 2008. The repetitive inspections must be accomplished thereafter at the intervals not to exceed those specified in Fokker 70/100 Fuel Airworthiness Limitation Items (ALI) and Critical Design Configuration Control Limitations (CDCCL) Report SE–672, Issue 2, dated December 1, 2006; or Fokker Service Bulletin SBF28–28–050, Revision 1, dated January 8, 2008; as applicable; except as provided by paragraphs (f)(3), (f)(4), and (g)(1) of this AD.

(i) For Model F.28 Mark 0070 and 0100 airplanes: Revise the ALS of the Instructions

for Continued Airworthiness to incorporate the inspections, thresholds, and intervals specified in Fokker 70/100 Fuel Airworthiness Limitation Items (ALI) and Critical Design Configuration Control Limitations (CDCCL) Report SE–672, Issue 2, dated December 1, 2006.

(ii) For Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes: Incorporate into the FAA-approved maintenance inspection program the inspections, thresholds, and intervals specified in Fokker Service Bulletin SBF28–28–050, Revision 1, dated January 8, 2008.

(2) Within 3 months after April 23, 2008, do the action in paragraph (f)(2)(i) or (f)(2)(ii) of this AD, as applicable.

(i) For Model F.28 Mark 0070 and 0100 airplanes: Revise the ALS of the Instructions for Continued Airworthiness to incorporate the CDCCLs as defined in Fokker 70/100 Fuel Airworthiness Limitation Items (ALI) and Critical Design Configuration Control Limitations (CDCCL) Report SE–672, Issue 2, dated December 1, 2006, except for the CDCCL component titled ''Level Control Pilot Valve Solenoid, jiffy junction.''

(ii) For Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes: Incorporate into the FAA-approved maintenance inspection program the CDCCLs as defined in Fokker Service Bulletin SBF28–28–050, Revision 1, dated January 8, 2008.

(3) Where Fokker 70/100 Fuel Airworthiness Limitation Items (ALI) and Critical Design Configuration Control Limitations (CDCCL) Report SE–672, Issue 2, dated December 1, 2006; and Fokker Service Bulletin SBF28–28–050, Revision 1, dated January 8, 2008; allow for exceptional short-term extensions, an exception is acceptable to the FAA if it is approved by the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

(4) After accomplishing the actions specified in paragraphs (f)(1) and (f)(2) of this AD, no alternative inspection, inspection interval, or CDCCL may be used, unless the inspection, interval, or CDCCL is approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (g)(1) of this AD.

(5) Actions done before the effective date of this AD in accordance with Fokker 70/100 Fuel Airworthiness Limitation Items (ALI) and Critical Design Configuration Control Limitations (CDCCL) Report SE–672, Issue 1, dated January 31, 2006; or Fokker Service Bulletin F28/28–050, dated June 30, 2006; are acceptable for compliance with the corresponding requirements of this AD.

Note 2: For Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes, after an operator complies with the requirements of paragraphs (f)(1)(ii) and (f)(2)(ii) of this AD, those paragraphs do not require that operators subsequently record accomplishment of those requirements each time an applicable action is accomplished according to that operator's FAA-approved maintenance inspection program.

New Information

Explanation of CDCCL Requirements

Note 3: Notwithstanding any other maintenance or operational requirements, components that have been identified as airworthy or installed on the affected airplanes before the revision of the ALS for certain airplanes, and the FAA-approved maintenance program for certain other airplanes, as required by paragraph (f) of this AD, do not need to be reworked in accordance with the CDCCLs. However, once the ALS for certain airplanes, and the FAA-approved maintenance program for certain other airplanes has been revised, future maintenance actions on these components must be done in accordance with the CDCCLs.

FAA AD Differences

Note 4: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to ensure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2006–0206, dated June 11, 2006; EASA Airworthiness Directive 2006–0208, dated July 12, 2006; Fokker 70/100 Fuel Airworthiness Limitation Items (ALI) and Critical Design Configuration Control Limitations (CDCCL) Report SE–672, Issue 2, dated December 1, 2006; and Fokker Service Bulletin SBF28–28–050, Revision 1, dated January 8, 2008; for related information.

Material Incorporated by Reference

(i) You must use Fokker 70/100 Fuel Airworthiness Limitation Items (ALI) and Critical Design Configuration Control Limitations (CDCCL) Report SE–672, Issue 2, dated December 1, 2006; and Fokker Service Bulletin SBF28–28–050, Revision 1, dated January 8, 2008; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register previously approved the incorporation by reference of Fokker 70/100 Fuel Airworthiness Limitation Items (ALI) and Critical Design Configuration Control Limitations (CDCCL) Report SE–672, Issue 2, dated December 1, 2006; and Fokker Service Bulletin SBF28–28–050, Revision 1, dated January 8, 2008; on April 23, 2008 (73 FR 14661, March 19, 2008).

(2) For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands; telephone +31 (0)252–627–350; fax +31 (0)252–627–211; e-mail *technicalservices.fokkerservices@stork.com;* Internet *http://www.myfokkerfleet.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on November 6, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–27962 Filed 11–20–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0821; Directorate Identifier 2008–NE–20–AD; Amendment 39–16094; AD 2009–24–06]

RIN 2120–AA64

Airworthiness Directives; General Electric Company (GE) CF34–8E Series Turbofan Engines

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for GE CF34–8E series turbofan engines with certain part number (P/N) full authority digital electronic controls (FADECs) installed. That AD currently requires removing certain P/N FADECs. This superseding AD requires removal of 12 more P/Ns of FADECs. This AD results from 20 additional reports received of loss of thrust control events since AD 2008–16–01 was issued. We are issuing this AD to prevent loss of thrust control of the airplane.

DATES: This AD becomes effective December 28, 2009.

ADDRESSES: The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *alan.strom@faa.gov;* telephone (781) 238–7143; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 by superseding AD 2008–16–01, Amendment 39–15619 (73 FR 44628, July 31, 2008), with a proposed AD. The proposed AD applies to GE CF34–8E series turbofan engines with FADECs, P/Ns 4120T00P31, 4120T00P32, 4120T00P41, 4120T00P42, 4120T00P43, 4120T00P44, 4120T00P47, 4120T00P48, 111E9320G32, 111E9320G33, 111E9320G42, 111E9320G43, 111E9320G44, 111E9320G45, 111E9320G48, or 111E9320G49 installed. We published the proposed AD in the **Federal Register** on August 24, 2009 (74 FR 42610). That action proposed to require removal of 12 more P/Ns of FADECs than what AD 2008–16–01 required to be removed.

Examining the AD Docket

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

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comment received. The commenter supports the proposal.

Conclusion

We have carefully reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD will affect 273 engines installed on airplanes of U.S. registry. We also estimate that it will take about one work-hour per engine to perform the actions, and that the average labor rate is $80 per work-hour, with a parts cost per engine of $55. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $36,855.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–15619 (73 FR 44628, July 31, 2008), and by adding a new airworthiness directive, Amendment 39–16094, to read as follows:

2009–24–06 General Electric Company: Amendment 39–16094. Docket No. FAA–2008–0821; Directorate Identifier 2008–NE–20–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 28, 2009.

Affected ADs

(b) This AD supersedes AD 2008–16–01, Amendment 39–15619.

Applicability

(c) This AD applies to General Electric Company (GE) CF34–8E series turbofan engines with full authority digital electronic controls (FADECs), part numbers (P/Ns) 4120T00P31, 4120T00P32, 4120T00P41, 4120T00P42, 4120T00P43, 4120T00P44, 4120T00P47, 4120T00P48, 111E9320G32, 111E9320G33, 111E9320G42, 111E9320G43, 111E9320G44, 111E9320G45, 111E9320G48, or 111E9320G49 installed. These engines are installed on, but not limited to, Empresa Brasileira de Aeronautica S.A. (EMBRAER) ERJ 170 series airplanes.

Unsafe Condition

(d) This AD results from 20 additional reports received of loss of thrust control events since AD 2008–16–01 was issued. We are issuing this AD to prevent loss of thrust control of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within

the compliance times specified unless the actions have already been done.

Removal of CF34–8E FADECs

(f) Within 660 flight hours time-in-service (TIS) after the effective date of this AD, remove FADEC P/Ns 4120T00P31, 4120T00P32, 4120T00P41, 4120T00P42, 4120T00P43, 4120T00P44, 4120T00P47, 4120T00P48, 111E9320G32, 111E9320G33, 111E9320G42, 111E9320G43, 111E9320G44, 111E9320G45, 111E9320G48, and 111E9320G49.

Installation Prohibition

(g) After 660 flight hours TIS after the effective date of this AD, do not install any FADEC P/N 4120T00P31, 4120T00P32, 4120T00P41, 4120T00P42, 4120T00P43, 4120T00P44, 4120T00P47, 4120T00P48, 111E9320G32, 111E9320G33, 111E9320G42, 111E9320G43, 111E9320G44, 111E9320G45, 111E9320G48, or 111E9320G49 onto any GE CF34–8E series engine.

Alternative Methods of Compliance

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

Related Information

(i) Contact Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *alan.strom@faa.gov;* telephone (781) 238–7143; fax (781) 238–7199, for more information about this AD.

(j) Guidance on removal and replacement with an FAA-approved FADEC software version can be found in GE Alert Service Bulletin No. CF34–8E–AL S/B 73–A0020, dated November 12, 2008. For a copy of this service information, contact General Electric Company, GE-Aviation, Room 285, 1 Newmann Way, Cincinnati, OH 45215, telephone (513) 552–3272; fax (513) 552–3329; e-mail: *geae.aoc@ge.com.*

Material Incorporated by Reference

(k) None.

Issued in Burlington, Massachusetts, on November 16, 2009.

Peter A. White,

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

[FR Doc. E9–27985 Filed 11–20–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0246; Directorate Identifier 2009–NE–04–AD; Amendment 39–16091; AD 2009–24–04]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Corporation AE 3007A1/1, AE 3007A1/3, AE 3007A1, AE 3007A1E, AE 3007A1P, AE 3007A3, AE 3007C, and AE 3007C1 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Rolls-Royce Corporation (RRC) AE 3007A1/1, AE 3007A1/3, AE 3007A1, AE 3007A1E, AE 3007A1P, AE 3007A3, AE 3007C, and AE 3007C1 turbofan engines with a fan spinner part number (P/N) 23070964 or P/N 23078783, installed. This AD requires replacement of the fan spinner. This AD results from a report of a fan spinner releasing from an AE 3007A turbofan engine, during flight. We are issuing this AD to prevent the fan spinner from releasing, which could result in injury, damage to the engine, and damage to the airplane.

DATES: This AD becomes effective December 28, 2009.

ADDRESSES: The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Michael Downs, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; e-mail: *michael.downs@faa.gov;* telephone: (847) 294–7870; fax: (847) 294–7834.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to RRC AE 3007A1/1, AE 3007A1/3, AE 3007A1, AE 3007A1E, AE 3007A1P, AE 3007A3, AE 3007C, and AE 3007C1 turbofan engines with a fan spinner P/N 23070964 or P/N 23078783, installed. We published the proposed AD in the **Federal Register** on June 24, 2009 (74 FR 30017). That action proposed to require replacement of the fan spinner.

Examining the AD Docket

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

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Request To Change the Compliance Time

One commenter, Rolls-Royce Corporation, requests that we change the compliance time of no later than 1,500 additional cycles-in-service, to no later than 4,000 additional cycles-in-service. The commenter bases this change on their updated risk assessment of the affected fan spinners.

We have reviewed Rolls-Royce Corporation's updated risk assessment and agree with the change in compliance time. We changed the AD to state the compliance time to be no later than 4,000 additional cycles-in-service.

Request To Specify Installation of an Approved Fan Spinner

One commenter, EMBRAER, requests that we specify that an approved fan spinner must be installed after the affected fan spinner is removed. The commenter states that the proposed AD does not instruct to install a fan spinner, and operators might interpret the AD as allowing engines to operate without a fan spinner.

We agree. We added wording to paragraphs (f) and (g) that states to install an approved P/N fan spinner.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

We estimate that this AD will affect 1,600 RRC AE 3007A series and AE 3007C series turbofan engines installed

on airplanes of U.S. registry. We also estimate that it will take about one work-hour per engine to perform the actions, and that the average labor rate is $80 per work-hour. Required parts will cost about $12,943 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $20,836,800.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–24–04 Rolls-Royce Corporation (formerly Allison Engine Company): Amendment 39–16091. Docket No. FAA–2009–0246; Directorate Identifier 2009–NE–04–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 28, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce Corporation (RRC) AE 3007A1/1, AE 3007A1/3, AE 3007A1, AE 3007A1E, AE 3007A1P, AE 3007A3, AE 3007C, and AE 3007C1 turbofan engines with a fan spinner part number (P/N) 23070964 or P/N 23078783, installed. These engines are installed on, but not limited to, Embraer EMB–135, EMB–145, and Cessna Citation X airplanes.

Unsafe Condition

(d) This AD results from a report of a fan spinner releasing from an AE 3007A turbofan engine during flight. We are issuing this AD to prevent the fan spinner from releasing, which could result in injury, damage to the engine, and damage to the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

Replacement of the Fan Spinner

(f) For RRC AE 3007A1/1, AE 3007A1/3, AE 3007A1, AE 3007A1E, AE 3007A1P, and AE 3007A3 turbofan engines, remove fan spinner P/N 23070964 or P/N 23078783 at the next shop visit, but no later than 4,000 additional cycles-in-service (CIS) after the effective date of this AD, and install an approved P/N fan spinner.

(g) For RRC AE 3007C and AE 3007C1 turbofan engines, remove fan spinner P/N 23070964 or P/N 23078783 at the next shop visit, but no later than 4,000 additional CIS after the effective date of this AD, and install an approved P/N fan spinner.

Fan Spinner Installation Prohibition

(h) After the effective date of this AD, do not install any fan spinner P/N 23070964 or P/N 23078783 on any Rolls Royce Corporation engine.

Definition

(i) For the purpose of this AD, a shop visit is induction of the engine into the engine maintenance shop for any cause.

Alternative Methods of Compliance

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

Related Information

(k) Contact Michael Downs, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; e-mail: *michael.downs@faa.gov;* telephone: (847) 294–7870; fax: (847) 294–7834, for more information about this AD.

(l) Rolls-Royce Corporation Service Bulletin (SB) No. AE 3007A–72–361, dated June 26, 2008, and SB No. AE 3007C–72–285, dated June 26, 2008, pertain to the subject of this AD. Contact Rolls-Royce Corporation, P.O. Box 420, Indianapolis, IN 46206; telephone (317) 230–3774; fax (317) 230–8084; e-mail: *indy.pubs.services@rolls-royce.com,* for a copy of this service information.

Material Incorporated by Reference

(m) None.

Issued in Burlington, Massachusetts, on November 13, 2009.

Peter A. White,

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

[FR Doc. E9–27986 Filed 11–20–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30697 Amdt. No 3348]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new

obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective November 23, 2009. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 23, 2009.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (*Mail Address:* P.O. Box 25082, Oklahoma City, OK 73125) *Telephone:* (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the, associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

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

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective December 17, 2009

St George, AK, St George, Takeoff Minimums and Obstacle DP, Amdt 1

Wrangell, AK, Wrangell, VOR/DME–B, Amdt 1, CANCELLED

Pell City, AL, St. Clair County, RNAV (GPS) RWY 3, Amdt 2

Pell City, AL, St. Clair County, RNAV (GPS) RWY 21, Amdt 2
Pell City, AL, St. Clair County, Takeoff Minimums and Obstacle DP, Amdt 2
Pell City, AL, St. Clair County, VOR–A, Amdt 9
Nogales, AZ, Nogales Intl, Takeoff Minimums and Obstacle DP, Amdt 2
Chico, CA, Chico Muni, ILS OR LOC/DME RWY 13L, Amdt 12
Wilmington, DE, New Castle, ILS OR LOC RWY 1, Amdt 22
Avon Park, FL, Avon Park Executive, Takeoff Minimums and Obstacle DP, Amdt 1
Marco Island, FL, Marco Island, GPS RWY 17, Orig-A, CANCELLED
Marco Island, FL, Marco Island, GPS RWY 35, Orig-A, CANCELLED
Marco Island, FL, Marco Island, RNAV (GPS) RWY 17, Orig
Marco Island, FL, Marco Island, RNAV (GPS) RWY 35, Orig
Marco Island, FL, Marco Island, Takeoff Minimums and Obstacle DP, Amdt 2
Miami, FL, Kendall-Tamiami Executive, RNAV (GPS) RWY 9L, Orig-A
Naples, FL, Naples Muni, Takeoff Minimums and Obstacle DP, Amdt 2
Sebring, FL, Sebring Rgnl, RNAV (RNP) RWY 18, Orig
West Palm Beach, FL, Palm Beach Intl, ILS OR LOC RWY 10L, Amdt 25
West Palm Beach, FL, Palm Beach Intl, ILS OR LOC RWY 28R, Amdt 3
West Palm Beach, FL, Palm Beach Intl, RNAV (GPS) Y RWY 10L, Amdt 2
West Palm Beach, FL, Palm Beach Intl, RNAV (GPS) Y RWY 14, Amdt 2
West Palm Beach, FL, Palm Beach Intl, RNAV (GPS) Y RWY 28R, Amdt 2
West Palm Beach, FL, Palm Beach Intl, RNAV (GPS) Y RWY 32, Amdt 2
Thomaston, GA, Thomaston-Upson County, RNAV (GPS) RWY 30, Orig
Chariton, IA, Chariton Muni, GPS RWY 10, Orig-A, CANCELLED
Chariton, IA, Chariton Muni, RNAV (GPS) RWY 10, Orig
Chariton, IA, Chariton Muni, RNAV (GPS) RWY 17, Orig
Chariton, IA, Chariton Muni, Takeoff Minimums and Obstacle DP, Orig
Idaho Falls, ID, Idaho Falls Rgnl, Takeoff Minimums and Obstacle DP, Amdt 4
Rochelle, IL, Rochelle Muni-Koritz Field, RNAV (GPS) RWY 25, Orig-A
Rochelle, IL, Rochelle Muni-Koritz Field, VOR–A, Amdt 8A
Huntingburg, IN, Huntingburg, GPS RWY 9, Orig, CANCELLED
Huntingburg, IN, Huntingburg, GPS RWY 27, Orig, CANCELLED
Huntingburg, IN, Huntingburg, RNAV (GPS) RWY 9, Orig
Huntingburg, IN, Huntingburg, RNAV (GPS) RWY 27, Orig
Lewisport, KY, Hancock Co-Ron Lewis Field, RNAV (GPS) RWY 5, Orig
Lewisport, KY, Hancock Co-Ron Lewis Field, RNAV (GPS) RWY 23, Orig
Lewisport, KY, Hancock Co-Ron Lewis Field, Takeoff Minimums and Obstacle DP, Orig
Bogalusa, LA, George R Carr Memorial Air Field, LOC RWY 18, Amdt 2
Bogalusa, LA, George R Carr Memorial Air Field, Takeoff Minimum and Obstacle DP, Amdt 2
Winnfield, LA, David G. Joyce, NDB OR GPS RWY 8, Amdt 2B, CANCELLED
Mankato, MN, Mankato Rgnl, GPS RWY 22, Orig, CANCELLED
Mankato, MN, Mankato Rgnl, RNAV (GPS) RWY 4, Orig
Mankato, MN, Mankato Rgnl, RNAV (GPS) RWY 22, Orig
St Louis, MO, Lambert-St Louis Intl, ILS OR LOC RWY 12R, Amdt 21E
Okolona, MS, Okolona Muni-Richard Stovall Field, RNAV (GPS) RWY 18, Orig
Okolona, MS, Okolona Muni-Richard Stovall Field, RNAV (GPS) RWY 36, Orig
Okolona, MS, Okolona Muni-Richard Stovall Field, VOR/DME OR GPS RWY 18, Amdt 5, CANCELLED
Butte, MT, Bert Mooney, ILS Y RWY 15, Amdt 7
Charlotte, NC, Charlotte/Douglas Intl, Takeoff Minimums and Obstacle DP, Amdt 5
Neligh, NE, Antelope County, RNAV (GPS) RWY 1, Orig
Neligh, NE, Antelope County, RNAV (GPS) RWY 19, Orig
Neligh, NE, Antelope County, Takeoff Minimums and Obstacle DP, Orig
Sidney, NE, Sidney Muni/Lloyd W Carr Field, VOR RWY 31, Amdt 8
Rochester, NH, Skyhaven, GPS RWY 33, Orig-B, CANCELLED
Rochester, NH, Skyhaven, NDB–B, Amdt 2
Rochester, NH, Skyhaven, RNAV (GPS) RWY 33, Orig
Rochester, NH, Skyhaven, Takeoff Minimums and Obstacle DP, Amdt 6
Rochester, NH, Skyhaven, VOR/DME–A, Amdt 2
Teterboro, NJ, Teterboro, RNAV (RNP) RWY 19, Orig-A
Teterboro, NJ, Teterboro, RNAV (RNP) Z RWY 6, Orig-A
Jamestown, NY, Chautauqua County/ Jamestown, ILS OR LOC RWY 25, Amdt 7
Jamestown, NY, Chautauqua County/ Jamestown, RNAV (GPS) RWY 7, Amdt 1
Jamestown, NY, Chautauqua County/ Jamestown, RNAV (GPS) RWY 25, Amdt 1
Jamestown, NY, Chautauqua County/ Jamestown, RNAV (GPS) Y RWY 25, Orig, CANCELLED
Massena, NY, Massena Intl-Richards Field, Takeoff Minimums and Obstacle DP, Amdt 8
New York, NY, John F. Kennedy Intl, RNAV (RNP) Z RWY 31R, Orig-A
Springfield, OH, Springfield-Beckley Muni, ILS OR LOC RWY 24, Amdt 2
Springfield, OH, Springfield-Beckley Muni, NDB RWY 24, Amdt 17
Springfield, OH, Springfield-Beckley Muni, RNAV (GPS) RWY 6, Orig
Springfield, OH, Springfield-Beckley Muni, RNAV (GPS) RWY 24, Orig
Springfield, OH, Springfield-Beckley Muni, VOR RWY 6, Amdt 11
Kutztown, PA, Kutztown, RNAV (GPS)-A, Orig, CANCELLED
Kutztown, PA, Kutztown, Takeoff Minimums and Obstacle DP, Orig, CANCELLED
Kutztown, PA, Kutztown, VOR–B, Amdt 1B, CANCELLED
Saluda, SC, Saluda County, Takeoff Minimums and Obstacle DP, Orig
Columbia/Mt Pleasant, TN, Maury County, GPS RWY 24, Orig, CANCELLED
Columbia/Mt Pleasant, TN, Maury County, RNAV (GPS) RWY 6, Orig
Columbia/Mt Pleasant, TN, Maury County, RNAV (GPS) RWY 24, Orig
Columbia/Mt Pleasant, TN, Maury County, VOR/DME–A, Amdt 4
Beaumont/Port Arthur, TX, Southeast Texas Rgnl, ILS OR LOC RWY 12, Amdt 23
Beaumont/Port Arthur, TX, Southeast Texas Rgnl, LOC BC RWY 30, Amdt 20
Beaumont/Port Arthur, TX, Southwest Texas Rgnl, Takeoff Minimums and Obstacle DP, Orig
Bridgeport, TX, Bridgeport Muni, Takeoff Minimums and Obstacle DP, Amdt 2
Burnet, TX, Burnet Muni/Kate Craddock Field, GPS RWY 1, Amdt 1, CANCELLED
Burnet, TX, Burnet Muni/Kate Craddock Field, GPS RWY 19, Orig, CANCELLED
Burnet, TX, Burnet Muni/Kate Craddock Field, NDB RWY 1, Amdt 6
Burnet, TX, Burnet Muni/Kate Craddock Field, RNAV (GPS) RWY 1, Orig
Burnet, TX, Burnet Muni/Kate Craddock Field, RNAV (GPS) RWY 19, Orig
Burnet, TX, Burnet Muni/Kate Craddock Field, Takeoff Minimums and Obstacle DP, Amdt 1
Dallas, TX, Collins County Rgnl at McKinney, ILS OR LOC RWY 17, Amdt 3
Dallas, TX, Collins County Rgnl at McKinney, RNAV (GPS) RWY 17, Amdt 1
Dallas, TX, Collins County Rgnl at McKinney, RNAV (GPS) RWY 35, Amdt 1
Dallas, TX, Collins County Rgnl at McKinney, Takeoff Minimums and Obstacle DP, Amdt 1
Killeen, TX, Skylark Field, NDB OR GPS RWY 1, Amdt 5C, CANCELLED
Tooele, UT, Bolinder Field-Tooele Valley, RNAV (GPS) RWY 17, Amdt 2A
Tooele, UT, Bolinder Field-Tooele Valley, RNAV (GPS) Y RWY 17, Orig, CANCELLED
Eastsound, WA, Orcas Island, Takeoff Minimums and Obstacle DP, Amdt 1
Milwaukee, WI, General Mitchell Intl, ILS OR LOC RWY 1L, ILS RWY 1L (CAT II), ILS RWY 1L (CAT III), Amdt 9
Milwaukee, WI, General Mitchell Intl, RNAV (GPS) RWY 1L, Amdt 1
Minocqua-Woodruff, WI, Lakeland/Noble F. Lee Memorial Field, LOC RWY 36, Amdt 1
Minocqua-Woodruff, WI, Lakeland/Noble F. Lee Memorial Field, NDB RWY 28, Amdt 12
Minocqua-Woodruff, WI, Lakeland/Noble F. Lee Memorial Field, NDB OR GPS RWY 18, Amdt 12A, CANCELLED
Minocqua-Woodruff, WI, Lakeland/Noble F. Lee Memorial Field, NDB OR GPS RWY 36, Amdt 9A, CANCELLED
Minocqua-Woodruff, WI, Lakeland/Noble F. Lee Memorial Field, RNAV (GPS) RWY 18, Orig
Minocqua-Woodruff, WI, Lakeland/Noble F. Lee Memorial Field, RNAV (GPS) RWY 28, Orig
Minocqua-Woodruff, WI, Lakeland/Noble F. Lee Memorial Field, RNAV (GPS) RWY 36, Orig
Minocqua-Woodruff, WI, Lakeland/Noble F. Lee Memorial Field, Takeoff Minimums and Obstacle DP, Orig

Sheboygan, WI, Sheboygan County Memorial, ILS OR LOC/DME RWY 21, Amdt 3
Sheboygan, WI, Sheboygan County Memorial, RNAV (GPS) RWY 3, Amdt 2
Sheboygan, WI, Sheboygan County Memorial, RNAV (GPS) RWY 21, Amdt 2
Sheboygan, WI, Sheboygan County Memorial, VOR RWY 3, Amdt 8
Sheboygan, WI, Sheboygan County Memorial, VOR RWY 21, Amdt 8

[FR Doc. E9–27898 Filed 11–20–09; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30698; Amdt. No. 3349]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective November 23, 2009. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 23, 2009.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs are available online free of charge. Visit *http://nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420)Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on November 13, 2009.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

Effective Upon Publication

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
17–Dec–09	CT	Danielson	Danielson	9/3449	10/9/09	VOR–A, AMDT 6C.
17–Dec–09	IL	Kewanee	Kewanee Muni	9/5179	10/16/09	Takeoff Minimums and Obstacle DP, ORIG.
17–Dec–09	RI	North Kingstown	Quonset State	9/5393	10/21/09	ILS OR LOC RWY 16, AMDT 10.
17–Dec–09	VA	Clarksville	Marks Muni	9/6484	10/23/09	VOR/DME A, ORIG.
17–Dec–09	KY	Mount Sterling	Sterling-Montgomery County.	9/6872	10/23/09	NDB OR GPS RWY 3, AMDT 1C.
17–Dec–09	ND	Devils Lake	Devils Lake RgNL	9/7299	10/28/09	Takeoff Minimums and Obstacle DP, AMDT 1.
17–Dec–09	ME	Auburn/Lewiston	Auburn/Lewiston Muni	9/7617	10/30/09	ILS OR LOC RWY 4, AMDT 10A.
17–Dec–09	ME	Auburn/Lewiston	Auburn/Lewiston Muni	9/7618	10/30/09	RNAV (GPS) RWY 4, ORIG.
17–Dec–09	ME	Auburn/Lewiston	Auburn/Lewiston Muni	9/7620	10/30/09	RNAV (GPS) RWY 22, ORIG.
17–Dec–09	NC	Greenville	Pitt-Greenville	9/8037	10/30/09	RNAV (GPS) RWY 26, AMDT 2.
17–Dec–09	NC	Greenville	Pitt-Greenville	9/8038	10/30/09	RNAV (GPS) RWY 20, AMDT 2.
17–Dec–09	NC	Greenville	Pitt-Greenville	9/8040	10/30/09	RNAV (GPS) RWY 8, AMDT 2.

[FR Doc. E9–27900 Filed 11–20–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

[Docket No. FDA–2009–N–0665]

New Animal Drugs for Use in Animal Feeds; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for 10 new animal drug applications (NADAs) from Merial Ltd. to Huvepharma AD.

DATES: This rule is effective November 23, 2009.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8307, e-mail: *david.newkirk@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Merial Ltd., 3239 Satellite Blvd., Bldg. 500, Duluth, GA 30096–4640, has informed FDA that it has transferred ownership of, and all rights and interest in, the following 10 approved NADAs to Huvepharma AD, 33 James Boucher Blvd., Sophia 1407, Bulgaria: NADA 036–304, 049–179, 049–180, 118–507, 040–264, 041–541, 044–016, 046–209, 049–934, and 099–150. Accordingly, the agency is amending the regulations to reflect the transfer of ownership.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.55 [Amended]

■ 2. In § 558.55, in paragraph (d)(2)(iv), in the table, in the entry for ''Carbarsone 227 to 340.5'', in the ''Sponsor'' column, remove ''000006'' and in its place add ''016592''.

■ 3. Amend § 558.58 as follows:

a. Remove paragraphs (a)(3), (b)(1), and (b)(2);

b. In paragraph (e)(1)(i), in the table, in the ''Sponsor'' column, remove ''050604'';

c. In paragraphs (e)(1)(ii) and (e)(1)(iii), in the table, in the ''Limitations'' column, remove ''050604'' wherever it occurs and in its place add ''016592''; and

d. Revise paragraph (b).

The revisions are to read as follows:

§ 558.58 Amprolium and ethopabate.

* * * * *

(b) *Approvals.* See No. 016592 in § 510.600(c) of this chapter.

* * * * *

§ 558.175 [Amended]

■ 4. In § 558.175, in paragraph (b) and in the table in paragraph (d), in the ''Sponsor'' column, remove ''050604'' wherever it occurs and in its place add ''016592''.

Dated: November 16, 2009.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. E9–28009 Filed 11–20–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

[Docket No. FDA–2009–N–0665]

New Animal Drugs for Use in Animal Feeds; Melengestrol; Monensin; Tylosin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pharmacia & Upjohn Co., a Division of Pfizer, Inc. The supplemental NADA provides for use of the same dose levels approved for single-ingredient Type C medicated feeds containing melengestrol acetate, monensin, or tylosin phosphate for heifers fed in confinement for slaughter in three-way, combination drug Type C medicated feeds containing melengestrol acetate, monensin, and tylosin phosphate.

DATES: This rule is effective November 23, 2009.

FOR FURTHER INFORMATION CONTACT: Suzanne J. Sechen, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8105, e-mail: *suzanne.sechen@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Pharmacia & Upjohn Co., a Division of Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed a supplement to NADA 138–870 for use of MGA (melengestrol acetate), RUMENSIN (monensin, USP), and TYLAN (tylosin phosphate) single-ingredient Type A medicated articles to make three-way, combination drug Type C medicated feeds for heifers fed in confinement for slaughter. The supplemental NADA provides for use of the same dose levels approved for single ingredient Type C medicated feeds containing melengestrol acetate, monensin, or tylosin phosphate in the three-way, combination drug Type C medicated feeds. The supplemental application is approved as of October 19, 2009, and the regulations are amended in 21 CFR 558.342 to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 2. In § 558.342, add paragraph (e)(1)(xi) to read as follows:

§ 558.342 Melengestrol.

* * * * *

(e) * * *

(1) * * *

Melengestrol acetate in mg/head/day	Combination in mg/head/day	Indications for use	Limitations	Sponsor
*	* *	* *	*	*
(xi) 0.25 to 0.5	Monensin 50 to 480, plus tylosin 60 to 90.	Heifers fed in confinement for slaughter: As in paragraph (e)(1)(i) of this section; for the prevention and control of coccidiosis due to *Eimeria bovis* and *E. zuernii*; and for reduction of incidence of liver abscesses caused by *Fusobacterium necrophorum* and *Arcanobacterium pyogenes*.	Feed continuously as sole ration (liquid or dry) at a rate of 0.5 to 2.0 lb/head/day to provide 0.25 to 0.5 mg/head/day melengestrol acetate; 0.14 to 0.42 mg monensin/lb body weight/day, depending on the severity of the coccidiosis challenge, up to 480 mg/head/day; and 60 to 90 mg/head/day tylosin. The melengestrol acetate portion of this Type C medicated feed must be mixed into a complete feed containing 10 to 40 g/ton monensin and 8 to 10 g/ton tylosin in the amount of complete feed consumed by an animal per day. Monensin and tylosin phosphate provided by No. 000986 in § 510.600(c) of this chapter.	000009

* * * * *

Dated: November 17, 2009.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. E9–28019 Filed 11–20–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 538 and 560

Sudanese Sanctions Regulations; Iranian Transactions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Interim final rule with request for comments.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is adopting an interim final rule which makes technical changes to certain sections of the Sudanese Sanctions Regulations and the Iranian Transactions Regulations, 31 CFR parts 538 and 560, respectively, relating to the Trade Sanctions Reform and Export Enhancement Act of 2000, as amended (''TSRA''). The preamble to this interim final rule clarifies OFAC's policy with respect to the process for issuing one-year licenses to export agricultural commodities, medicine, and medical devices to Sudan and Iran pursuant to section 906 of TSRA.

DATES: The interim final rule is effective November 23, 2009. Written comments may be submitted on or before January 22, 2010.

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

Federal eRulemaking Portal: http://www.regulations.gov.

Follow the instructions for submitting comments.

Fax: Attn: Request for Comments (Trade Sanctions Reform and Export Enhancement Act) (202) 622–1657

Mail: Attn: Request for Comments (Trade Sanctions Reform and Export Enhancement Act): Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Instructions: All submissions received must include the agency name and the **Federal Register** Doc. number that appears at the end of this document. Comments received will be made available to the public via regulations.gov or upon request, without change and including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Assistant Director for Compliance, Outreach and Implementation, tel.: 202/622–2490, Assistant Director for Licensing, tel.: 202/622–2480, Assistant Director for Policy, tel.: 202/622–4855, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs is also available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Procedural Requirements

Because the amendment of 31 CFR parts 538 and 560 involves a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553), requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Although a prior notice of proposed rulemaking is not required, OFAC is soliciting comments on this interim final rule in order to consider how it might make improvements to these sections of the Sudanese Sanctions Regulations and the Iranian Transactions Regulations, 31 CFR parts 538 and 560, respectively. Comments must be submitted in writing. The addresses and deadline for submitting comments appear near the beginning of this notice. OFAC will not accept comments accompanied by a request that all or part of the submission be treated confidentially because of its business proprietary nature or for any other reason. All comments received by the deadline will be a matter of public record and will be made available to the public via regulations.gov.

Background

The Office of Foreign Assets Control (''OFAC'') today is adopting an interim final rule which makes technical changes to certain sections of the Sudanese Sanctions Regulations, 31 CFR part 538 (the ''SSR''), and the Iranian Transactions Regulations, 31 CFR part 560 (the ''ITR''), relating to the Trade Sanctions Reform and Export Enhancement Act of 2000, as amended (22 U.S.C. 7201 *et seq.*) (''TSRA''). This interim final rule and accompanying preamble serve to clarify OFAC's policy with respect to the process for issuing one-year licenses to export agricultural commodities, medicine, and medical devices to Sudan and Iran, and the considerations relevant to such licensing decisions.

TSRA provides that, with certain exceptions, the President may not impose a unilateral agricultural sanction or unilateral medical sanction against a foreign country or foreign entity unless, at least 60 days before imposing such a sanction, the President submits a report to Congress describing the proposed sanction and the reasons for it and Congress enacts a joint resolution approving the report. Section 906 of TSRA, however, requires that the export of agricultural commodities, medicine, and medical devices to Cuba, or to the government of a country that has been determined by the Secretary of State, pursuant to, *inter alia,* section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), to have repeatedly provided support for acts of international terrorism, or to any entity in such a country, shall only be made pursuant to one-year licenses issued by the United States Government. Section 906 also requires that procedures shall be in place to deny licenses for exports to any entity within such country that promotes international terrorism.

Effective July 26, 2001, OFAC promulgated amendments to the SSR and the ITR to implement section 906 of TSRA. See 66 FR 36683 (July 12, 2001) (the ''2001 interim rule''). The preamble to the 2001 interim rule described an expedited process for the issuance of the one-year license required by section 906 for all exports and reexports of agricultural commodities, medicine, and medical devices to Sudan or Iran.

OFAC published the 2001 interim rule describing the expedited licensing process in July 2001. As OFAC has stated publicly, circumstances developed almost immediately after publication of the 2001 interim rule that seriously limited OFAC's ability to process applications as expeditiously as had been hoped. See Clarification of Policy With Respect to the Process for Issuing One-Year Licenses to Export Agricultural Commodities, Medicine, and Medical Devices to Sudan and Iran, 72 FR 12980 (March 20, 2007). To begin with, the terrorist attacks of September 11, 2001, magnified concerns about international terrorism and proliferation of weapons of mass destruction. These concerns prompted greater scrutiny on

the part of OFAC and other agencies of the U.S. Government of those entities within state sponsors of terrorism to whom agricultural commodities, medicine, and medical devices were being exported. Moreover, the volume of license requests has increased substantially since the inception of the TSRA program, and applications are now much more complicated than earlier ones, often involving dozens and sometimes hundreds of products and parties to the transaction.

All of these factors have contributed to longer OFAC and interagency reviews of the applications, and thus longer processing times for the applications than indicated in the preamble to the 2001 interim rule. This review has often been further complicated by the fact that these license requests are evaluated both in terms of whether the foreign entities involved in the transaction ''promote international terrorism,'' as required by section 906 of TSRA, and in terms of whether the products at issue implicate independent export control regimes involving chemical or biological weapons, missiles, or weapons of mass destruction, as provided in section 904(2)(C) of TSRA. Scrutiny of license applications on the latter ground often results in requests for additional information by the reviewing agencies, which neither the applicant nor OFAC can anticipate, further delaying the review process.

While TSRA specifies that the requirements of the one-year licenses shall be no more restrictive than general licenses administered by the Department of the Treasury, it also requires that procedures be in place to deny licenses for exports of agricultural commodities, medicine, and medical devices to any entity within a country promoting international terrorism. In addition, TSRA itself provides that the restrictions on the imposition of unilateral agricultural sanctions or unilateral medical sanctions shall not affect any authority or requirement to impose a sanction to the extent such sanction applies to any agricultural commodity, medicine or medical device that is (1) controlled on the United States Munitions List (the ''USML''), (2) controlled on any control list established under the Export Administration Act of 1979 or any successor statute, or (3) used to facilitate the design, development or production of chemical or biological weapons, missiles, or weapons of mass destruction.

Moreover, shortly after the issuance of the 2001 interim rule and in response to the events of September 11, Congress enacted the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Pub. L. 107–56) (the ''USA Patriot Act''). Section 221 of the USA Patriot Act amended or modified the application of TSRA in several ways, including by adding a section, codified at 22 U.S.C. 7210, which provides:

> Nothing in the Trade Sanctions Reform and Export Enhancement Act of 2000 (22 U.S.C. § 7201 et seq.) shall limit the application or scope of any law establishing criminal or civil penalties, including any Executive order or regulation promulgated pursuant to such laws (or similar or successor laws), for the unlawful export of any agricultural commodity, medicine, or medical device to—
>
> (1) A foreign organization, group, or person designated pursuant to Executive Order No. 12947 of January 23, 1995, as amended;
>
> (2) a Foreign Terrorist Organization pursuant to the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132);
>
> (3) a foreign organization, group, or person designated pursuant to Executive Order No. 13224 (September 23, 2001);
>
> (4) any narcotics trafficking entity designated pursuant to Executive Order No. 12978 (October 21, 1995) or the Foreign Narcotics Kingpin Designation Act (Public Law 106–120) (21 U.S.C. § 1901 et seq.); or
>
> (5) any foreign organization, group, or persons subject to any restriction for its involvement in weapons of mass destruction or missile proliferation.

Neither the legislative history surrounding TSRA nor the statute itself specifies a timeline for the issuance of the one-year licenses. As the TSRA and USA Patriot Act provisions cited above make clear, the licensing process must account for the requirements that the licensing and reviewing agencies take measures to ensure that (1) no agricultural commodity, medicine or medical device is exported to any entity, organization or other person designated pursuant to any law or Executive order sanctioning terrorists, weapons of mass destruction or missile proliferators, or narcotics traffickers and (2) licenses under section 906 of TSRA are not granted for the export of any agricultural commodity, medicine, or medical device that is controlled on the USML or the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1, or that is used to facilitate the design, development or production of chemical or biological weapons, missiles, or weapons of mass destruction.

Accordingly, OFAC is adopting an interim final rule which makes technical changes to the TSRA-related sections of the SSR and the ITR. The preamble to this interim final rule clarifies OFAC's policy with respect to the licensing process for TSRA-related exports. Although this interim final rule is effective immediately, OFAC invites comments on this interim final rule. OFAC will continue to conduct a review of applications for one-year licenses consistent with the requirements of section 906 of TSRA and other applicable provisions of law, which may include a referral to other government agencies for guidance, and will respond to such applications upon completion of the review. The specific timing with respect to any application will continue to depend on factors such as the nature of the goods being exported, the complexity of the transactions, and the need for interagency review. Therefore, OFAC's processing of one-year license requests may take significantly longer than the time periods indicated in the preamble to the 2001 interim rule published at the inception of the TSRA program. OFAC will continue to respond to such applications in as timely a manner as is possible under the circumstances of each individual license application, consistent with OFAC's obligations under TSRA, the SSR, the ITR, and other applicable provisions of law.

Paperwork Reduction Act

The collections of information related to 31 CFR parts 538 and 560 are contained in 31 CFR part 501 (the ''Reporting, Procedures and Penalties Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. 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 control number.

List of Subjects

31 CFR Part 538

Administrative practice and procedure, Agricultural commodities, Banks, Banking, Blocking of assets, Drugs, Exports, Foods, Foreign trade, Humanitarian aid, Imports, Information, Investments, Loans, Medical devices, Medicine, Penalties, Reporting and recordkeeping requirements, Specially designated nationals, Services, Sudan, Terrorism, Transportation.

31 CFR Part 560

Administrative practice and procedure, Agricultural commodities, Banks, Banking, Blocking of assets, Drugs, Exports, Foods, Foreign trade, Humanitarian aid, Imports, Information, Investments, Iran, Loans, Medical

devices, Medicine, Penalties, Reporting and recordkeeping requirements, Services, Specially designated nationals, Terrorism, Transportation.

■ For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control adopts an interim final rule amending 31 CFR parts 538 and 560, as follows:

PART 538—SUDANESE SANCTIONS REGULATIONS

■ 1. The authority citation for part 538 continues to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2339B, 2332d; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); 22 U.S.C. 7201–7211; Pub. L. 109–344, 120 Stat. 1869; Pub. L. 110–96, 121 Stat. 1011; E.O. 13067, 62 FR 59989, 3 CFR, 1997 Comp., p. 230; E.O. 13412, 71 FR 61369, 3 CFR, 2006 Comp., p. 244.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

■ 2. Revise § 538.523 to read as follows:

§ 538.523 Commercial sales, exportation, and reexportation of agricultural commodities, medicine, and medical devices.

(a)(1) *One-year specific license requirement.* The exportation or reexportation of agricultural commodities (including bulk agricultural commodities listed in appendix A to this part 538), medicine, or medical devices to the Government of Sudan, to any individual or entity in an area of Sudan other than the Specified Areas of Sudan, or to persons in third countries purchasing specifically for resale to the foregoing, shall only be made pursuant to a one-year specific license issued by the U.S. Department of the Treasury, Office of Foreign Assets Control, for contracts entered into during the one-year period of the license and shipped within the 12-month period beginning on the date of the signing of the contract. No specific license will be granted for the exportation or reexportation of agricultural commodities, medicine, or medical equipment to any entity or individual in Sudan promoting international terrorism, to any narcotics trafficking entity designated pursuant to Executive Order 12978 of October 21, 1995 (60 FR 54579, October 24, 1995) or the Foreign Narcotics Kingpin Designation Act (21 U.S.C. 1901–1908), or to any foreign organization, group, or persons subject to any restriction for their involvement in weapons of mass destruction or missile proliferation. Executory contracts entered into pursuant to paragraph (b)(2) of this section prior to the issuance of the one-year specific license described in this paragraph shall be deemed to have been signed on the date of issuance of that one-year specific license (and, therefore, the exporter is authorized to make shipments under that contract within the 12-month period beginning on the date of issuance of the one-year specific license).

(2) *General license for the Specified Areas of Sudan.* The exportation or reexportation of agricultural commodities (including bulk agricultural commodities listed in appendix A to this part 538), medicine, and medical devices to the Specified Areas of Sudan and the conduct of related transactions, including, but not limited to, the making of shipping and cargo inspection arrangements, the obtaining of insurance, the arrangement of financing and payment, the entry into executory contracts, and the provision of brokerage services for such sales and exports or reexports, are hereby authorized, provided that such activities or transactions do not involve any property or interests in property of the Government of Sudan and do not relate to the petroleum or petrochemical industries in Sudan, and also provided that all such exports or reexports are shipped within the 12-month period beginning on the date of the signing of the contract for export or reexport.

Note 1 to § 538.523(a)(2): Consistent with section 906(a)(1) of the Trade Sanctions Reform and Export Enhancement Act of 2000 (22 U.S.C. 7205), each year by the anniversary of its effective date of September 9, 2009, the Office of Foreign Assets Control will determine whether to revoke this general license. Unless revoked, the general license will remain in effect.

Note 2 to § 538.523(a)(2): See §§ 538.417 and 538.418 for additional requirements with respect to transshipments through, and financial transactions in, Sudan.

(b) *General license for arrangement of exportation or reexportation of covered products.* (1) With respect to sales pursuant to § 538.523(a)(1), the making of shipping arrangements, cargo inspection, obtaining of insurance, and arrangement of financing (consistent with § 538.525) for the exportation or reexportation of agricultural commodities, medicine, or medical devices to the Government of Sudan, to any individual or entity in an area of Sudan other than the Specified Areas of Sudan, or to persons in third countries purchasing specifically for resale to the foregoing, are authorized.

(2) If desired, entry into executory contracts (including executory pro forma invoices, agreements in principle, or executory offers capable of acceptance such as bids in response to public tenders) for the exportation or reexportation of agricultural commodities, medicine, and medical devices to the Government of Sudan, to any individual or entity in an area of Sudan other than the Specified Areas of Sudan, or to persons in third countries purchasing specifically for resale to the foregoing, is authorized, provided that performance of an executory contract is expressly made contingent upon the prior issuance of the one-year specific license described in paragraph (a)(1) of this section.

(c) *Instructions for obtaining one-year specific licenses.* In order to obtain the one-year specific license described in paragraph (a)(1) of this section, the exporter must provide to the Office of Foreign Assets Control:

(1) The applicant's full legal name (if the applicant is a business entity, the state or jurisdiction of incorporation and principal place of business).

(2) The applicant's mailing and street address (so that OFAC may reach a responsible point of contact, the applicant should also include the name of the individual(s) responsible for the application and related commercial transactions along with their telephone and fax numbers and, if available, e-mail addresses).

(3) The names, mailing addresses, and if available, fax and telephone numbers of all parties with an interest in the transaction. If the goods are being exported or reexported to a purchasing agent in Sudan, the exporter must identify the agent's principals at the wholesale level for whom the purchase is being made. If the goods are being exported or reexported to an individual, the exporter must identify any organizations or entities with which the individual is affiliated that have an interest in the transaction.

(4) A description of all items to be exported or reexported pursuant to the requested one-year license, including a statement that the item is classified as EAR 99, and, if necessary, documentation sufficient to verify that the items to be exported or reexported are classified as EAR 99 and do not fall within any of the limitations contained in paragraph (d) of this section.

(5) An Official Commodity Classification of EAR 99 issued by the Department of Commerce, Bureau of Industry and Security (''BIS''), certifying that the product is EAR 99, is required to be submitted to OFAC with the request for a license authorizing the

exportation or reexportation of all fertilizers, live horses, western red cedar, and medical devices other than basic medical supplies, such as syringes, bandages, gauze and similar items, that are specifically listed on BIS's Web site, *http://www.bis.doc.gov/policiesandregulations/tradesanctionsreformexportenhancementact.html.* Medical supplies that are specifically listed on BIS's Web site may not require an Official Commodity Classification of EAR 99 from BIS. BIS will also provide a list on its Web site of medicines that are ineligible for a one-year license under these procedures. Exporters should seek an Official Commodity Classification of EAR 99 from BIS for medicines and submit a copy to OFAC. See 15 CFR 745.3 for instructions for obtaining Official Commodity Classification of EAR 99 from BIS.

(d) *Limitations.* (1) Nothing in this section or in any license issued pursuant to paragraph (a) of this section relieves the exporter from compliance with the export license application requirements of another Federal agency.

(2) Nothing in this section or in any license issued pursuant to paragraph (a) of this section authorizes the exportation or reexportation of any agricultural commodity, medicine, or medical device controlled on the United States Munitions List established under section 38 of the Arms Export Control Act (22 U.S.C. 2778); controlled on any control list established under the Export Administration Act of 1979 or any successor statute (50 U.S.C. App. 2401 *et seq.*); or used to facilitate the development or production of a chemical or biological weapon or weapon of mass destruction.

(3) Nothing in this section or in any license issued pursuant to paragraph (a) of this section affects prohibitions on the sale or supply of U.S. technology or software used to manufacture agricultural commodities, medicine, or medical devices, such as technology to design or produce biotechnological items or medical devices.

(4) Nothing in this section or in any license issued pursuant to paragraph (a) of this section affects U.S. nonproliferation export controls, including end-user and end-use controls maintained under the Enhanced Proliferation Control Initiative.

(5) This section does not apply to any transaction or dealing involving property blocked pursuant to this chapter or to any other activity prohibited by this chapter that is not otherwise authorized in this part.

(e) *Covered items.* For the purposes of this part, agricultural commodities, medicine, and medical devices are defined below.

(1) *Agricultural commodities.* For the purposes of this section, agricultural commodities are:

(i) Products that are not listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1, and that fall within the term ''agricultural commodity'' as defined in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602); and

(ii) Products not listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1, that are intended for ultimate use in Sudan as:

(A) Food for humans (including raw, processed, and packaged foods; live animals; vitamins and minerals; food additives or supplements; and bottled drinking water) or animals (including animal feeds);

(B) Seeds for food crops;

(C) Fertilizers or organic fertilizers; or

(D) Reproductive materials (such as live animals, fertilized eggs, embryos, and semen) for the production of food animals.

(2) *Medicine.* For the purposes of this section, the term medicine has the same meaning given the term ''drug'' in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) but does not include any item listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1 (excluding items classified as EAR 99).

(3) *Medical device.* For the purposes of this section, the term medical device has the meaning given the term ''device'' in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) but does not include any item listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1 (excluding items classified as EAR 99).

■ 3. Revise § 538.525 to read as follows:

§ 538.525 Payment for and financing of commercial sales of agricultural commodities, medicine, and medical equipment.

(a) *General license for payment terms.* The following payment terms for sales, pursuant to § 538.523(a)(1), of agricultural commodities and products, medicine, and medical equipment to the Government of Sudan, to any individual or entity in an area of Sudan other than the Specified Areas, or to persons in third countries purchasing specifically for resale to the foregoing are authorized:

(1) Payment of cash in advance;

(2) Sales on open account, provided that the account receivable may not be transferred by the person extending the credit; or

(3) Financing by third-country financial institutions that are neither United States persons nor Government of Sudan entities. Such financing may be confirmed or advised by U.S. financial institutions.

(b) *Specific licenses for alternate payment terms.* Specific licenses may be issued on a case-by-case basis for payment terms and trade financing not authorized by the general license in paragraph (a) of this section for sales pursuant to § 538.523(a)(1). See § 501.801(b) of this chapter for specific licensing procedures.

(c) *No debits to blocked accounts.* Nothing in this section authorizes payment terms or trade financing involving a debit to an account of the Government of Sudan blocked pursuant to this part.

(d) *Transfers through the U.S. financial system.* Before a United States financial institution initiates a payment on behalf of any customer, or credits a transfer to the account on its books of the ultimate beneficiary, the United States financial institution must determine that the underlying transaction is not prohibited by this part. Any payment relating to a transaction authorized in or pursuant to § 538.523 or § 538.526 that is routed through the U.S. financial system must reference the relevant Office of Foreign Assets Control license authorizing the payment to avoid the blocking or rejection of the transfer.

(e) Notwithstanding any other provision of this part, no commercial exportation to Sudan may be made with United States Government assistance, including United States foreign assistance, United States export assistance, and any United States credit or guarantees absent a Presidential waiver.

■ 4. Revise § 538.526 to read as follows:

§ 538.526 Brokering sales of agricultural commodities, medicine, and medical devices.

(a) *General license for brokering sales by U.S. persons.* United States persons are authorized to provide brokerage services on behalf of U.S. persons for the sale and exportation or reexportation by United States persons of agricultural commodities, medicine, and medical devices to the Government of Sudan, to any individual or entity in an area of Sudan other than the Specified Areas of Sudan, or to persons in third countries purchasing specifically for resale to the foregoing, provided that the sale and exportation or reexportation is authorized by a one-

year specific license issued pursuant to § 538.523(a)(1).

(b) *Specific licensing for brokering sales by non-U.S. persons of bulk agricultural commodities.* Specific licenses may be issued on a case-by-case basis to permit United States persons to provide brokerage services on behalf of non-United States, non-Sudanese persons for the sale and exportation or reexportation of bulk agricultural commodities to the Government of Sudan, to any individual or entity in an area of Sudan other than the Specified Areas of Sudan, or to persons in third countries purchasing specifically for resale to the foregoing. Specific licenses issued pursuant to this section will authorize the brokering only of sales that:

(1) Are limited to the bulk agricultural commodities listed in appendix A to this part 538;

(2) Are to purchasers permitted pursuant to § 538.523(a)(1); and

Note to paragraph (b)(2) of § 538.526: Requests for specific licenses to provide brokerage services under this paragraph must include all of the information described in § 538.523(c).

(3) Make any performance involving the exportation or reexportation of any goods, technology or services (including technical data, software, or information) that are subject to license application requirements of another Federal agency contingent upon the prior authorization of that agency. (For example, items classified EAR 99 under the Export Administration Regulations, 15 CFR parts 730 through 774, may in certain instances require a license from the Department of Commerce, Bureau of Industry and Security. See, e.g., 15 CFR 736.2(b)(5), 744.2 through 744.4, 744.7, and 744.10; see also 22 CFR 123.9.)

(c) *No debit to blocked accounts.* Payment for any brokerage fee earned pursuant to this section may not involve a debit to an account blocked pursuant to this part.

(d) *Recordkeeping and reporting requirements.* Attention is drawn to the recordkeeping, retention, and reporting requirements of §§ 501.601 and 501.602.

PART 560—IRANIAN TRANSACTIONS REGULATIONS

■ 5. The authority citation for part 560 is revised to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2339B, 2332d; 22 U.S.C. 2349aa–9; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); 22 U.S.C. 7201–7211; Pub. L. 110–96, 121 Stat. 1011; E.O. 12613, 52 FR 41940, 3 CFR, 1987 Comp., p. 256; E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 12959, 60 FR 24757, 3 CFR, 1995 Comp., p. 356; E.O. 13059, 62 FR 44531, 3 CFR, 1997 Comp., p. 217.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

■ 6. Revise § 560.530 to read as follows:

§ 560.530 Commercial sales, exportation, and reexportation of agricultural commodities, medicine, and medical devices.

(a) *One-year license requirement.* The exportation or reexportation of agricultural commodities (including bulk agricultural commodities listed in appendix B to this part 560), medicine, or medical devices to the Government of Iran, any entity in Iran, individuals in Iran, or persons in third countries purchasing specifically for resale to any of the foregoing, shall only be made pursuant to a one-year license issued by the United States Department of the Treasury, Office of Foreign Assets Control, for contracts entered into during the one-year period of the license and shipped within the 12-month period beginning on the date of the signing of the contract. No license will be granted for the exportation or reexportation of agricultural commodities, medicine, or medical equipment to any entity or individual in Iran promoting international terrorism. Executory contracts entered into pursuant to paragraph (b)(2) of this section prior to the issuance of the one-year license described in this paragraph shall be deemed to have been signed on the date of issuance of that one-year license (and, therefore, the exporter is authorized to make shipments under that contract within the 12-month period beginning on the date of issuance of the one-year license).

(b) *General license for arrangement of exportation and reexportation of covered products.* (1) The making of shipping arrangements, cargo inspections, obtaining of insurance, and arrangement of financing (consistent with § 560.532) for the exportation or reexportation of agricultural commodities, medicine, and medical devices to the Government of Iran, entities in Iran, individuals in Iran, or persons in third countries purchasing specifically for resale to any of the foregoing, is authorized.

(2) If desired, entry into executory contracts (including executory pro forma invoices, agreements in principle, or executory offers capable of acceptance such as bids in response to public tenders) for the exportation or reexportation of agricultural commodities, medicine, and medical devices to the Government of Iran, entities in Iran, individuals in Iran, or persons in third countries purchasing specifically for resale to any of the foregoing, is authorized, provided that performance of an executory contract is expressly made contingent upon the prior issuance of the one-year license described in paragraph (a) of this section.

(c) *Instructions for obtaining one-year licenses.* In order to obtain the one-year license described in paragraph (a), the exporter must provide to the Office of Foreign Assets Control:

(1) The applicant's full legal name (if the applicant is a business entity, the state or jurisdiction of incorporation and principal place of business).

(2) The applicant's mailing and street address (so that OFAC may reach a responsible point of contact, the applicant should also include the name of the individual(s) responsible for the application and related commercial transactions along with their telephone and fax numbers and, if available, e-mail addresses).

(3) The names, mailing addresses, and, if available, fax and telephone numbers of all parties with an interest in the transaction. If the goods are being exported or reexported to a purchasing agent in Iran, the exporter must identify the agent's principals at the wholesale level for whom the purchase is being made. If the goods are being exported or reexported to an individual, the exporter must identify any organizations or entities with which the individual is affiliated that have an interest in the transaction.

(4) A description of all items to be exported or reexported pursuant to the requested one-year license, including a statement that the item is classified as EAR 99, and, if necessary, documentation sufficient to verify that the items to be exported or reexported are classified as EAR 99 and do not fall within any of the limitations contained in paragraph (d) of this section.

(5) An Official Commodity Classification of EAR 99 issued by the Department of Commerce, Bureau of Industry and Security (''BIS''), certifying that the product is EAR 99, is required to be submitted to OFAC with the request for a license authorizing the exportation or reexportation of all fertilizers, live horses, western red cedar, and medical devices other than basic medical supplies, such as syringes, bandages, gauze and similar items, that are specifically listed on BIS's Web site, *http://www.bis.doc.gov policiesandregulations/tradesanctions reformexportenhancementact.html.* Medical supplies that are specifically listed on BIS's Web site may not require

an Official Commodity Classification of EAR 99 from BIS. BIS will also provide a list on its Web site of medicines that are ineligible for a one-year license under these procedures. Exporters should seek an Official Commodity Classification of EAR 99 from BIS for medicines and submit a copy to OFAC. See 15 CFR 745.3 for instructions for obtaining Official Commodity Classification of EAR 99 from BIS.

(d) *Limitations.* (1) Nothing in this section or in any license issued pursuant to paragraph (a) of this section relieves the exporter from compliance with the export license application requirements of another Federal agency.

(2) Nothing in this section or in any license issued pursuant to paragraph (a) of this section authorizes the exportation or reexportation of any agricultural commodity, medicine, or medical device controlled on the United States Munitions List established under section 38 of the Arms Export Control Act (22 U.S.C. 2778); controlled on any control list established under the Export Administration Act of 1979 or any successor statute (50 U.S.C. App. 2401 *et seq.*); or used to facilitate the development or production of a chemical or biological weapon or weapon of mass destruction.

(3) Nothing in this section or in any license issued pursuant to paragraph (a) of this section affects prohibitions on the sale or supply of U.S. technology or software used to manufacture agricultural commodities, medicine, or medical devices, such as technology to design or produce biotechnological items or medical devices.

(4) Nothing in this section or in any license issued pursuant to paragraph (a) of this section affects U.S. nonproliferation export controls, including end-user and end-use controls maintained under the Enhanced Proliferation Control Initiative.

(5) This section does not apply to any transaction or dealing involving property blocked pursuant to this chapter or any other activity prohibited by this chapter not otherwise authorized in this part.

(e) *Covered items.* For the purposes of this part, agricultural commodities, medicine, and medical devices are defined below.

(1) *Agricultural commodities.* For the purposes of this section, agricultural commodities are:

(i) Products not listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1, and that fall within the term ''agricultural commodity'' as defined in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602); and

(ii) Products not listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1, that are intended for ultimate use in Iran as:

(A) Food for humans (including raw, processed, and packaged foods; live animals; vitamins and minerals; food additives or supplements; and bottled drinking water) or animals (including animal feeds);

(B) Seeds for food crops;

(C) Fertilizers or organic fertilizers; or

(D) Reproductive materials (such as live animals, fertilized eggs, embryos, and semen) for the production of food animals.

(2) *Medicine.* For the purposes of this section, the term medicine has the same meaning given the term ''drug'' in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) but does not include any item listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1 (excluding items classified as EAR 99).

(3) *Medical device.* For the purposes of this section, the term medical device has the meaning given the term ''device'' in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) but does not include any item listed on the Commerce Control List in the Export Administration Regulations, 15 CFR part 774, supplement no. 1 (excluding items classified as EAR 99).

■ 7. Revise § 560.532 to read as follows:

§ 560.532 Payment for and financing of exports and reexports of agricultural commodities, medicine, and medical devices.

(a) *General license for payment terms.* The following payment terms for sales of agricultural commodities and products, medicine, and medical equipment pursuant to §§ 560.530 and 560.531 are authorized:

(1) Payment of cash in advance;

(2) Sales on open account, provided that the account receivable may not be transferred by the person extending the credit; or

(3) Financing by third-country financial institutions that are neither United States persons nor Government of Iran entities. Such financing may be confirmed or advised by U.S. financial institutions.

(b) *Specific licenses for alternate payment terms.* Specific licenses may be issued on a case-by-case basis for payment terms and trade financing not authorized by the general license in paragraph (a) of this section for sales pursuant to § 560.530. See § 501.801(b) of this chapter for specific licensing procedures.

(c) *No debits or credits to Iranian accounts on the books of U.S. depository institutions.* Nothing in this section authorizes payment terms or trade financing involving debits or credits to Iranian accounts, as defined in § 560.320.

(d) *Transfers through the U.S. financial system.* Any payment relating to a transaction authorized in or pursuant to § 560.530 or § 560.533 that is routed through the U.S. financial system must reference the relevant Office of Foreign Assets Control license authorizing the payment to avoid the rejection of the transfer. See § 560.516(c).

(e) Notwithstanding any other provision of this part, no commercial exportation to Iran may be made with United States Government assistance, including United States foreign assistance, United States export assistance, and any United States credit or guarantees absent a Presidential waiver.

■ 8. Revise § 560.533 to read as follows:

§ 560.533 Brokering sales of agricultural commodities, medicine, and medical devices.

(a) *General license for brokering sales by U.S. persons.* United States persons are authorized to provide brokerage services on behalf of U.S. persons for the sale and exportation or reexportation by United States persons of agricultural commodities, medicine, and medical devices, provided that the sale and exportation or reexportation is authorized by a one-year license issued pursuant to § 560.530.

(b) *Specific licensing for brokering sales by non-U.S. persons of bulk agricultural commodities.* Specific licenses may be issued on a case-by-case basis to permit United States persons to provide brokerage services on behalf of non-United States, non-Iranian persons for the sale and exportation or reexportation of bulk agricultural commodities to the Government of Iran, entities in Iran or individuals in Iran. Specific licenses issued pursuant to this section will authorize the brokering only of sales that:

(1) Are limited to the bulk agricultural commodities listed in appendix B to this part 560;

(2) Are to purchasers permitted pursuant to § 560.530; and

Note to § 560.533(b)(2): Requests for specific licenses to provide brokerage services under this paragraph must include all of the information described in § 560.530(c).

(3) Make any performance involving the exportation or reexportation of any goods, technology or services (including technical data, software, or information) that are subject to license application requirements of another Federal agency contingent upon the prior authorization of that agency. (For example, items classified EAR 99 under the Export Administration Regulations, 15 CFR parts 730 through 774, may in certain instances require a license from the Department of Commerce, Bureau of Industry and Security. See, e.g., 15 CFR 736.2(b)(5), 744.2 through 744.4, 744.7, and 744.10; see also 22 CFR 123.9.)

(c) *No debits or credits to Iranian accounts on the books of U.S. depository institutions.* Payment for any brokerage fee earned pursuant to this section may not involve debits or credits to Iranian accounts, as defined in § 560.320.

(d) *Recordkeeping and reporting requirements.* Attention is drawn to the recordkeeping, retention, and reporting requirements of §§ 501.601 and 501.602.

Dated: November 17, 2009.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E9–27979 Filed 11–20–09; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 594

Global Terrorism Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is amending the Global Terrorism Sanctions Regulations to define the term ''financial, material, or technological support,'' as used in these regulations. Providing ''financial, material, or technological support,'' for either acts of terrorism that threaten the United States, or any person whose property or interests in property are blocked under these regulations, constitutes one of the criteria for designation as a person whose property and interests in property are blocked.

DATES: *Effective Date:* November 23, 2009.

FOR FURTHER INFORMATION CONTACT: Assistant Director for Policy, tel.: 202/622–4855, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

OFAC administers the Global Terrorism Sanctions Regulations, 31 CFR part 594 (''GTSR''), which implement Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism'' (66 FR 49079, Sept. 25, 2001) (''E.O. 13224''). Section 594.201(a) of the GTSR implements section 1 of E.O. 13224 and blocks the property and interests in property that are in or come within the United States, or that are in or come within the possession or control of U.S. persons, including their overseas branches, of (1) foreign persons listed in the Annex to E.O. 13224, as may be amended; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of Homeland Security, and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States; and (3) persons determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of Homeland Security, and the Attorney General, to be owned or controlled by, or to act for or on behalf of, any person whose property and interests in property are blocked pursuant to this section.

In particular, paragraph (a)(4)(i) of section 594.201 of the GTSR implements section 1(d)(i) of E.O. 13224 by blocking the U.S. property and interests in property of persons determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of Homeland Security, and the Attorney General:

> To assist in, sponsor, or provide *financial, material, or technological support* for, or financial or other services to or in support of:
>
> (A) Acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States, or
>
> (B) Any person whose property or interests in property are blocked pursuant to paragraph (a) of this section . * * *

GTSR, section 594.201(a)(4)(i) (emphasis added).

Acting under authority delegated by the Secretary of the Treasury, OFAC today is amending the GTSR to add a new definition of the term ''financial, material, or technological support,'' as used in section 594.201(a)(4)(i) of the GTSR. New section 594.317, in subpart C of the GTSR, defines the term ''financial, material, or technological support'' to mean any property, tangible or intangible, and includes a list of specific examples.

The definition of the term ''financial, material, or technological support'' in new section 594.317 may include concepts that overlap with existing provisions in the GTSR, such as interpretive section 594.406 on the ''provision of services.'' However, in light of the threat posed by acts of terrorism to the national security, foreign policy, and economy of the United States, OFAC has determined that the benefit of greater specificity in the new definition outweighs any concerns with regard to redundancy.

Please note that, in promulgating this regulation, OFAC does not imply any limitation on the scope of paragraphs (a)(1), (a)(2), (a)(3), or (a)(4)(ii) of section 594.201. Furthermore, the designation criteria in these paragraphs as well as in paragraph (a)(4)(i) of section 594.201 will be applied in a manner consistent with pertinent Federal law, including, where applicable, the First Amendment to the United States Constitution.

Public Participation

Because the amendments of the GTSR involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the GTSR are contained in 31 CFR part 501 (the ''Reporting, Procedures and Penalties Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. 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 control number.

List of Subjects 31 CFR Part 594

Administrative practice and procedure, Banks, Banking, Penalties, Reporting and recordkeeping requirements, Terrorism.

■ For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control amends 31 CFR part 594 as follows:

PART 594—GLOBAL TERRORISM SANCTIONS REGULATIONS

■ 1. The authority citation for part 594 continues to read as follows:

Authority: 3 U.S.C. 301; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13268, 67 FR 44751, 3 CFR, 2002 Comp., p. 240; E.O. 13284, 64 FR 4075, 3 CFR, 2003 Comp., p. 161.

Subpart C—General Definitions

■ 2. Add a new § 594.317 to subpart C to read as follows:

§ 594.317 Financial, material, or technological support.

The term *financial, material, or technological support,* as used in § 594.201(a)(4)(i) of this part, means any property, tangible or intangible, including but not limited to currency, financial instruments, securities, or any other transmission of value; weapons or related materiel; chemical or biological agents; explosives; false documentation or identification; communications equipment; computers; electronic or other devices or equipment; technologies; lodging; safe houses; facilities; vehicles or other means of transportation; or goods. ''Technologies'' as used in this definition means specific information necessary for the development, production, or use of a product, including related technical data such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals, or other recorded instructions.

Dated: November 18, 2009.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. E9–28066 Filed 11–20–09; 8:45 am]

BILLING CODE 4810–AL–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2009–0599; FRL–8982–5]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revision to Clean Air Interstate Rule Sulfur Dioxide Trading Program; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to an adverse comment, EPA is withdrawing the direct final rule to approve the timing change for the first phase of the sulfur dioxide (SO_2) trading budget under the Commonwealth of Virginia's approved Clean Air Interstate Rule (CAIR) regulations. In the direct final rule published on October 22, 2009 (74 FR 54485), we stated that if we received adverse comment by November 23, 2009, the rule would be withdrawn and not take effect. EPA subsequently received an adverse comment. EPA will address the comment received in a subsequent final action based upon the proposed action also published on October 22, 2009 (74 FR 54534). EPA will not institute a second comment period on this action.

DATES: *Effective Date:* The direct final rule is withdrawn as of November 23, 2009.

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Sulfur oxides.

Dated: November 5, 2009.

William C. Early,

Acting Regional Administrator, Region III.

■ Accordingly, the addition of an entry for 9 VAC 5 Chapter 140, Part IV, Section 5–140–3400 to the table in paragraph (c) is withdrawn as of November 23, 2009.

[FR Doc. E9–27826 Filed 11–20–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–R01–OAR–2009–0031; A–1–FRL–8974–5]

Approval of the Clean Air Act, Section 112(l), Authority for Hazardous Air Pollutants: Perchloroethylene Air Emission Standards for Dry Cleaning Facilities: Commonwealth of Massachusetts Department of Environmental Protection

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

ACTION: Direct final rule.

SUMMARY: Pursuant to section 112(l) of the Clean Air Act (''CAA'') and federal regulations promulgated thereunder, the Massachusetts Department of Environmental Protection (''MassDEP'') submitted a request for approval to implement and enforce the amended 310 CMR 70.00 Environmental Results Program (''ERP'') Certification and the amended 310 CMR 7.26(10)–(16) Perchloroethylene (''Perc'' or ''PCE'') Air Emissions Standards for Dry Cleaning Facilities (together referred to as the ''amended Dry Cleaner ERP'') as a partial substitution for the amended National Emissions Standards for Hazardous Air Pollutants for Perchloroethylene Dry Cleaning Facilities (''Dry Cleaning NESHAP''), as it applies to area sources. EPA has reviewed this request and has determined that the amended Dry Cleaner ERP satisfies the requirements necessary for partial substitution approval. Thus, EPA is hereby granting MassDEP the authority to implement and enforce its amended Dry Cleaner ERP in place of the Dry Cleaning NESHAP for area sources, but EPA is retaining its authority with respect to major source dry cleaners and dry cleaners installed in a residence between December 21, 2005 and July 13, 2006. This approval makes the amended Dry Cleaner ERP federally enforceable.

DATES: This direct final rule will be effective January 22, 2010, unless EPA receives adverse comments by December 23, 2009. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of January 22, 2010.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–

R01–OAR–2009–0031 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: mcdonnell.ida@epa.gov.*
3. *Fax:* (617) 918–0653.
4. *Mail:* ''EPA–R01–OAR–2009–0031'', Ida McDonnell, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAP), Boston, MA 02114–2023.
5. *Hand Delivery or Courier. Deliver your comments to:* Ida McDonnell, Acting Manager, Air Permits, Toxics and Indoor Programs Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAP), Boston, MA 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R01–OAR–2009–0031. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (''CBI'') or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov*, or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. EPA will forward copies of all submitted comments to the Massachusetts Department of Environmental Protection.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

In addition, copies of the State submittal are also available for public inspection during normal business hours, by appointment at the Massachusetts Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Susan Lancey, Air Permits, Toxics and Indoor Programs Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAP), Boston, MA 02114–2023, telephone number (617) 918–1656, fax number (617) 918–0656, e-mail *lancey.susan@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. Background and Purpose
II. What Requirements Must a State Rule Meet To Substitute for a Section 112 Rule?
III. How Will EPA Determine Equivalency for State Alternative NESHAP Requirements?
IV. What Significant Changes Did EPA Make to the Dry Cleaning NESHAP and How Did MassDEP Address Those Changes?
A. What Definitions Were Added to the NESHAP and the Amended Dry Cleaner ERP?
B. What Control Requirements Were Added for New Dry Cleaners Installed After December 21, 2005?
C. What Requirements Were Added for Dry Cleaners Installed in a Building With a Residence After December 21, 2005?
D. What Requirements Were Added for Transfer Machines?
E. What Monitoring Requirements Were Added?
F. How Did the Reporting Requirements Change?
V. What Is EPA's Action Regarding MassDEP's Dry Cleaner ERP?
VI. Final Action
VII. Judicial Review
VIII. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act

I. Background and Purpose

Under CAA section 112(l), EPA may approve state or local rules or programs to be implemented and enforced in place of certain otherwise applicable Federal rules, emissions standards, or requirements. The Federal regulations governing EPA's approval of state and local rules or programs under section 112(l) are located at 40 CFR part 63, subpart E. *See* 58 FR 62262 (November 26, 1993), as amended by 65 FR 55810 (September 14, 2000). Under these regulations, a state air pollution control agency has the option to request EPA's approval to substitute a state rule for the applicable Federal rule (*e.g.,* the National Emissions Standards for Hazardous Air Pollutants). Upon approval by EPA, the state agency is authorized to implement and enforce its rule in place of the Federal rule.

EPA promulgated the Dry Cleaning NESHAP on September 22, 1993. *See* 58 FR 49354 (codified at 40 CFR part 63, subpart M, ''National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities''). On October 24, 2001, EPA received a request from MassDEP to implement and enforce its Perchloroethylene Air Emissions Standards for Dry Cleaning Facilities, 310 CMR 7.26(10)–(16), and Environmental Results Program (ERP)

Certification, 310 CMR 70.01–04 (together referred to as the ''Dry Cleaner ERP'') in lieu of the Dry Cleaning NESHAP rule for area sources. On September 16, 2002, EPA approved Massachusetts' Dry Cleaner ERP in place of the Dry Cleaning NESHAP for area sources pursuant to the provisions of 40 CFR part 63, subpart E. *See* 67 FR 58339.

Under 40 CFR 63.91(e)(3), if EPA amends or otherwise revises a promulgated CAA section 112 rule or requirement in a way that increases its stringency, EPA will notify any state with a delegated alternative of the need to revise its equivalency demonstration. EPA will consult with the state to set a time frame for the state to submit a revised equivalency demonstration. EPA will then review and approve the revised equivalency demonstration according to the procedures in 40 CFR part 63, subpart E. More stringent NESHAP amendments to a delegated alternative apply to all sources until EPA determines that the approved or revised alternative requirements are equivalent to the more stringent amendments.

On July 27, 2006, September 21, 2006 and July 11, 2008, EPA promulgated amendments to the Dry Cleaning NESHAP. *See* 71 FR 42724, 71 FR 55280 and 73 FR 39871. In a letter dated October 25, 2006, EPA notified MassDEP that EPA had published more stringent amendments to the Dry Cleaning NESHAP and of the need for MassDEP to revise its equivalency demonstration. Accordingly, MassDEP revised 310 CMR 7.26(10)–(16) with an effective date of September 5, 2008. In addition, MassDEP revised 310 CMR 70.00 with an effective date of December 28, 2007. On November 17, 2008, MassDEP submitted a request for approval to implement and enforce the amended Dry Cleaner ERP in place of the amended Dry Cleaning NESHAP. On January 13, 2009, EPA determined that Massachusetts' submittal was complete. As explained below, EPA has reviewed the State's submission and determined that the amended Dry Cleaner ERP is no less stringent than the amended Dry Cleaning NESHAP, as applied to area sources.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

II. What Requirements Must a State Rule Meet To Substitute for a Section 112 Rule?

A state must demonstrate that it has satisfied the general delegation/approval criteria contained in 40 CFR 63.91(d). The process of providing ''up-front approval'' assures that a state has met the delegation criteria in Section 112(l)(5) of the CAA (as codified in 40 CFR 63.91(d)), that is, that the state has demonstrated that its NESHAP program contains adequate authorities to assure compliance with each applicable Federal requirement, adequate resources for implementation, and an expeditious compliance schedule. Under 40 CFR 63.91(d)(3), interim or final Title V program approval satisfies the criteria set forth in 40 CFR 63.91(d) for ''up-front approval.'' On September 28, 2001, EPA promulgated full approval of MassDEP's operating permits program with an effective date of November 27, 2001. *See* 66 FR 49541. Accordingly, MassDEP has satisfied the up-front approval criteria of 40 CFR 63.91(d).

Additionally, the ''rule substitution'' option requires EPA to ''make a detailed and thorough evaluation of the state's submittal to ensure that it meets the stringency and other requirements'' of 40 CFR 63.93. *See* 58 FR at 62274. A rule will be approved if EPA finds: (1) The state and local rules are ''no less stringent'' than the corresponding Federal regulations, (2) the state and local government has adequate authorities to implement and enforce the rules, and (3) the schedule for implementation and compliance is ''no less stringent'' than the deadlines established in the otherwise applicable Federal rule. 40 CFR 63.93(b). After reviewing MassDEP's amended partial rule substitution request and equivalency demonstration for the Dry Cleaning NESHAP as it applies to area sources, EPA has determined this request meets all the requirements necessary for approval under CAA section 112(l) and 40 CFR 63.91 and 63.93.

III. How Will EPA Determine Equivalency for State Alternative NESHAP Requirements?

Before we can approve alternative requirements in place of a part 63 emissions standard, the state must submit to us detailed information that demonstrates how the alternative requirements compare with the otherwise applicable Federal standard. Under 40 CFR part 63 subpart E, the level of control in the state rule must be at least as stringent as the level of control in the Federal rule. In addition, in order for equivalency to be granted, the level of control and compliance and enforcement measures (''MRR'') of the state rule, taken together as a whole, must be equivalent to the level of control and MRR of the Federal rule, taken together as a whole. A detailed discussion of how EPA will determine equivalency for state alternative NESHAP requirements is provided in the preamble to EPA's proposed Subpart E amendments on January 12, 1999. *See* 64 FR 1908.

IV. What Significant Changes Did EPA Make to the Dry Cleaning NESHAP and How Did MassDEP Address Those Changes?

The following discussion explains the changes that EPA made to the Dry Cleaning NESHAP and how MassDEP addressed these changes in the amended Dry Cleaner ERP, as well as any additional changes MassDEP made to the Dry Cleaner ERP. The September 16, 2002, **Federal Register** Notice initially approving the Dry Cleaner ERP as a substitute for the Dry Cleaning NESHAP contains a more detailed discussion of the differences between the Dry Cleaning NESHAP and the Dry Cleaner ERP. *See* 67 FR 58339.

A. What Definitions Were Added to the NESHAP and the Amended Dry Cleaner ERP?

The Dry Cleaning NESHAP added definitions for halogenated hydrocarbon detector, perchloroethylene gas analyzer, residence, vapor leak, and vapor barrier. The amended Dry Cleaner ERP adopted each of these definitions with the exception of vapor barrier. MassDEP has not adopted the definition of vapor barrier into its amended Dry Cleaner ERP because the requirement is not necessary. Specifically, MassDEP's amended Dry Cleaner ERP specifies that dry cleaning machines installed in a building with a residence between December 21, 2005 and July 13, 2006 (i.e., those facilities which must utilize a vapor barrier under the Dry Cleaning NESHAP) are not within the scope of the State's rule and thus remain subject to the Dry Cleaning NESHAP.

B. What Control Requirements Were Added for New Dry Cleaners Installed After December 21, 2005?

The Dry Cleaning NESHAP requires new area source dry cleaners which commence construction after December 21, 2005, to be equipped with a refrigerated condenser and a non-vented carbon adsorber. The carbon adsorber must be desorbed in accordance with the manufacturer's instruction. *See* 40 CFR 63.322(o)(2). The amended Dry

Cleaner ERP added these control requirements for new dry cleaners installed after December 21, 2005, and added the requirement for the carbon adsorber to be desorbed in accordance with the manufacturer's instructions. *See* 310 CMR 7.26(12)(a)(3) and 7.26(14)(c). The amended Dry Cleaner ERP is accordingly no less stringent than the corresponding federal rule.

C. What Requirements Were Added for Dry Cleaners Installed in a Building with Residence After December 21, 2005?

The Dry Cleaning NESHAP requires a vapor barrier and other control requirements for dry cleaners installed in a building with a residence between December 21, 2005 and July 13, 2006. The Dry Cleaning NESHAP requires that such dry cleaners eliminate perc emissions by July 27, 2009. *See* 40 CFR 63.322(o)(5)(i)-(ii) and 63.320(b)(2)(ii). MassDEP's amended Dry Cleaner ERP specifies that such dry cleaners are not within the scope of the State's rule and thus remain subject to the Dry Cleaning NESHAP. *See* 310 CMR 7.26(10)(d). Therefore, EPA is retaining these requirements.

The Dry Cleaning NESHAP does not allow any dry cleaning systems to be installed in a building with a residence as of July 13, 2006. *See* 40 CFR 63.322(o)(4) and 63.320(b)(3). The Dry Cleaner ERP prohibits the installation of a dry cleaner co-located with a residence as of September 5, 2008, and requires all dry cleaners co-located with a residence installed after July 13, 2006, to cease operation on September 5, 2008. *See* 310 CMR 7.26(12)(a)(5) and (7). The Dry Cleaner ERP could not prohibit installation of a dry cleaner co-located with a residence prior to the final date of the amendments on September 5, 2008. Therefore, the Dry Cleaner ERP required all dry cleaners co-located with a residence as of July 13, 2006 to cease operation on September 5, 2008. Such dry cleaners were already effectively prohibited from installing in a building with a residence as of July 13, 2006 under the Dry Cleaning NESHAP. In addition, the amended Dry Cleaner ERP prohibits the installation of a co-located dry cleaner as of November 5, 2008. *See* 310 CMR 7.26(12)(a)(4). A co-located dry cleaner includes dry cleaning facilities located in a building with a residence, licensed day care center, a health care facility, a prison, an elementary school, a middle or high school or a pre-school, a senior center or a youth center. Therefore, MassDEP's Dry Cleaner ERP is more stringent than the Dry Cleaning NESHAP because it prohibits all co-located dry cleaners as of November 5, 2008, in addition to prohibiting co-located dry cleaners in a building with a residence as of July 13, 2006.

The Dry Cleaning NESHAP requires all dry cleaners located in a building with a residence to eliminate perc emissions by December 21, 2020. *See* 40 CFR 63.322(o)(5)(ii). The Dry Cleaner ERP requires all co-located dry cleaners to cease operation on or before December 21, 2020. *See* 310 CMR 7.26(12)(a)(6). MassDEP's Dry Cleaner ERP is more stringent than the Dry Cleaning NESHAP because this provision applies to all co-located facilities in addition to dry cleaners installed in a building with a residence.

D. What Requirements Were Added for Transfer Machines?

The Dry Cleaning NESHAP effectively prohibits all transfer machines as of July 28, 2008, by requiring the owner or operator to eliminate emissions of perc during the transfer of articles between the washer and the dryer(s) or reclaimer(s). *See* 40 CFR 63.320(b)(1)) and 63.322(o)(4). The amended Dry Cleaner ERP adds this requirement by requiring the owner or operator to cease operation of their transfer machine on or before September 5, 2008. Facilities in Massachusetts were effectively prohibited from operating transfer machines under the Dry Cleaning NESHAP as of July 28, 2008 and, as of September 5, 2008, were prohibited under the Dry Cleaner ERP. Therefore, upon the effective date of EPA's approval of the Dry Cleaner ERP, facilities in Massachusetts will continue to be prohibited from operating transfer machines. *See* 310 CMR 7.26(12)(b)(4).

E. What Monitoring Requirements Were Added?

The Dry Cleaning NESHAP added a requirement for area source dry cleaners to conduct leak checks monthly using a halogenated hydrocarbon detector or a PCE gas analyzer that is operated according to the manufacturer's recommendation. *See* 40 CFR 63.322(o)(1). A halogenated solvent hydrocarbon detector means a portable device capable of detecting vapor concentrations of PCE of 25 parts per million (''ppm'') by volume and indicating a concentration of 25 ppm by volume or greater by emitting an audible or visual signal that varies as the concentration changes. A PCE gas analyzer means a flame ionization detector, photoionization detector, or infrared analyzer capable of detecting vapor concentrations of PCE of 25 ppm by volume. The amended Dry Cleaner ERP requires vapor leak checks weekly with a halogenated hydrocarbon detector, a PCE gas analyzer, or an alternate method that is capable of detecting vapor concentrations of PCE of 25 ppm by volume and approved by MassDEP. *See* 310 CMR 7.26(13)(i). Since the Dry Cleaner ERP specifies that any alternative method approved by MassDEP must be capable of detecting vapor concentrations of PCE of 25 ppm by volume, EPA does not view this as affecting the stringency of the Dry Cleaner ERP. Furthermore, the amended Dry Cleaner ERP is more stringent than the Dry Cleaning NESHAP because it requires leak checks with a detector or analyzer to be conducted weekly.

The Dry Cleaning NESHAP added a requirement that allows facilities using a refrigerated condenser to monitor the refrigeration system high pressure and low pressure as an alternative to monitoring for the temperature of the perc vapor gas vapor-stream. *See* 40 CFR 63.323(a)(1). Massachusetts added this requirement and is therefore equivalent to the Dry Cleaning NESHAP. *See* 310 CMR 7.26(14)(a).

F. How Did the Reporting Requirements Change?

The Dry Cleaning NESHAP added a requirement for facilities to submit a notification of compliance status by July 28, 2008. *See* 40 CFR 63.324(f). The Dry Cleaner ERP required a similar compliance status report, including the information required by the NESHAP, to be submitted by September 15, 2008. *See* 310 CMR 7.26(15)(b). In addition, the Dry Cleaner ERP requires facilities to submit an annual compliance certification. The Dry Cleaning NESHAP does not require an annual compliance certification. Massachusetts amended its ERP regulation to allow less frequent reporting than annually if Massachusetts specifies less frequent reporting based on specific criteria in its ERP regulation. *See* 310 CMR 70.03(f) and (h). Specifically, MassDEP identifies the following criteria to allow less frequent reporting: (1) The size, composition and activities of the ERP sector; (2) the quantity and types of (toxic) materials used and potential wastes, emissions and discharges of the ERP sector; (3) the degree of compliance with established regulatory requirements by the ERP sector; (4) the degree of control over the environmental and public health aspects of activities by the ERP sector; and (5) any other relevant information regarding the environmental consequences of the periodic compliance certifications and return to compliance response rates and results within the ERP sector. Though the Dry

Cleaning NESHAP does not have an annual reporting requirement, EPA considered the annual compliance certification requirement in approving the Dry Cleaner ERP in 2002. Nonetheless, the amended Dry Cleaner ERP is more stringent than the Dry Cleaning NESHAP in a number of areas. As discussed above, the amended Dry Cleaner ERP prohibits co-located dry cleaners as of November 5, 2008 and requires weekly monitoring with a detector. In addition, as discussed in EPA's September 16, 2002 approval, the Dry Cleaning NESHAP applies partial exemptions from control requirements based on perc consumption, while the amended Dry Cleaner ERP, however, does not allow for partial exemptions and applies control requirements for all perc dry cleaners. Additionally, the ERP is a multimedia compliance program which requires self certification with air, water and hazardous waste requirements while providing extensive compliance assistance to dry cleaners through training programs and workbooks and includes inspections and enforcement. EPA evaluated the air portion of the ERP for dry cleaning facilities in approving the Dry Cleaner ERP in 2002. Although the amended Dry Cleaner ERP compliance report was allowed to be submitted later than the Dry Cleaning NESHAP notification of compliance status report and although MassDEP may now allow less frequent compliance certifications than annually, EPA has determined that given the more stringent requirements of the amended Dry Cleaner ERP, the requirements of the amended Dry Cleaner ERP are, taken as a whole, more stringent than the requirements of the Dry Cleaning NESHAP.

V. What Is EPA's Action Regarding MassDEP's Amended Dry Cleaner ERP?

After reviewing MassDEP's request for approval of the amended Dry Cleaner ERP, EPA has determined that Massachusetts' regulations meet all of the requirements necessary for partial rule substitution under section 112(l) of the CAA and 40 CFR 63.91 and 63.93. The amended Dry Cleaner ERP, taken as a whole, is no less stringent than the Dry Cleaning NESHAP, as applied to area sources. Therefore, EPA hereby approves Massachusetts' request to implement and enforce 310 CMR 70.00 Environmental Results Program, as amended, and 310 CMR 7.26(10)–(16) Perchloroethylene Air Emissions Standards for Dry Cleaning Facilities, as amended, in place of the Dry Cleaning NESHAP for area sources in Massachusetts. The EPA retains the requirements for major source dry cleaners and dry cleaners installed in a residence between December 21, 2005 and July 13, 2006. As of the effective date of this action, the amended Dry Cleaner ERP is enforceable by EPA and by citizens under the CAA. Although MassDEP has primary responsibility to implement and enforce the amended Dry Cleaner ERP, EPA retains the authority to enforce any requirement of the rule upon its approval under CAA 112. *See* CAA section 112(l)(7).

VI. Final Action

The EPA is approving the Massachusetts Environmental Results Program, 310 CMR 70.00, as amended, and the Perchloroethylene Air Emissions Standards for Dry Cleaning Facilities, 310 CMR 7.26(10)–(16), as amended, as a partial rule substitution for the Dry Cleaning NESHAP for area sources in Massachusetts. The EPA retains the requirements for major source dry cleaners and dry cleaners installed in a residence between December 21, 2005, and July 13, 2006.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the rule revision should relevant adverse comments be filed. This rule will be effective January 22, 2010 without further notice unless the Agency receives relevant adverse comments by December 23, 2009.

If the EPA receives such comments, then EPA will publish a notice withdrawing the direct final rule and informing the public that the direct final rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on January 22, 2010 and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VII. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this final rule is available only by filing a petition for review in the United States Court of Appeals for the appropriate circuit by January 22, 2010. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides that ''[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.'' This section also provides a mechanism for us to convene a proceeding for reconsideration, ''[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Regional Administrator, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (RAA), Boston, MA 02114–2023, with a copy to the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Regional Counsel, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (RAA), Boston, MA 02114–2023. Filing a petition for reconsideration by the Administrator of this final rule under CAA section 307(d)(7)(B) does not affect the finality of this rule for the purposes of judicial review, does not extend the time within which a petition for judicial review may be filed, and does not postpone the effectiveness of the rule.

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action approves equivalent state requirements in place of Federal requirements under CAA section 112(l). This type of action is exempt from review under EO 12866.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This action

allows the Commonwealth of Massachusetts to implement equivalent state requirements *in lieu of* pre-existing Federal requirements as applied only to area source dry cleaners. Thus, this action does not require any person to submit information.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards found at 13 CFR 121.201 (coin operated laundries and drycleaners as defined by NAICS code 812310 with annual receipts of less than $7.0 million or drycleaning and laundry services (except coin operated) as defined by NAICS code 812320 with annual receipts of less than $4.5 million); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not have a significant impact on a substantial number of small entities because approvals under CAA section 112(l) and 40 CFR 63.93 do not create any new requirements. Such approvals simply allow a state to implement and enforce equivalent requirements in place of the Federal requirements that EPA is already imposing.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action allows the Commonwealth of Massachusetts to implement equivalent state requirements *in lieu of* pre-existing Federal requirements as applied only to area source dry cleaners. Thus, this action does not significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action simply allows Massachusetts to implement equivalent alternative requirements to replace a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action allows the Commonwealth of Massachusetts to implement equivalent state requirements *in lieu* of pre-existing Federal requirements as applied only to area source dry cleaners. This action will not have substantial direct effects on tribal governments, 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it approves a state program such that it allows the Commonwealth of Massachusetts to implement equivalent state requirements *in lieu* of pre-existing Federal requirements as applied only to area source dry cleaners.

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

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

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

This action does not involved technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action allows the Commonwealth of Massachusetts to implement equivalent state

requirements *in lieu of* pre-existing Federal requirements as applied only to area source dry cleaners. As explained above, the state requirements contain standards that are at least equivalent to the Federal standards; thus, we anticipate only a positive impact from this action.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective January 22, 2010.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of section 112 of the Clean Air Act, as amended, 42 U.S.C. 7412.

Dated: October 15, 2009.

Ira W. Leighton,

Acting Regional Administrator, EPA-New England.

■ 40 CFR part 63 is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart A—[Amended]

■ 2. Section 63.14 is amended by revising paragraph (d) introductory text and paragraph (d)(4) to read as follows:

§ 63.14 Incorporation by reference.

* * * * *

(d) *State and Local Requirements.* The following materials listed below are available at the Air and Radiation Docket and Information Center, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone number (202) 566–1745.

* * * * *

(4) Massachusetts Department of Environmental Protection regulations at 310 CMR 7.26(10)–(16), Air Pollution Control, effective as of September 5, 2008, corrected March 6, 2009, and 310 CMR 70.00, Environmental Results Program Certification, effective as of December 28, 2007. Incorporation By Reference approved for § 63.99(a)(22)(ii) of subpart E of this part.

* * * * *

Subpart E—[Amended]

3. Section 63.99 is amended by revising paragraph (a)(22) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(22) Massachusetts.

(i) [Reserved]

(ii) Affected area sources within Massachusetts must comply with the Massachusetts Regulations Applicable to Hazardous Air Pollutants (incorporated by reference as specified in § 63.14) as described in paragraph (a)(22)(ii)(A) of this section:

(A) The material incorporated into the Massachusetts Department of Environmental Protection regulations at 310 CMR 7.26(10)–(16), Air Pollution Control, effective as of September 5, 2008, corrected March 6, 2009, and 310 CMR 70.00, Environmental Results Program Certification, effective as of December 28, 2007, pertaining to dry cleaning facilities in the Commonwealth of Massachusetts jurisdiction, and approved under the procedures in § 63.93 to be implemented and enforced in place of the Federal NESHAP for Perchloroethylene Dry Cleaning Facilities (subpart M of this part), effective as of July 11, 2008, for area sources only, as defined in § 63.320(h).

(1) Authorities not delegated.

(i) Massachusetts is not delegated the Administrator's authority to implement and enforce Massachusetts regulations at 310 CMR 7.26(10)–(16) and 310 CMR 70.00, in lieu of those provisions of subpart M of this part which apply to major sources, as defined in § 63.320(g).

(ii) Massachusetts is not delegated the Administrator's authority to implement and enforce Massachusetts regulations at 310 CMR 7.26(10)–(16) and 310 CMR 70.00, in lieu of those provisions of subpart M of this part which apply to dry cleaning systems installed in a building with a residence between December 21, 2005 and July 13, 2006, as defined in § 63.320(b)(2)(ii) and § 63.322(o)(5)(i)–(ii).

(B) [Reserved]

* * * * *

[FR Doc. E9–27820 Filed 11–20–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 227 and 252

RIN 0750–AG50

Defense Federal Acquisition Regulation Supplement; Government Rights in the Design of DoD Vessels (DFARS Case 2008–D039)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 825 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417). Section 825 clarifies the Government's rights in technical data in the designs of DoD vessels, boats, craft, and components thereof. This interim rule also implements the Vessel Hull Design Protection Amendments of 2008 (Pub. L. 110–434).

DATES: *Effective date:* November 23, 2009.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before January 22, 2010, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments via the Internet at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcom.* As an alternative, respondents may e-mail comments to: *dfars@osd.mil.* Please cite DFARS Case 2008–D039 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–7887. Please cite DFARS Case 2008–D039.

Interested parties may view public comments on the Internet at *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

The requirements of the Vessel Hull Design Protection Amendments and new section 825 of the National Defense Authorization Act for Fiscal Year 2009 are similar in both substance and language. This interim rule adds language to the existing technical data policy sections and creates two new clause alternates.

10 U.S.C. 2320 establishes requirements for DoD's acquisition of technical data and neither of the above statutory changes covers computer software. Accordingly, additional coverage in the DFARS for computer software is unnecessary.

Both statutory changes provide new requirements, not presently covered in the DFARS, for the acquisition of vessels and hulls covered by vessel hull design registrations. DFARS coverage is appropriate because these statutory changes directly impact the acquisition of vessels and hulls by DoD and its components.

To implement the statutory changes, DoD has added new paragraph (c) to current 227.7102–1, Policy, and new paragraph (g) to current 227.7103–1, Policy. Contracting officers must be made aware of the requirements of 17 U.S.C. 1301(a)(3) and 10 U.S.C. 7317, as these statutes affect both the rights of the contractors and DoD.

The rule also provides Alternates to clauses 252.227–7013, Rights in Technical Data—Noncommercial Items, and 252.227–7015, Technical Data—Commercial Items. Each Alternate adds to the basic clause—

(i) A new definition for ''vessel designs''; and

(ii) An affirmative grant of appropriate rights in same to the Government.

This rule was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because it does not create any burden for small business concerns. The rule just clarifies the Government's rights in technical data in the designs of DoD vessels, boats, craft, and components thereof. For acquisition of vessels and hulls covered by vessel hull design registrations, the rule provides that the Government shall have certain rights for a vessel design (including a vessel design embodied in a useful article) that is developed or delivered to the Government, to the same extent that the Government is granted rights in the technical data pertaining to the vessel design. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties.

DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2008–D039.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the DFARS rule will not impose any additional reporting or recordkeeping requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements section 825 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417) and the Vessel Hull Design Protection Amendments of 2008 (Pub. L. 110–434). These statutes were effective upon enactment. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 227 and 252

Government procurement.

Amy G. Williams,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 227 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 227 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 227—PATENTS, DATA, AND COPYRIGHTS

■ 2. Section 227.7100 is amended by redesignating paragraphs (a)(6) and (a)(7) as paragraphs (a)(8) and (a)(9) respectively and adding new paragraphs (a)(6) and (a)(7), to read as follows:

227.7100 Scope of subpart.

* * * * *

(a) * * *

(6) 10 U.S.C. 7317.

(7) 17 U.S.C. 1301, *et seq.*

* * * * *

■ 3. Section 227.7102–1 is amended by adding paragraph (c) to read as follows:

227.7102–1 Policy.

* * * * *

(c) The Government's rights in a vessel design, and in any useful article embodying a vessel design, must be consistent with the Government's rights in technical data pertaining to the design (10 U.S.C. 7317; 17 U.S.C. 1301(a)(3)).

■ 4. Section 227.7102–3 is amended by redesignating paragraph (a) as paragraph (a)(1) and adding paragraph (a)(2) to read as follows:

227.7102–3 Contract clause.

(a)(1) * * *

(2) Use the clause at 252.227–7015 with its Alternate I in contracts for the development or delivery of a vessel design or any useful article embodying a vessel design.

* * * * *

■ 5. Section 227.7103–1 is amended by adding paragraph (g) to read as follows:

227.7103–1 Policy.

* * * * *

(g) The Government's rights in a vessel design, and in any useful article embodying a vessel design, must be consistent with the Government's rights in technical data pertaining to the design (10 U.S.C. 7317; 17 U.S.C. 1301(a)(3)).

■ 6. Section 227.7103–6 is amended by redesignating paragraphs (b)(1) and (b)(2) as (b)(i) and (b)(ii), paragraph (b) as (b)(1), and adding paragraph (b)(2) to read as follows:

227.7103–6 Contract clauses.

* * * * *

(b)(1) * * *

(2) Use the clause at 252.227–7013 with its Alternate II in contracts for the development or delivery of a vessel design or any useful article embodying a vessel design.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 7. Section 252.227–7013 is amended in the introductory text of Alternate I by removing ''227.7103–6(b)'' and adding in its place ''227.7103–6(b)(1)''; and adding Alternate II to read as follows:

* * * * *

Alternate II (NOV 2009)

As prescribed in 227.7103–6(b)(2), add the following paragraphs (a)(16) and (b)(7) to the basic clause:

(a)(16) ''Vessel design'' means the design of a vessel, boat, or craft, and its components, including the hull, decks, superstructure, and the exterior surface shape of all external shipboard equipment and systems. The term includes designs covered by 10 U.S.C. 7317, and designs protectable under 17 U.S.C. 1301, *et seq.*

(b)(7) *Vessel designs.* For a vessel design (including a vessel design embodied in a useful article) that is developed or delivered under this contract, the Government shall have the right to make and have made any useful article that embodies the vessel design, to import the article, to sell the article, and to distribute the article for sale or to use the article in trade, to the same extent that the Government is granted rights in the technical data pertaining to the vessel design.

■ 8. Section 252.227–7015 is amended in the introductory text by removing ''227.7102–3'' and adding in its place ''227.7102–3(a)(1)''; and adding Alternate I to read as follows:

252.227–7015 Technical data—Commercial items.

* * * * *

Alternate I (NOV 2009)

As prescribed in 227.7102–3(a)(2), add the following paragraphs (a)(5) and (b)(3) to the basic clause:

(a)(5) ''Vessel design'' means the design of a vessel, boat, or craft, and its components, including the hull, decks, superstructure, and the exterior surface shape of all external shipboard equipment and systems. The term includes designs covered by 10 U.S.C. 7317, and designs protectable under 17 U.S.C. 1301, *et seq.*

(b)(3) *Vessel designs.* For a vessel design (including a vessel design embodied in a useful article) that is developed or delivered under this contract, the Government shall have the right to make and have made any useful article that embodies the vessel design, to import the article, to sell the article, and to distribute the article for sale or to use the article in trade, to the same extent that the Government is granted rights in the technical data pertaining to the vessel design.

[FR Doc. E9–27844 Filed 11–20–09; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquistion Regulations System

48 CFR Part 252

[DFARS Case 2009–D010]

Defense Federal Acquisition Regulation Supplement; World Trade Organization Government Procurement Agreement Designated Country

AGENCY: Defense Acqusition Regulations System, Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add Taiwan as a designated country to the list of World Trade Organization Government Procurement Agreement designated countries in the trade agreements provisions and clauses in part 252, due to the accession of Taiwan to the World Trade Organization Government Procurement Agreement.

DATES: *Effective Date:* November 23, 2009.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before January 22, 2010, to be considered in the formulation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2009–D010, using any of the following methods:

○ *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

○ *E-mail: dfars@osd.mil.* Include DFARS Case 2009–D010 in the subject line of the message.

○ *Fax:* 703–602–7887.

○ *Mail:* Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

○ *Hand Delivery/Courier:* Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–0328; facsimile 703–602–7887. Please cite DFARS Case 2009–D010.

SUPPLEMENTARY INFORMATION:

A. Background

On July 15, 2009, Taiwan became a party to the World Trade Organization Government Procurement Agreement. This interim rule adds Taiwan to the list of World Trade Organization Government Procurement Agreement countries in the definition of ''designated country'' in the trade agreements provisions and clauses in part 252.

Taiwan is known in the World Trade Organization as ''the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu'' (Chinese Taipei). In accordance with 22 U.S.C. 3303(b)(1), it is appropriate to treat Taiwan as a country for purposes of this regulation.

This rule was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Although the rule opens up Government procurement to the products of Taiwan, DoD does not believe there will be a significant economic impact on U.S. small businesses. DoD only applies the trade agreements to acquisitions of those non-defense items listed at DFARS 225.401–70, and acquisitions of supplies that are set aside for small businesses are exempt. Therefore, DoD has not performed an initial regulatory flexibility analysis.

DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2009–D010.

C. Paperwork Reduction Act

Although this rule does not make any direct change to the provision at DFARS 252.225–7020, this interim rule does affect the certification and information collection requirements in that provision, which is currently approved under Office of Management and Budget Control Number 0704–0229. DFARS 252.225–7020(a) references the definition of ''designated country'' in the clause at DFARS 252.225–7021, which has been changed by this rule to include Taiwan. The impact, however, is negligible.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements the accession of Taiwan to the World Trade Organization Government Procurement Agreement. This action is necessary because the designation of Taiwan under the World Trade Organization Government Procurement Agreement took effect on July 15, 2009. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 252

Government procurement.

Amy G. Williams,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 252 is amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

252.212–7001 [Amended]

■ 2. Section 252.212–7001 is amended as follows:

■ a. By revising the clause date to read ''(NOV 2009)''; and

■ b. In paragraph (b)(11) by removing ''(12JUL 2009)'' and adding in its place ''(NOV 2009)''.

■ 3. Section 252.225–7021 is amended by revising the clause date and paragraph (a)(3)(i) to read as follows:

252.225–7021 Trade Agreements.

* * * * *

TRADE AGREEMENTS (NOV 2009)

(a) * * *

(3) * * *

(i) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as ''the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu'' (Chinese Taipei)), or the United Kingdom);

* * * * *

■ 4. Section 252.225–7045 is amended as follows:

■ a. By revising the clause date; and

■ b. In paragraph (a), in the definition of ''Designated country'', by revising paragraph (1) to read as follows:

252.225–7045 Balance of Payments Program—Construction Material Under Trade Agreements.

* * * * *

BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL UNDER TRADE AGREEMENTS (NOV 2009)

(a) * * *

''Designated country'' means—

* * * * *

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as ''the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu'' (Chinese Taipei)), or the United Kingdom);

* * * * *

[FR Doc. E9–27846 Filed 11–20–09; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 0907231161–91399–02]

RIN 0648–AY08

International Fisheries; Pacific Tuna Fisheries; Fishing Restrictions in the Longline and Purse Seine Fisheries in the Eastern Pacific Ocean in 2009, 2010, and 2011

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

ACTION: Final rule.

SUMMARY: NMFS is issuing regulations under the Tuna Conventions Act of 1950 (Act) to implement a decision of the Inter-American Tropical Tuna Commission (IATTC). That decision requires, among other things, that members of the IATTC, including the United States, ensure that catches in the eastern Pacific Ocean (EPO) of bigeye tuna (*Thunnus obesus*) by longline vessels greater than 24 meters in length do not exceed specified levels in each of the years 2009, 2010, and 2011, and that purse seine vessels class size 4–6 do not fish in the EPO during established closure periods. This action is necessary for the United States to satisfy its obligations under the 1949 Convention for the Establishment of an Inter-American Tropical Tuna Commission (Convention), to which it is a Contracting Party.

DATES: These regulations become effective on November 21, 2009.

ADDRESSES: Copies of supporting documents that were prepared for this final rule, including the environmental assessment (EA) and proposed rule, are available via the Federal e-Rulemaking portal, at *http://www.regulations.gov*. Those documents are also available from the Regional Administrator, Rodney R. McInnis, NMFS Southwest Regional Office, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802. The initial regulatory flexibility analysis (IRFA) and final regulatory flexibility analysis (FRFA) prepared for this rule are included in the proposed rule and this final rule, respectively.

FOR FURTHER INFORMATION CONTACT: Heidi Hermsmeyer, NMFS SWR, 562–980–4036.

SUPPLEMENTARY INFORMATION:

On October 19, 2009, NMFS published a proposed rule in the **Federal Register** (74 FR 53455) that would revise regulations at 50 CFR part 300, subpart C, in order to implement certain decisions of the IATTC. The proposed rule was open to public comment through November 9, 2009.

As a Contracting Party to the Convention and a Member of the IATTC, the United States is legally bound to implement the decisions of the IATTC. The Act (16 U.S.C. 951–961 and 971 *et seq.*) authorizes the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Department in which the United States Coast Guard (USCG) is operating (currently the Department of Homeland Security), to promulgate such regulations as may be necessary to carry out the obligations of the United States under the Convention, including the decisions of the IATTC. The authority to promulgate regulations has been delegated to NMFS.

At its Eightieth Meeting, in June 2009, the IATTC adopted the Resolution on a Multiannual Program for the Conservation of Tuna in the Eastern

Pacific Ocean in 2009–2011 (Resolution C–09–01) related to bigeye and yellowfin tunas (*Thunnus albacares*) in the EPO. The resolution, available with other decisions of the IATTC at *http://www.iattc.org/ResolutionsActiveENG.htm,* places certain obligations on the IATTC's High Contracting Parties, Cooperating Non-Parties, Cooperating Fishing Entity, and Regional Economic Integration Organization (collectively, CPCs).

The proposed rule includes further background information, including information on the Convention and the IATTC, the international obligations of the United States under the Convention, the provisions of Resolution C–09–01, and the basis for the proposed regulations.

New Requirements

This final rule establishes the following requirements:

(1) 500 mt Bigeye Tuna Quota in the Longline Fishery

The bigeye tuna limits established in Resolution C–09–01 are termed ''catch'' limits. The annual limit on harvests by large-scale longline vessels covers all bigeye tuna that is retained on board, as opposed to all bigeye tuna caught. Accordingly, this rule establishes a limit of 500 mt of bigeye tuna that is caught and retained. The limit has the purpose of reducing fishing mortality of EPO bigeye tuna. Once NMFS determines in any of the years 2009, 2010, or 2011 that the limit is expected to be reached by a specific future date in that year, NMFS would publish a notice in the **Federal Register** announcing that the limit is expected to be reached and that specific restrictions will be effective on that particular date until the end of the calendar year. NMFS would publish the notice at least seven calendar days before the effective date of the restrictions to provide fishermen advance notice of the restrictions. NMFS would also endeavor to make publicly available, such as on a website, regularly updated estimates and/or projections of bigeye tuna landings in order to help fishermen plan for the possibility of the limit being reached. In Resolution C–09–01, the IATTC has reserved the option of reversing or amending its adoption of the bigeye tuna catch limits in longline fisheries at its regular annual session in June 2011. If such a decision occurs, NMFS will take appropriate action to rescind any closed areas that are established by regulation.

Starting on the announced date and extending through the last day of that calendar year, it would be prohibited to use a U.S. fishing vessel greater than 24 meters in length to retain on board, transship, or land bigeye tuna captured in the Convention Area by longline gear. Bigeye tuna caught incidentally in the longline fishery starting on the announced date (e.g., in the shallow-set longline fishery targeting swordfish) would be required to be discarded. Any bigeye tuna already on board an applicable longline fishing vessel upon the effective date of the restrictions may be retained on board, transshipped, and/or landed, provided that they are landed within 14 days after the restrictions become effective. In the case of a vessel that has declared to NMFS pursuant to 50 CFR 665.23(a) [applicable to the Hawaii-based longline fishery] that the current trip type is shallow-setting, the 14-day limit would be waived, but the number of bigeye tuna retained on board, transshipped, or landed must not exceed the number on board the vessel upon the effective date of the restrictions, as recorded by the NMFS observer on board the vessel. Starting on the announced date and extending through the last day of that calendar year, it would also be prohibited to transship bigeye tuna caught in the Convention Area by a longline vessel greater than 24 meters in length to any vessel other than a U.S. fishing vessel operating in compliance with a valid permit issued under 50 CFR 660.707 or 665.21.

These restrictions do not apply to bigeye tuna caught by longline vessels 24 meters in length or less, or to longline gear used outside of the Convention Area, such as in the western and central Pacific Ocean. However, to help ensure compliance with the restrictions related to bigeye tuna caught by longline gear in the Convention Area, there are two additional, related, prohibitions that would be in effect starting on the announced date and extending through the last day of that calendar year. First, it would be prohibited to fish with a large-scale longline vessel that was declared to be on a deep-set longline trip, pursuant to 50 CFR 665.23(a), both inside and outside the Convention Area during the same fishing trip, with the exception of a fishing trip that is in progress at the time the announced restrictions go into effect. In that exceptional case, the vessel, unless on a declared shallow-setting trip, would still be required to land any bigeye tuna taken within the Convention Area within 14 days of the effective date of the restrictions, as described above. Second, if a large-scale longline vessel on a declared deep-set longline trip, pursuant to 50 CFR 665.23(a), is used to fish outside the Convention Area and the vessel enters the Convention Area at any time during the same fishing trip, the longline gear on the fishing vessel must be stowed in a manner so as not to be readily available for fishing while the vessel is in the Convention Area.

(2) EPO Closure in the Purse Seine Fishery

The rule prohibits fishing in the EPO by all U.S. purse seine vessels class size 4–6 for a period of 59 days in 2009, 62 days in 2010, and 73 days in 2011. For 2009, the closure is from November 21, 2009, to January 18, 2010. For 2010, the closure is from November 18, 2010, to January 18, 2011. For 2011, the closure is from November 7, 2011, to January 18, 2012. Notwithstanding the general prohibition on fishing during the closure period, a class size 4 vessel is allowed to make one single fishing trip of up to 30 days duration during the specified closure periods, provided that any such vessel carries an observer. In Resolution C–09–01, the IATTC has reserved the option of reversing its adoption of the closure at its regular annual meeting in June 2011. If such a decision occurs, NMFS would initiate rulemaking to implement the IATTC decision.

(3) Closure Area to the West of the Galapagos Islands in the Purse Seine Fishery

This rule also establishes an additional area closed to fishing for skipjack (*Katsuwonus pelamis*), bigeye, and yellowfin tunas by U.S. purse seine vessels class size 4–6 from September 29 to October 29 in 2010, and 2011. The area is a rectangle to the west of the Galapagos Islands and was chosen due to the high levels of juvenile bigeye tuna catch by purse seiners in the area. The area is between 96° and 110° W. longitude and between 4° N. and 3° S. latitude in the Convention Area and is depicted in Figure 1. Purse seine vessels class size 4–6 may transit the closed areas with all fishing gear stowed in a manner so as not to be readily available for fishing.

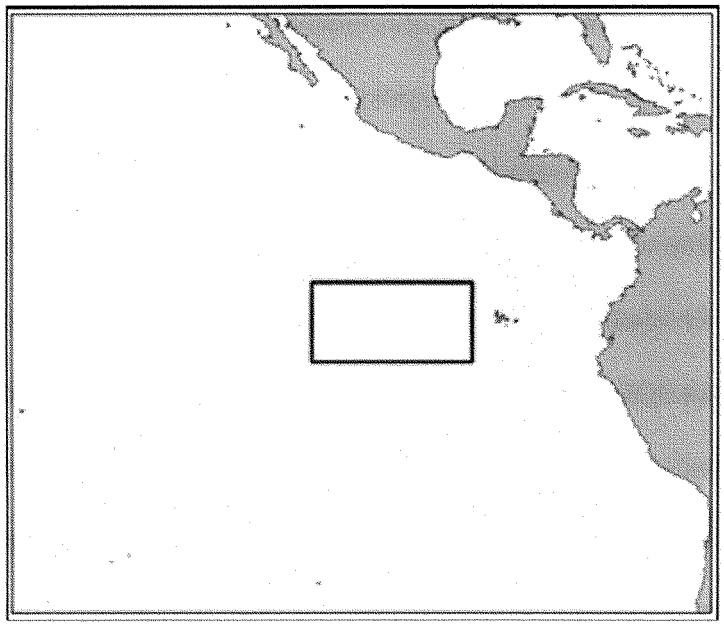

Figure 1 – Purse Seine Closure Area. The area that is closed to purse seine fishing is the high seas area within the rectangle bounded by the bold black lines. The lines on this map are for illustrative purposes only and are not necessarily to scale.

(4) Tuna Retention in the Purse Seine Fishery

Purse seine vessels will also continue to be required to retain and land all skipjack, bigeye, and yellowfin tunas; however, there are some minor changes to the existing regulations at 50 CFR 300.24(e) and 300.25(e)(1). The regulations are being amended to be consistent with IATTC Resolution C–09–01, so the catch retention measure is now only applicable to purse seine vessels class size 4–6, and the exception to the tuna retention measure is being adjusted accordingly. Tuna is required to be retained for fish considered unfit for human consumption for reasons other than size, and the single exemption of this is the final set of a trip, when there may be insufficient well space remaining to accommodate all the tuna caught in that set. The regulatory language was slightly different than this but with similar intent, so the amendment will not result in any significant changes to the purse seine fishery. The catch retention requirement will remain in effect through December 31, 2011. In Resolution C–09–01, the IATTC has reserved the option of reversing its adoption of the catch retention measure at its regular annual session in 2010. If such a decision occurs, NMFS would take appropriate action to rescind the tuna retention provision.

Response to Comments

There was a 20-day public comment period during which comments could be submitted electronically via the Federal e-Rulemaking portal, at *http://www.regulations.gov,* or by mail. There was also a public hearing held on October 21, 2009, from 9 a.m. to 12 p.m. NMFS received one letter from staff of the Western Pacific Regional Fishery Management Council during the public comment period that included several substantive comments, which are summarized below. No other comments were received. No one attended the public hearing.

Comment 1: Shallow-set vessels should be exempted from the proposed regulations that would prohibit longline fishing in the EPO and WCPO on the same trip. On average, 17 bigeye are caught per trip by the Hawaii-based shallow-set longline fleet whereas an average of 250 swordfish are caught per trip. It is clear that shallow-set longline fishing can target swordfish without catching much bigeye tuna, and given that approximately 75 percent of tuna caught on longline gear can be discarded alive, the final rule should be revised to allow shallow-set longline fishing outside of the Convention Area on the same trip.

Response: Once the limit is reached, the provisions to: (1) Prohibit fishing in the Convention Area and the WCPO during the same trip, and (2) require that fishing gear be stowed while the vessel is in the Convention Area during a trip in which fishing takes place in the WCPO, help provide effective mechanisms to enforce this rule. Both would substantially improve the likelihood of compliance with, and the ability to enforce, the more fundamental requirements of the rule. Specifically, both prohibitions are designed to ensure that vessels that are fishing in the WCPO and the Convention Area do not make longline sets in the Convention Area and retain bigeye tuna from those sets after the limit established by this rule is reached. It is important to retain these provisions for the deep-setting trips since these vessels are only subject to about 20 percent observer coverage and generally target bigeye tuna. However, NMFS acknowledges that these two prohibitions should not apply to vessels on declared shallow-setting trips pursuant to 50 CFR 665.23(a), since swordfish are being targeted, the amount of bigeye tuna discards would be minimal, and the fishery is subject to 100 percent observer coverage. Accordingly, the proposed rule has been

modified in this final rule such that the two prohibitions do not apply to shallow-set longline vessels.

Comment 2: The proposed rule states that bigeye tuna are subject to overfishing and overfished in the EPO. While this may be true according to the stock assessment prepared by the staff of the IATTC, bigeye tuna is considered a pan-Pacific stock, and on a stock wide basis it is not considered overfished in terms of the Magnuson-Stevens Act (MSA). NMFS's Draft EA (October 2009) associated with the proposed rule acknowledges this in Section 3.3.2.1 (pg. 28).

Response: The proposed rule stated that IATTC Resolution C–09–01 was based on the stock assessment conducted by IATTC scientists in May 2009, which concluded that the bigeye stock in the EPO was both subject to overfishing and in an overfished state. While the resolution was based on the stock assessment for bigeye in the EPO conducted by IATTC scientists, NMFS's 2009 Status of U.S. Fisheries Third Quarter Update recognizes one stock of bigeye in the Pacific Ocean and has determined that the stock is subject to overfishing, but not in an overfished condition.

Comment 3: The proposed rule and Draft EA do not identify the catch limits provided to Japan, Korea, Taiwan, and China under the IATTC Resolution (C–09–01) for which the 500 mt limit for U.S. longline vessels over 24 m is derived. The public should be provided this information because it adds context to the relative impact of U.S. longline fisheries on the bigeye resource in the EPO. The total annual catch limits established by the resolution for vessels greater than 24 m in length of bigeye tuna caught in the EPO are as follows for 2009 and 2010, respectively: China—2,533 mt and 2,507 mt; Japan—32,713 mt and 32,372 mt; Korea—12,073 mt and 11,947 mt; and Chinese Taipei 7,635 mt and 7,555 mt.

Response: NMFS acknowledges this comment.

Comment 4: In the draft EA (pg. 61), NMFS acknowledges that it is very unlikely that the 500 mt catch limit applicable to the U.S. longline fishery in the EPO would be reached in 2009, 2010, or 2011. If this is true, why is NMFS going through rulemaking to implement a catch limit that has no realistic possibility of being reached?

Response: While it is unlikely, based on current projections of bigeye catch in the EPO by large-scale longline vessels, that the 500 mt catch limit will be reached in any each of the years 2009–2011, it is a possibility; therefore, NMFS is implementing these regulations so that it can satisfy its international obligations should catches increase in the EPO and the limits be reached in any given year. In addition, NMFS is taking extra precautions in this situation because NMFS is also proposing to establish catch limits for bigeye tuna caught in the WCPO by longline vessels in 2009–2011 in order to implement a decision of the Western and Central Pacific Fisheries Commission (WCPFC) (FR 32521, July 8, 2009), thus there is a potential for vessels to shift more effort into the Convention Area should the catch limit in the WCPO be reached in any given year.

Comment 5: Page 23 of the Draft EA includes a table (Table 3–4) that indicates that 54 Hawaii longline vessels less than 24 m in length engaged in shallow-set fishing in 2005, 16 in 2006, 61 in 2007, and 84 in 2008. This is incorrect.

Response: Table 3–4 in the Draft EA should have shown that 54 Hawaii longline vessels less than 24 m in length engaged in deep-set fishing in 2005, 16 in 2006, 61 in 2007, and 84 in 2008. Table 3–4 in the Final EA has been adjusted accordingly.

Changes From the Proposed Rule

As described in the response to comment 1, § 300.24(b)(4)(iii) and (iv) were revised to allow longline vessels that shallow-set to continue fishing inside and outside of the Convention Area during the same fishing trip during a closure provided that no bigeye harvested in the Convention Area are retained.

In the final regulations, § 300.21, ''Definitions'', the definition of a ''fishing trip'' was revised to be consistent with the definition of a fishing trip used in the regulations to implement the WCPFC at § 300.211.

In the final regulations, § 300.25, ''Eastern Pacific fisheries management'', the subparagraphs of paragraph (b)(4) were renumbered for clarity.

Classification

The NMFS Assistant Administrator has determined that this final rule is consistent with the Tuna Conventions 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 for this entire final rule. Compliance with the 30-delay requirement would be impracticable and contrary to the public interest. If we did not waive the 30-day delay, the EPO closure period in the purse seine fishery would only be in effect for about half of the specified period in 2009, meaning that NMFS would not completely satisfy the international obligations of the United States under the Convention. This would be contrary to the public interest because bigeye tuna are currently subject to overfishing, and this rule has the objective of limiting or reducing the fishing effort in U.S. fisheries targeting bigeye tuna in the EPO. The United States also had limited notice of the need to implement Resolution C–09–01, which was adopted ad referendum at the regular annual meeting of the IATTC in June 2009, but was not fully adopted by the Commission until Colombia joined the consensus on July 15, 2009. Under the Tuna Conventions Act, the United States cannot implement decisions made by the Commission unless they are adopted by consensus. To help keep the regulated community informed of the potential for a purse seine closure in 2009, NMFS advised affected purse seine vessel managers and owners of the proposed November 21, 2009–January 18, 2010 purse seine closure soon after the IATTC Resolution was adopted in July 2009. NMFS also held a public hearing on October 21, 2009, and solicited public comments on the proposed rule during a 20-day public comment period. In addition, NMFS sent the proposed rule directly to purse seine vessel managers and owners in October 2009 so they would be aware of, and prepared for, the proposed closure period slated to begin on November 21, 2009. Therefore, NMFS finds that there is good cause to waive the 30-day delay in effectiveness in this circumstance.

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

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the IRFA prepared for the proposed rule (74 FR 53455; October 19, 2009) and a summary of the analyses completed to support the action. No public comments were received on the IRFA. A copy of the IRFA is available from NMFS (see **ADDRESSES**).

A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble and summary section of the proposed rule. There are no disproportionate economic impacts between small and large vessels resulting from this rule. Furthermore, there are no disproportionate economic impacts from this rule based on vessel size, gear, or homeport. There are no new recordkeeping or reporting requirements associated with this rule. Other compliance requirements are described in the IRFA. This rule is issued under authority of the Tuna Conventions Act.

Description of Small Entities to Which the Rule Will Apply

This rule applies to owners and operators of U.S. longline vessels over 24 meters length overall, and U.S. purse seine vessels class size 4–6 fishing for yellowfin, bigeye, and skipjack tunas in the Convention Area. The total number of affected longline vessels is approximated by the average number of U.S. large-scale longline vessels that have caught bigeye tuna in the EPO in 2005–2008. In each of the years 2005 through 2008, the number of large-scale longline vessels that caught bigeye in the EPO were 18, 8, 18, and 30, respectively. Thus approximately 19 longline vessels on average are likely to be affected by this proposed rule, if adopted. The majority of the longline vessels that may be affected by this proposed rule are based out of Hawaii and American Samoa. There is also one longline vessel based out of California that would be affected by the proposed rule. These longline vessels target bigeye tuna using deep sets, and during certain parts of the year, portions of the Hawaii and American Samoa fleet target swordfish using shallow sets. As an indication of the size of businesses in the fishery, average annual fleet-wide ex-vessel revenues during 2005–2007 were about $60 million. Given the number of vessels active during that period (127, on average), this indicates an average of about $500,000 in annual revenue per vessel, thus all of the businesses affected by the longline measures would be considered small business entities. It is estimated that even with a large increase in the catch rates of bigeye tuna in the EPO the 500 mt catch limit would not be reached in any of the applicable years (2009–2011).

The total number of affected purse seine vessels is approximated by the current number of U.S. purse seine vessels class size 4–6 authorized to fish in the IATTC Convention Area. As of July 2009, there were five U.S. purse seine vessels listed on the IATTC Vessel Register; two are class size 5 (273 to 363 mt carrying capacity) and three are class size 6 (greater than 363 mt carrying capacity). Purse seine vessels class size 5 would be considered small business entities (revenues equal to or less than $4 million per year). It is estimated that from 2004–2008, the majority, if not all, class size 5 U.S. purse seine vessels have had revenues of less than $0.5 million per year. Class size 6 vessels are categorized as large business entities (revenues in excess of $4 million per year). A large purse seine vessel typically generates about 4,000 to 5,000 mt of tuna valued at about $4 to $5 million per year.

It is estimated that purse seine sets would be prohibited for 16 percent of the year in 2009 (59 day closure/365 days), 17 percent of the year in 2010 (61 day closure/365 days), and 20 percent of the year in 2011 (73 day closure/365 days), thus catches would be expected to be affected accordingly; however, the affected vessels are capable of fishing outside of the closure area (i.e., in the WCPO) during the closure period and/or for the remainder of the year, since the fishery continues year round, and vessels tend to use relatively short closures (such as these) for regular vessel maintenance. It may not be economically viable for the class size 5 purse seine vessels to register under the SPTT and fish in the WCPO because of their smaller carrying capacity and the increased costs associated with fishing far from port. At least one of the class size 5 vessels would not be able to register to fish in the WCPO because only one license is currently available.

Steps Taken To Minimize the Economic Impact on Small Business Entities

NMFS compared the effects of the proposed rule and various alternatives to the proposed rule on small business entities. For the longline fishery, an economic impact is not anticipated under the preferred alternative since the quota is unlikely to be met in any of the applicable years; however, NMFS considered the following alternatives. One of the alternatives would have prohibited all longline fishing in the Convention Area once the limit is reached, rather than just prohibiting the retention, transshipment, and landing of bigeye tuna caught in the Convention Area. The other alternative would have prohibited deep-set longline fishing in the Convention Area once the limit is reached, allowing shallow-set longline fishing in the Convention Area to continue, provided that no bigeye tuna and no yellowfin tuna caught in the Convention Area are retained, transshipped, or landed.

For the EPO purse seine closure, NMFS considered one alternative for each applicable year which differs from the rule in terms of when the closure is implemented. However, based on catch data from 2004–2009, small entities have historically made more tuna landings in the EPO during the alternatives' closure periods (July through September) compared to the closure period in the rule (November through January). Thus, for each year the alternative would not minimize the economic impact on small entities compared to the preferred alternative. There were no alternatives for the 30-day purse seine closure to the west of the Galapagos from 2009–2011 and for the tuna retention measure which would accomplish the stated objectives of Resolution C–09–01 and which would minimize any significant economic impact on the affected small entities.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, one small entity compliance guide was prepared for the affected small business entities in the longline fishery, and one was prepared for the affected small business entities in the purse seine fishery. Copies of this final rule and the compliance guides are available from the Southwest Regional Office (see **ADDRESSES**) and on the following Web site: *http://swr.nmfs.noaa.gov/*. The purse seine guide will be sent to all holders of permits for the purse seine fishery that are authorized by the IATTC to fish in the Convention Area, and the longline guide will be sent to all holders of permits for the longline fishery that have large-scale longline vessels. Copies of the guide and final rule will also be available upon request.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: November 18, 2009.

James W. Balsiger,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 300, subpart C is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart C—Eastern Pacific Tuna Fisheries

■ 1. The authority citation for 50 CFR part 300, subpart C, continues to read as follows:

Authority: 16 U.S.C. 951–961 *et seq.*

■ 2. In § 300.21, the definition of ''Fishing trip'' is revised and a definition of ''Longline gear'' is added, in alphabetical order, to read as follows:

§ 300.21 Definitions.

* * * * *

Fishing trip means a period that a fishing vessel spends at sea between port visits and during which any fishing occurs.

* * * * *

Longline gear means a type of fishing gear consisting of a main line that exceeds 1 nautical mile in length, is suspended horizontally in the water column anchored, floating, or attached to a vessel, and from which branch or dropper lines with hooks are attached.

* * * * *

■ 3. In § 300.24, paragraph (e) is revised, and new paragraphs (k) through (n) are added to read as follows:

§ 300.24 Prohibitions.

* * * * *

(e) Fail to retain any bigeye, skipjack, or yellowfin tuna caught by a fishing vessel of the United States of class size 4–6 using purse seine gear in the Convention Area, except fish considered unfit for human consumption due to reasons other than size, and except on the last set of the trip if there is insufficient well capacity to accommodate the entire catch.

* * * * *

(k) Use a fishing vessel over 24 meters in length to retain on board, transship, or land bigeye tuna captured by longline gear in the Convention Area or to fish in contravention of § 300.25(b)(4)(i) or (ii).

(l) Use a fishing vessel over 24 meters in length to fish in the Pacific Ocean using longline gear both inside and outside the Convention Area on the same fishing trip in contravention of § 300.25(b)(4)(iii).

(m) Fail to stow gear as required in § 300.25(b)(4)(iv) or (f)(3).

(n) Use a fishing vessel of class size 4–6 to fish with purse seine gear in the Convention Area in contravention of § 300.25(f)(1) or (2).

■ 4. In § 300.25, paragraphs (b) and (e)(1) are revised, and paragraph (f) is added to read as follows:

§ 300.25 Eastern Pacific fisheries management.

* * * * *

(b) *Tuna quotas in the longline fishery in the EPO.* (1) Fishing seasons for all tuna species begin on January 1 and end either on December 31 or when NMFS closes the fishery for a specific species.

(2) For each of the calendar years 2009, 2010, and 2011, there is a limit of 500 metric tons of bigeye tuna that may be captured and landed by longline gear in the Convention Area by fishing vessels of the United States that are over 24 meters in length.

(3) NMFS will monitor bigeye tuna landings with respect to the limit established under paragraph (b)(2) of this section using data submitted in logbooks and other available information. After NMFS determines that the limit in any year is expected to be reached by a specific future date, and at least 7 calendar days in advance of that date, NMFS will publish a notice in the **Federal Register** announcing that the limit has been reached and that the restrictions described in paragraph (b)(4) of this section will be in effect through the end of the calendar year.

(4) Once an announcement is made pursuant to paragraph (b)(3) of this section, the following restrictions will apply during the period specified in the announcement:

(i) A fishing vessel of the United States over 24 meters in length may not be used to retain on board, transship, or land bigeye tuna captured by longline gear in the Convention Area, except as follows:

(A) Any bigeye tuna already on board a fishing vessel upon the effective date of the prohibitions may be retained on board, transshipped, and/or landed, to the extent authorized by applicable laws and regulations, provided that they are landed within 14 days after the prohibitions become effective.

(B) In the case of a vessel that has declared to NMFS, pursuant to § 665.23(a) of this title, that the current trip type is shallow-setting, the 14-day limit is waived, but the number of bigeye tuna retained on board, transshipped, or landed must not exceed the number on board the vessel upon the effective date of the prohibitions, as recorded by the NMFS observer on board the vessel.

(ii) Bigeye tuna caught by longline gear used on a vessel of the United States over 24 meters in length in the Convention Area may not be transshipped to a fishing vessel unless that fishing vessel is operated in compliance with a valid permit issued under § 660.707 or § 665.21 of this title.

(iii) A fishing vessel of the United States over 24 meters in length, other than a vessel for which a declaration has been made to NMFS, pursuant to § 665.23(a) of this title, that the current trip type is shallow-setting, may not be used to fish in the Pacific Ocean using longline gear both inside and outside the Convention Area during the same fishing trip, with the exception of a fishing trip during which the prohibitions were put into effect as announced under paragraph (b)(3) of this section.

(iv) If a fishing vessel of the United States over 24 meters in length, other than a vessel for which a declaration has been made to NMFS, pursuant to § 665.23(a) of this title, that the current trip type is shallow-setting, is used to fish in the Pacific Ocean using longline gear outside the Convention Area and the vessel enters the Convention Area at any time during the same fishing trip, the longline gear on the fishing vessel must be stowed in a manner so as not to be readily available for fishing; specifically, the hooks, branch or dropper lines, and floats used to buoy the mainline must be stowed and not available for immediate use, and any power-operated mainline hauler on deck must be covered in such a manner that it is not readily available for use.

* * * * *

(e) *Bycatch reduction measures.* (1) Bigeye, skipjack, and yellowfin tuna caught by a fishing vessel of the United States of class size 4–6 (more than 182 metric tons carrying capacity) using purse seine gear must be retained on board and landed, except fish deemed unfit for human consumption for reasons other than size from 0000 hours on January 1, 2010 to 2400 hours on December 31, 2011. This requirement shall not apply to the last set of a trip if the available well capacity is insufficient to accommodate the entire catch.

* * * * *

(f) *Purse seine closures in the EPO.* (1) A fishing vessel of the United States of class size 4–6 (more than 182 metric tons carrying capacity) may not be used to fish with purse seine gear in the Convention Area from 0000 hours on November 21, 2009, to 2400 hours on January 18, 2010; from 0000 hours on November 18, 2010, to 2400 hours on January 18, 2011; and from 0000 hours on November 7, 2011, to 2400 hours on January 18, 2012, except that a vessel of class size 4 (182 to 272 metric tons carrying capacity) may make one fishing trip of up to 30 days duration during the specified closure period, provided that the vessel carries an observer of the On-Board Observer Program of the Agreement on the International Dolphin Conservation Program during the entire fishing trip.

(2) A fishing vessel of the United States of class size 4–6 (more than 182 metric tons carrying capacity) may not be used from 0000 hours on September 29 to 2400 hours on October 29 in the years 2010 or 2011 to fish with purse seine gear within the area bounded at

the east and west by 96° and 110° W. longitude and bounded at the north and south by 4° N. and 3° S. latitude.

(3) At all times while a vessel is in a Closed Area established under paragraphs (f)(1) or (f)(2) of this section, the fishing gear of the vessel shall be stowed in a manner as not to be readily available for fishing. In particular, the boom shall be lowered as far as possible so that the vessel cannot be used for fishing, but so that the skiff is accessible for use in emergency situations; the helicopter, if any shall be tied down; and launches shall be secured.

[FR Doc. E9–28034 Filed 11–18–09; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 74, No. 224
Monday, November 23, 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

Agricultural Marketing Service

7 CFR Part 948

[Doc. No. AMS–FV–09–0055; FV09–948–3 PR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on a modification of the minimum size requirement under the Colorado potato marketing order, Area No. 2. The marketing order regulates the handling of Irish potatoes grown in Colorado, and is administered locally by the Colorado Potato Administrative Committee for Area No. 2 (Committee). This proposed rule would change the minimum size requirement from 1⅞ inches in diameter to 2 inches in diameter or 4 ounces minimum weight for all long varieties of potatoes. This change would return the minimum size requirement to the standard that had been in place prior to the 2008–2009 season, when adverse weather conditions damaged the crop and resulted in the Committee recommending a temporary relaxation in the minimum size requirement.

DATES: Comments must be received by December 8, 2009.

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

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

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

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

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

This proposal 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, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposal invites comments on a modification of the minimum size requirement under the order. This rule would change the minimum size requirement from 1⅞ inches in diameter to 2 inches in diameter or 4 ounces minimum weight for all varieties of potatoes, except for round varieties. This rule was recommended by the Committee at a meeting on June 25, 2009.

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

Section 948.40 provides that whenever the handling of potatoes is regulated pursuant to §§ 948.20 through 948.24, such potatoes must be inspected by the Federal-State Inspection Service, and certified as meeting the applicable requirements of such regulations.

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

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

On June 25, 2009, the Committee unanimously recommended changing the minimum size requirement from 1⅞

inches to 2 inches in diameter or 4 ounces minimum weight for all varieties of potatoes, except for round varieties. This had been the industry standard in place prior to the 2008–2009 season. Because severe and adverse weather conditions in 2008 significantly decreased yields and damaged the crop, the Committee had recommended for the 2008–2009 marketing season that the minimum size be reduced from 2 inches in diameter or 4 ounces minimum weight to 1⅞ inches in diameter for all varieties of potatoes, except round varieties. The Committee believes it would now be appropriate to return to the size regulations that were in place prior to the 2008–2009 season.

The Committee believes that quality assurance is very important to the Colorado potato industry. Providing acceptable quality produce that is appealing to consumers on a consistent basis is necessary to maintain buyer confidence in the marketplace and improve producer returns.

Under this proposal, potatoes other than round varieties would meet the size requirement if they are at least 2 inches in diameter or 4 ounces in weight. Some long, thin potatoes might be smaller than 2 inches in diameter, but weigh at least 4 ounces. These potatoes would meet the proposed size requirement. Some potatoes might weigh less than 4 ounces, but be at least 2 inches in diameter. These potatoes would also meet the proposed minimum size requirement.

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 initial regulatory flexibility analysis.

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

There are approximately 72 handlers of Colorado Area No. 2 potatoes subject to regulation under the order and approximately 175 producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts are less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

During the 2007–2008 marketing year, 14,225,568 hundredweight of Colorado Area No. 2 potatoes were inspected under the order and sold into the fresh market. Based on an estimated average f.o.b. price of $12.05 per hundredweight, the Committee estimates that 61 Area No. 2 handlers, or about 85 percent, had annual receipts of less than $7,000,000. In view of the foregoing, the majority of Colorado Area No. 2 potato handlers may be classified as small entities.

In addition, based on information provided by the National Agricultural Statistics Service (NASS), the average producer price for Colorado potatoes for 2007 was $9.85 per hundredweight. The average annual fresh potato revenue for the 175 Colorado Area No. 2 potato producers is therefore calculated to be approximately $778,455. Consequently, on average, the majority of the Area No. 2 Colorado potato producers may not be classified as small entities.

This rule would change the minimum size requirement from 1⅞ inches in diameter to 2 inches in diameter or 4 ounces minimum weight for all potato varieties, except round varieties. Authority for this action is contained in §§ 948.21 and 948.22.

NASS estimated planted acreage for the 2007 crop in Area No. 2 at 59,200 acres, a decrease of 700 acres when compared with 59,900 acres planted in 2006. Based on Committee records, 88.4 percent of Area No. 2 potatoes entered the fresh market during the 2007–2008 marketing year (including potatoes produced for seed). Of those potatoes, Russet or long potato varieties accounted for 88.3 percent.

Only a small portion of the crop is expected to be affected by the proposed minimum size increase (i.e., that portion of varieties, other than round varieties, smaller than 2 inches in diameter or 4 ounces minimum weight, but larger than 1⅞ inches in diameter) and would no longer meet order requirements. However, due to current customer demand, many handlers are already shipping 2-inch minimum diameter potatoes. The Committee believes that the expected benefits of improved quality, increased purchases and sales volume, and increased returns received by producers would greatly outweigh the costs related to the regulation.

The Committee discussed alternatives to this rule. One alternative included making no change at all to the current regulation. However, the Committee did not believe this alternative would meet the needs of buyers or benefit the industry. The Committee believes that the change would increase returns to producers while supplying the market with a higher percentage of larger high quality potatoes.

This proposed rule would change the size requirement for all varieties of potatoes, except for round varieties. This action would not impose any additional reporting or recordkeeping requirements on either small or large potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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 proposed rule.

In addition, the Committee's meeting was widely publicized throughout the Colorado Area No. 2 potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 25, 2009, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

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

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because this rule would need to be in place as soon as possible, as handlers will begin shipping potatoes from the 2009–2010 crop in September. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

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

PART 948—IRISH POTATOES GROWN IN COLORADO

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

Authority: 7 U.S.C. 601–674.

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

§ 948.386 Handling regulation.

* * * * *

(a) * * *

(2) *All other varieties.* U.S. No. 2, or better grade, 2 inches minimum diameter or 4 ounces minimum weight.

* * * * *

Dated: November 17, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9–28131 Filed 11–19–09; 4:15 pm]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. FAA–2009–0675; Notice No. 09–07]

RIN 2120–AJ43

Part 121 Activation of Ice Protection

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action would amend the regulations applicable to operators of certain airplanes used in Title 14 Code of Federal Regulations part 121 operations and certificated for flight in icing conditions. The proposed standards would require either the installation of ice detection equipment or changes to the Airplane Flight Manual to ensure timely activation of the airframe ice protection system. This proposed regulation is the result of information gathered from a review of icing accidents and incidents, and it is intended to improve the level of safety when airplanes are operated in icing conditions.

DATES: Send your comments on or before February 22, 2010.

ADDRESSES: You may send comments identified by Docket Number FAA–2009–0675 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Bring comments to Docket Operations Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax comments to Docket Operations at 202–493–2251.

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

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

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

Contacts for Further Information: For operational questions about the proposed rule contact Jerry Ostronic, FAA, Air Carrier Operations Branch, AFS–220, Flight Standards Service, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–8166; facsimile (202) 267–5229, e-mail *Jerry.C.Ostronic@faa.gov.*

For aircraft certification questions about the proposed rule contact Robert Jones, FAA, Propulsion/Mechanical Systems Branch, ANM–112, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, WA 98057–3356; telephone (425) 227–1234; facsimile (425) 227–1149, e-mail *Robert.C.Jones@faa.gov.*

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SUPPLEMENTARY INFORMATION: Later in this preamble, under the Additional Information section, the FAA discusses how you can comment on this proposal and how the agency will handle your comments. Included in this discussion is related information about the docket, privacy, and the handling of proprietary or confidential business information. The FAA also discusses how you can get a copy of this proposal and related rulemaking documents. Instructions for accessing the docket appear under the **ADDRESSES** heading of this notice of proposed rulemaking (NPRM). Appendix 1 of this preamble defines terms used in the preamble of this NPRM.

Authority for This Rulemaking

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

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing minimum standards required in the interest of safety for the design and performance of aircraft; regulations and minimum standards of safety for inspecting, servicing, and overhauling aircraft; and regulations for other practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it prescribes new safety standards for the operation of certain airplanes used in air carrier service.

I. Background

On October 31, 1994, an accident involving an Avions de Transport Regional ATR 72 series airplane occurred in icing conditions. This prompted the FAA to initiate a review of aircraft safety in icing conditions and determine what changes could be made to increase the level of safety. In May 1996, the FAA sponsored the International Conference on Aircraft

Inflight Icing, where icing specialists recommended improvements to increase the level of safety of aircraft operating in icing conditions. The FAA reviewed the conference recommendations and developed a comprehensive, multi-year icing plan. The FAA Inflight Aircraft Icing Plan, dated April 1997,[1] described various activities the FAA was considering to improve aircraft safety when operating in icing conditions. In accordance with the FAA Inflight Aircraft Icing Plan, the FAA tasked the Aviation Rulemaking Advisory Committee (ARAC)[2] to consider the need for ice detectors or other means to warn flightcrews early about ice accreting on critical surfaces requiring crew action. The work would be carried out by ARAC's Ice Protection Harmonization Working Group (IPHWG). This proposed rule is based on ARAC's recommendations to the FAA, which may be found in the docket for this rulemaking, docket FAA–2009–0675.

A. Existing Regulations for Flight in Icing Conditions

Currently, the certification regulations applicable to airplanes for flight in icing conditions require that the airplane must be able to operate safely in the continuous maximum and intermittent maximum icing conditions of appendix C.[3] Amendment 25–121 to 14 CFR part 25, which applies to transport category airplanes, added specific requirements for airplane performance and handling qualities for flight in icing conditions.[4] Recently, the FAA adopted Amendment 25–129[5] to add requirements in § 25.1419 to provide means to ensure timely activation of ice protection systems. These requirements will apply to airplanes type certificated in the future. The regulations for airplanes certificated under part 23 (non-transport) require that ''a means be identified or provided for determining the formation of ice on critical parts of the airplane * * *''

Parts 91, 121, and 135 contain regulations that apply to airplane operations in icing conditions. Operating regulations under parts 91 and 135 address limitations in icing conditions for airplanes operated under those regulations.[6] Part 121 addresses operations in icing conditions that might adversely affect safety and regulates installation of certain types of ice protection and wing illumination equipment.[7]

Neither the current operating regulations nor the certification regulations in effect before the recent adoption of Amendment 25–129 require a means to ensure timely activation of ice protection systems. This proposed rule would provide a standard to ensure that ice protection systems on in-service part 121 airplanes are activated in a timely way to ensure safe flight in icing conditions.

B. National Transportation Safety Board Safety Recommendations

This proposal addresses Safety Recommendation No. A–07–14[8] issued by the National Transportation Safety Board (NTSB) on the subject of airframe icing. That NTSB safety recommendation is a result of a Cessna Citation 560 series airplane accident near Pueblo, Colorado on February 16, 2005, in which the airplane crashed and eight people died. The accident airplane had been operating in icing conditions, and the flightcrew had not activated the airframe ice protection system during approach, as was required for those operating conditions by the Airplane Flight Manual (AFM). The NTSB recommended that manufacturers and operators of pneumatic-deicing-boot-equipped airplanes be required to revise their AFM, operating manuals, and training programs to emphasize that leading-edge deicing boots should be activated as soon as the airplane enters icing conditions.

C. Authorities

1. Federal Aviation Administration

Title 14 CFR part 25 contains the U.S. airworthiness standards for type certification of transport category airplanes. These standards apply to airplanes manufactured within the U.S. and to airplanes manufactured in other countries and imported to the U.S. under a bilateral airworthiness agreement.

2. Joint Aviation Authorities

The Joint Airworthiness Requirements (JAR)-25 contain the airworthiness standards of the Joint Aviation Authorities (JAA) of Europe for type certification of transport category airplanes. Thirty-seven European countries accept airplanes type certificated to JAR–25 standards. These countries also accept airplanes manufactured in the U.S. that are type certificated to JAR–25 standards for export to Europe.

3. European Aviation Safety Agency

The European Aviation Safety Agency (EASA) was established by the European community to develop standards to ensure safety and environmental protection, oversee uniform application of those standards, and promote them internationally. EASA formally became responsible for certification of aircraft, engines, parts, and appliances on September 28, 2003. EASA has assumed most of the functions and activities of the JAA, including its efforts to harmonize the European airworthiness certification regulations with those of the U.S.

The JAR–25 standards have been incorporated into EASA's ''Certification Specifications for Large Aeroplanes'' (CS–25) in similar if not identical language. EASA's CS–25 became effective October 17, 2003.

D. Harmonization of U.S. Standards With Those of Other Countries

The airworthiness standards proposed in this NPRM were developed before EASA began operations. They were developed in coordination with the JAA, United Kingdom Civil Aviation Authority, and Transport Canada. None of these civil aviation authorities have initiated rulemaking to adopt the proposed standards.

E. Related Rulemaking Activity

A final rule titled ''Activation of Ice Protection'' was published on August 3, 2009.[9] It amends § 25.1419 by requiring a method to ensure timely activation of the airframe ice protection systems (IPS). It also adds requirements to reduce flightcrew workload associated with operation of an airframe IPS that operates cyclically, and to ensure that procedures for operation of an airframe IPS are included in the AFM. Those changes affect new airplane certification for flight in icing conditions. In contrast, this proposed rule is concerned with timely airframe IPS activation for in-service airplanes.

F. Advisory Material

In addition to this NPRM, the FAA has developed Advisory Circular (AC) 121.321, ''Compliance with the Requirements of § 121.321.'' That proposed AC would provide guidance

[1] FAA Inflight Aircraft Icing Plan, dated April 1997, is available in the Docket.

[2] Published in the **Federal Register**, December 8, 1997 (62 FR 64621).

[3] Section 25.1419, Ice Protection.

[4] 72 FR 44656 (August 8, 2007).

[5] 74 FR 38328 (August 3, 2009).

[6] 14 CFR 91.527, Operating in icing conditions; and § 135.227, Icing conditions: Operating limitations.

[7] 14 CFR 121.629(a), Operation in icing conditions and § 121.341, Equipment for operations in icing conditions.

[8] NTSB recommendation A–07–14 is available in the Docket and on the Internet at: *http://www.ntsb.gov/Recs/letters/2007/A07_12_17.pdf.*

[9] 74 FR 38328.

for one acceptable means, but not the only means, of demonstrating compliance with this proposed rule. The draft AC has been released concurrently with this NPRM. It is posted on the ''Aircraft Certification Draft Documents Open for Comment'' Web site, *http://www.faa.gov/aircraft/draft_docs.* The Web site will indicate the date comments are due.

II. Discussion of the Proposal

A. Safety Concern

The ARAC IPHWG, as a result of the FAA's tasking, reviewed icing events. The IPHWG found accidents and incidents where the flightcrew were either completely unaware of ice accretion on the airframe, or were aware of ice accretion but judged it not significant enough to warrant operation of the airframe IPS. The FAA agreed with the ARAC recommendation for rulemaking that would require that flightcrews have a clear means to know when to activate the airframe IPS.

B. Means To Address the Safety Concern

1. Airworthiness Directives

The FAA has issued airworthiness directives (AD) to address when to activate the airframe IPS on several types of airplanes. These ADs require activation of pneumatic deicing boots at the first signs of ice accretion on the airplane. This requirement relieves the pilot of the responsibility for determining whether the amount of ice accumulated on the wing warrants airframe IPS activation. But activation of the pneumatic deicing boots is still subject to the flightcrew's observation of ice accretions, and such observations can be difficult during times of high workload, during operations at night, or when clear ice has accumulated. The difficulties associated with observing ice accretions are applicable to *any* airframe IPS that relies on the flightcrew's observations for activating the system, not just pneumatic deicing boots, so those ADs are not adequate to address the safety concern that is the focus of this proposed rulemaking. The FAA has determined, however, that because the cruise phase of flight entails a lower workload than other phases of flight, activation of the deicing boots based on flightcrew observation of ice accretions during this phase of flight is acceptable.

2. A Primary Ice Detection System

The IPHWG concluded that installing a device to alert the flightcrew to activate the airframe IPS would be a better way to address the safety concern than solely relying on the flightcrew's observation of ice accretion to determine when to activate the IPS. The FAA has determined that a primary ice detection system would be one acceptable means to meet the objectives of this proposed rule. Such a system typically consists of two independent detectors (an advisory ice detection system typically has only one detector). A primary ice detection system has sufficient performance and reliability levels that the flightcrew does not need to monitor icing conditions. A primary ice detection system could either automatically activate the airframe IPS or indicate to the flightcrew when to activate the system. There are several types of airplanes currently in operation that have primary ice detection systems installed, and the FAA agrees with the IPHWG determination that these airplanes already meet the desired level of safety.

3. An Advisory Ice Detection System and Visual Cues

An advisory ice detection system typically consists of one detector. Such a system does not have sufficient reliability to be the primary means of determining when the airframe IPS must be activated. With an advisory ice detection installed, it is still the flightcrew's responsibility to make the determination to activate the IPS. However, the advisory ice detection system would provide a much higher level of safety than visual cues alone and would mitigate the effects of human sensory limitations and inadequate attention resulting from workload.

An advisory ice detection system, in conjunction with visual cues that pilots can use to identify icing accumulation, would also be an acceptable means of alerting the flightcrew to activate the airframe IPS and meet the objectives of this proposed rule. If this method is used, however, its acceptability would be contingent upon the following:

- The advisory ice detection system would indicate to the crew when icing conditions exist.
- The flightcrew would activate the airframe IPS based on either their observation of the first sign of ice accretion or an alert from the advisory ice detection system indicating the presence of ice, whichever occurs first. This activation would not depend on determining the thickness of the accretion.

4. Operating the Ice Protection System Continuously

The FAA agrees with the IPHWG conclusion that an acceptable means of meeting the objectives of this proposed rule would be to require operating the airframe IPS continuously whenever the airplane is operating in conditions conducive to airframe icing, except in the cruise phase of flight (discussed below). To accomplish this, the flightcrew would activate the airframe IPS in response to a specific air temperature threshold and the presence of visible moisture. Because ambient temperature is indicated by flight deck instruments and the flightcrew can readily observe visible moisture, deciding when to initiate the system would require little increased effort on the part of the flightcrew.

C. The Proposed Rule

The proposed rule would be applicable to airplanes with a certificated maximum takeoff weight (MTOW) less than 60,000 pounds. Proposed § 121.321 would require that, 24 months after the effective date of the final rule, no person may operate an airplane with a certificated MTOW less than 60,000 pounds in conditions conducive to airframe icing unless the airframe IPS is operated in accordance with the proposed section. To address flight in icing conditions, proposed § 121.321(a) would require one of the following:

(1) A primary ice detection system and automatic or manual activation of the airframe IPS upon notice from the primary ice detection system that activation is necessary, as well as initiation of any other operational procedures for operating in icing conditions specified in the AFM; or

(2) Both visual cues and an advisory ice detection system, either of which enable the flightcrew to determine when the airframe IPS must be activated, activation of the primary airframe IPS when either of those means indicate it is necessary, and initiation of any other operational procedures for operating in icing conditions specified in the AFM; or

(3) If the airplane is not equipped to comply with either of the above two options, activation of the airframe IPS and initiation of approved procedures for operating in airframe icing conditions during climb, holding, maneuvering for approach and landing, and any other operation at approach or holding airspeeds, when in conditions conducive to airframe icing. However, if this option is specifically prohibited in the AFM, then proposed § 121.321(b) would require either (1) or (2) above.

Proposed § 121.321(a) would also require that if option (a)(3) is selected, the airframe IPS must be activated and operated at the first sign of ice formation anywhere on the airplane during any

other phase of flight besides climb, holding, and maneuvering for approach and landing, except where the AFM specifies that the airframe IPS should not be used.

Proposed § 121.321(c) would require that procedures for operating the airframe IPS be included in the AFM for airplanes that comply with proposed § 121.321(a)(1) or (a)(2). For airplanes that comply with proposed § 121.321(a)(3), the procedures must be in the AFM or in the air carrier's operations manual required by § 121.133.

Proposed § 121.321(d) would require the AFM or the manual required by § 121.133 to address initial activation, operation after initial activation, and deactivation of the airframe IPS. This proposed provision would allow continuous operation, automatic cycling, or manual cycling of the airframe IPS, depending on the design of the airplane's airframe IPS. For airplanes equipped with ice detection systems, this proposed paragraph would require cycling, either manual or automatic, each time ice is detected.

Certain IPSs use fluids that lower the freezing point of water. Unlike other IPSs, fluid systems have a limited duration of ice protection that is related to the capacity of fluid that the airplane can carry. These systems need additional evaluation. Therefore, for airplanes equipped with fluid ice protection systems to comply with proposed § 121.321, two issues must be addressed:

- *System design.* The system design must have adequate fluid capacity to ensure that the airplane/flightcrew can comply with this proposed rule.
- *AFM Dispatch Instructions.* The AFM must contain information to ensure that the system is serviced with the appropriate amount of fluid for each flight to ensure that the airplane/flightcrew can comply with this proposed rule.

For airplanes without ice detection systems, this proposed rule also allows manual cycling based on time intervals. Recently adopted 14 CFR 25.1419(g) requires transport category airplanes to be equipped with an ice detection system that alerts the pilot when to activate the airframe IPS if the ice protection is not either operated continuously in icing conditions or automatically activated. However, it does not allow manual cycling of the IPS based on time intervals. Therefore, manual cycling based on time intervals would be allowed only for airplanes without § 25.1419(g) in their certification basis. This would allow the existing airplane fleet to comply with this proposed rule without modifying the airframe IPS.

The modifications to airplanes to install ice detection systems to comply with this proposed rule would likely be complex. They would require thorough testing and analysis to ensure that the ice detection systems perform their intended function when installed on the airplane. Therefore, the FAA proposes in § 121.321(e) that these modifications would require approval through an amended or supplemental type certificate in accordance with 14 CFR part 21. In the normal course of equipment approval, any revised procedures and/or limitations associated with such modifications would also need to be addressed in the AFM under §§ 23.1581 or 25.1581.

D. Affected Airplanes

The ARAC's recommendation was limited to airplanes with a certificated MTOW of less than 60,000 lbs. A limited analysis of past icing events revealed that airplanes with certificated MTOWs greater than 60,000 lbs. have not experienced accidents due to in-flight icing, while airplanes with lower certificated MTOWs have an event history. Since certificated MTOW is simple to discern, well-understood, and will address airplanes that have had an event history, the IPHWG recommended it be adopted as the discriminating parameter and the FAA agrees.

The FAA requests comment on whether this proposed rule, if adopted, should be applied to airplanes larger than 60,000 pounds MTOW. For example, initial indications were that icing may have been implicated in a recent accident near Buffalo, New York, involving an airplane with a MTOW slightly greater than 60,000 pounds. While subsequent investigation indicates that icing was not implicated in this accident, if this rule applied to airplanes with a MTOW of 66,000 pounds, the accident airplane would have been subject to its requirements.[10]

E. Phase of Flight Considerations

1. Approach, Landing, Go-Around and Holding Phases of Flight

The IPHWG accident and incident review revealed that the phases of flight that presented the greatest risk from airframe icing were those associated with low speed and relatively high angle-of-attack operation (that is, approach, landing, go-around, and holding). With respect to these phases of flight, for airplanes not equipped with primary or advisory ice detection systems, the IPHWG determined that the following factors substantiated the need for requiring activation of the airframe IPS while in conditions conducive to icing:

- An overall majority of events which originated in these phases of flight;
- A sufficient number of events in which the flightcrew was confirmed to be unaware of ice accretion, supplemented by a substantial number of events in which flightcrew awareness of ice accretion was unknown;
- High cockpit workload resulting in low residual flightcrew attention;
- Frequent maneuvering, resulting in little opportunity for the flightcrew to detect aerodynamic degradations due to icing; and
- Maneuvering at relatively high angles of attack.

The FAA concurred with this analysis.

2. Cruise Phase

In contrast with the phases of flight discussed previously, for the cruise phase of flight in airplanes not equipped with primary or advisory ice detection systems, the IPHWG determined that it would not be appropriate to require activation of the airframe IPS while in conditions conducive to icing. Rather, the IPHWG recommended that the airframe IPS be activated at the first sign of ice accretion, and operated thereafter, using an automatic system or manually based on time, until after the airplane departs the conditions conducive to icing.

The IPHWG reviewed accidents and incidents that originated during the cruise phase of flight.[11] For the events with sufficient data available for analysis, the IPHWG found that flightcrews were aware of the ice accretion, but did not activate the IPS. Waiting for a specific thickness of ice to accrete before activating the IPS was consistent with the common activation procedure at that time.

Flightcrew workload is lighter during the cruise phase of flight. This may account for the flightcrews of the cruise phase accident and incident airplanes being aware of the ice accretion, as compared to events which have occurred in other phases of flight, when workload was high and flightcrews were not aware of ice accretions.

The IPHWG also considered the human factors aspect of requiring

[10] The accident airplane was equipped with an ice detection system that would enable an operator to comply with this proposed rule. Preliminary reports indicate that the ice protection system was operating at the time of the accident.

[11] Cruise is the phase in which an altitude or flight level is maintained during en route level flight.

flightcrews to activate the IPS during the cruise phase of flight. Activation of the IPS based on conditions conducive to ice accretion, even if ice is not actually accreting, is a conservative way to ensure that the IPS is operated in a timely manner. For the cruise phase of flight, however, the IPHWG considered that flightcrews would more reliably activate the airframe IPS at the first sign of icing than they would if required to activate the system and keep operating it for long periods without any indication of ice accretion.

The IPHWG determined the following factors substantiated the acceptability of requiring activation of the airframe IPS based on flightcrew observation of airframe ice accretions during the cruise phase of flight:

- No accidents or incidents during cruise where the flightcrew were unaware of ice accretions on the airframe;
- Low cockpit workload, resulting in sufficient residual flightcrew attention to detect ice accretions;
- Infrequent maneuvering, resulting in opportunity for the flightcrew to detect aerodynamic degradations due to icing; and
- Human factors concerns about requiring flightcrews to operate the IPS for extended periods of time when there may not be any ice on the airframe.

The FAA agrees with this analysis. Therefore, for the cruise phase of flight, this proposed rule is written to require IPS activation and use at the first sign of ice on the airplane and thereafter, according to the procedures in the AFM or in the manual required by § 121.133. This may be accomplished with an automatic system, or the IPS may be cycled manually based on time.

3. Takeoff Phase of Flight

The IPHWG excluded the takeoff phase of flight from its recommendation for rulemaking because the accidents related to that phase of flight were caused by improper ground deicing/anti-icing procedures. Ground deicing and anti-icing procedures have been addressed by Amendment 121–253 to 14 CFR (121.629(b) and (c), ''Operating in icing conditions''). Again, the FAA agreed with this recommendation.

F. Temperature

In some cases, airframe manufacturers have specified definitions of icing conditions for some airplane types. In the absence of type-specific information, the IPHWG concluded that conditions conducive to airframe icing would exist in flight at an outside air temperature at or below 2 °C in clouds or precipitation.

Engine IPSs are commonly operated at or below a static air temperature of 5 °C or a total air temperature of 10 °C. This temperature is different from the 2 °C recommended by ARAC for this proposal. The FAA believes that using a common temperature for activation of both the engine and the airframe IPSs would reduce crew workload and decrease the probability of the flightcrew not noticing when the temperature has dropped to 2 °C. The FAA therefore proposes to identify conditions conducive to airframe icing in this proposed rule as visible moisture at or below a static air temperature of 5 °C or a total air temperature of 10 °C.

The FAA agrees with the IPHWG that flightcrews must be given a clear means to know when to activate the airframe IPS. In the past, many airplanes have had procedures requiring activation only after a substantial accumulation of ice. This proposed rule would require that ice detection systems be installed, or that ice protection systems be manually activated in conditions conducive to icing in most phases of flight. In the cruise phase, the airframe IPS would be activated at the first sign of ice accumulation anywhere on the airplane. To ensure timely activation of the airframe IPS, the FAA proposes to amend the current part 121 regulations as recommended by the IPHWG, except for the change to the temperature considered conducive to airframe icing, as discussed above.

G. Technology Available To Comply With Proposed Rule

The FAA and IPHWG reviewed the current state of ice detector technology and found viable means of compliance with the proposed rule. There are several methods available to reliably alert the flightcrew to activate the airframe IPS. This technology has been approved for use on airplanes to alert or advise the pilot of ice accretion, or as the primary means of determining when the airframe IPS should be activated.

H. Differences From the ARAC Recommendation

Besides the change in the air temperatures proposed for defining conditions conducive to icing, which is discussed earlier in this document, the FAA made several other changes to the rule recommended by ARAC through the IPHWG. One change was a rewording of the ARAC-recommended rule to clarify its applicability to the airframe IPS. The rule language recommended by ARAC did not specify applicability only to airframe IPSs.

The FAA made another change because, although the ARAC recommendation provided three ways to ensure that the flightcrew would know when to activate the airframe IPS, for at least one of them it did not specify when the flightcrew must activate the airframe IPS. The agency has revised the ARAC wording to clarify when the flightcrew must activate the airframe IPS. The FAA also revised the ARAC-recommended rule to specify items that must be included in the AFM or the manual required by § 121.133. These revisions are considered minor changes to the ARAC's recommendation.

I. Airworthiness Directives

The requirements proposed in this NPRM to some extent overlap and duplicate existing requirements in certain airworthiness directives (ADs). As discussed above, these ADs require revisions to the AFM for certain airplanes to provide information and instructions to pilots for operating in icing conditions. This proposed rule would also require AFM revisions to provide information for operating in icing conditions for those same airplanes, among others. However, the operating information required by this proposal would be more detailed and specific to the individual airplane models than the information required by the ADs and, in some cases, the proposed instructions to the pilots would be more stringent than those required by the ADs.

If this proposed rule is adopted, the FAA will revise those ADs to incorporate the new requirements. It is necessary to retain those ADs because this proposed rule would apply only to part 121 operations. The ADs, on the other hand, apply to all operations of the subject airplanes. Rescinding the ADs would allow reintroduction of the unsafe condition (that is, delayed activation of IPSs) into operations conducted under other parts.

The list of those ADs appears in Appendix 2 of the preamble of this NPRM.

J. Level of Approval

For an amended or supplemental type certificate used to comply with this proposed rule, among the pertinent rules that apply to any modification are §§ 23.1301 or 25.1301 (''Equipment—Function and installation''). Paragraph (a) of these rules requires that the equipment ''be of a kind and design appropriate to its intended function.'' This proposed rule would not by itself impose new airworthiness standards. However, to meet this ''intended function'' requirement, an applicant seeking approval of design changes to enable operators to comply with this

proposed rule would have to show that the airplane, as modified, would, in fact, comply with this proposed rule. This requirement is consistent with the FAA's practice of compliance findings for the digital flight data recorder requirements of § 121.343 (Amendment No. 121–238, ''Extension of Compliance Data for Installation of Digital Flight Data Recorders on Stage 2 Airplanes'').[12]

This proposed rule is not intended to disapprove an existing part 23 or part 25 approval for flight in icing conditions. It would not require re-certification of an airplane for flight in conditions conducive to airframe icing.

K. Compliance Time

This notice proposes a two-year compliance time after the effective date of the final rule. That compliance time is based on the time required to approve new designs and install new equipment. For some airplanes, it may be possible to comply through AFM revisions alone, which could be accomplished quickly. However, some airplanes may need to go through a more involved certification process, so the longer compliance time of two years was chosen.

L. Reasons for Not Proposing Part 91 and Part 135 Operating Rules

Part 121 covers all scheduled air carrier operations of airplanes with ten or more passenger seats and scheduled air carrier operations of all turbojets regardless of size. The ''hub and spoke'' route network of many air carriers can concentrate large numbers of part 121 operations within a single weather system. With occasional exceptions under § 121.590, part 121 operators are constrained to using only airports certificated under 14 CFR part 139. A given part 121 operator is generally further constrained to use of only those part 139 airports listed in its Operations Specifications.

Flightcrews of part 121 operators generally do not carry approach charts for airports not listed in their Operations Specifications. During busy traffic periods, lengthy vectoring or holding for landing sequencing is common at these airports. When this vectoring results in exposure to undesirable conditions such as icing, the flightcrews' options (except in case of emergency) are generally limited to tolerating the exposure or diverting to a pre-planned part 139 alternate airport listed in their Operations Specifications.

The FAA considered 14 CFR part 91 and part 135 operations. Most aircraft operated under parts 91 and 135 have been subjected to the ADs discussed above regarding activation of their de-icing boots at first signs of ice accretion. Those ADs apply to all aircraft with pneumatic de-icing boots that are certificated for flight in known icing conditions. The ADs addressing boot activation resulted from an FAA review of operating procedures and certification bases on the affected aircraft. As a result of this aircraft review and issuance of ADs, a level of safety for initial ice accretions has been established.

Part 91 and part 135 aircraft are typically smaller-scale aircraft than those operated under part 121. This smaller scale provides easier monitoring of ice accretions. Part 91 and part 135 operators are also not limited to part 139 airports only, and in fact, often avoid them because of the factors discussed above. Even when such operations include part 139 airports, operators may divert to any of a number of suitable airports near the scheduled part 139 airport. Consequently, part 91 and part 135 operators often operate in a lower air traffic density that results in fewer holding delays and significantly more routing options in icing conditions.

The level of safety provided by the combination of the ADs, the review of the operating procedures, the ability to more readily evaluate ice accretions, and tactical flexibility provide a level of safety comparable to other part 91 and part 135 operational requirements. The proposed part 121 rule change will enhance the level of safety for the segment of the traveling public that has the greatest exposure and subsequent risk associated with flight in icing conditions. Therefore, the IPHWG concluded that rules for parts 91 and 135 are not required at this time, and the FAA agrees.

M. Applicability to Part 23 and Part 25 Airplanes

The icing accident and incident database developed by the IPHWG showed that all the relevant accidents and incidents occurred on airplanes with a certificated MTOW of less than 60,000 pounds. Based on this finding, the FAA is proposing a part 121 rule that is applicable to those airplanes. Since the proposed rule addresses the safety concerns of flight in icing conditions for smaller airplanes (those with a certificated MTOW less than 60,000 pounds), the rule would be applicable to both part 23 and part 25 airplanes that are operated under part 121.

N. Discussion of Working Group Non-Consensus Issues

The IPHWG did not reach consensus on several issues related to this rulemaking proposal. A summary of these issues can be found in the docket. The complete working group discussion of the dissenting opinions is also available in the docket for this rulemaking.

O. Related ARAC Recommendations

The ARAC has submitted the following additional rulemaking recommendations to the FAA to improve the safety of operations in icing conditions. The FAA has not yet completed deliberations on these recommendations, but they may lead to future rulemaking.

- A part 121 recommendation to require certain airplanes to exit icing conditions.
- Parts 25 and 33 recommendations to address ice protection activation and operations in supercooled large droplet, mixed phase, and glaciated icing conditions.

Rulemaking Notices and Analyses

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there are no new information collection requirements associated with this proposed rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Economic Evaluation, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic

[12] Docket No. 27532, published in the **Federal Register** on May 24, 1994 (59 FR 26896).

impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule. The FAA suggests readers seeking greater detail read the full regulatory evaluation, a copy of which the agency has placed in the docket for this rulemaking.

In conducting these analyses, the FAA has determined that this proposed rule: (1) Has benefits that justify its costs, (2) is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, (3) has been designated as a ''significant regulatory action'' by the Office of Management and Budget, because it harmonizes U.S. and international standards, and is therefore ''significant'' under DOT's Regulatory Policies and Procedures; (4) would not have a significant economic impact on a substantial number of small entities; (5) would not create unnecessary obstacles to the foreign commerce of the United States; and (6) would not impose an unfunded mandate on State, local, or Tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

Total Benefits and Costs of This Rule

The estimated cost of this proposed rule is about $5.5 million ($2.9 million in seven percent present value terms). The estimated potential benefits of averting one accident and four fatalities are about $17.3 million ($12.6 million in seven percent present value terms).

Who Is Potentially Affected by This Rule?

Operators of transport category airplanes with a maximum take-off weight under 60,000 pounds operating under 14 CFR part 121.

Assumptions

(1) The base year is 2008.

(2) The proposal will become final in December 2010.

(3) The compliance date of the rule is 24 months from the effective date of the final rule.

(4) The analysis period is 20 years.

(5) The value of an averted fatality is $5.8 million.[13]

(6) The FAA used $79.93 hourly rate for a mechanic/technician working for an airplane manufacturer or modifier and the $76.01 hourly rate for an engineer working for an airplane manufacturer or modifier. These hourly rates include overhead costs.

(7) The FAA assumed whenever various compliance options are available to the operators, the minimal cost option will always be chosen.

Benefits of This Rule

The benefits of this proposed rule consist of the value of fatalities, loss of airplanes, and investigation cost averted from avoiding accidents involving transport category airplanes with a maximum take-off weight under 60,000 pounds operating under 14 CFR part 121. The FAA estimates that one accident and four fatalities could potentially be avoided, over the analysis period, by adopting the proposed rule. The value of an averted fatality is assumed to be $5.8 million. A series of airworthiness directives (AD) were issued for airplanes with pneumatic de-icing boots to activate the systems at the first sign of ice accretion. Due to the similarity of requirements between the ADs and this proposal, the FAA accounted for the effects of recent ADs by reducing the estimated benefits. Over the analysis period, the potential benefits of the proposed rule would be $17.3 million ($12.6 million in seven percent present value terms).

Estimated Costs of This Proposal

Using Ice Protection Harmonization Working Group (IPHWG) airplane compliance costs, the FAA estimates the total undiscounted cost of the proposed rule, over the analysis period, to be about $5.5 million. The seven percent present value cost of this proposed rule over the analysis period is about $2.9 million. The agency estimates the initial costs for a new certification program to operate the deicing boots based on visible moisture and temperature are about $385,000. The FAA estimates the operating and training costs are about $5.1 million.

[13] ''Treatment of the Economic Value of a Statistical Life in Departmental Analysis'', February 5, 2008, U.S. Department of Transportation Memorandum.

Alternatives Considered

Alternative One

The alternative of maintaining the status quo would not address the NTSB recommendations and the FAA's In-flight Icing Plan. The FAA rejected this alternative because the proposed rule would enhance passenger safety and prevent icing-related accidents for airplanes with a certificated MTOW less than 60,000 pounds. As it stands, the proposed rule is the reasoned result of the FAA Administrator carrying out the FAA's In-flight Aircraft Icing Plan.

Alternative Two

Alternative Two would be to issue more ADs requiring a means to know when to activate the airframe IPS. The FAA has already issued ADs to address the activation of airframe IPSs.

An evaluation of accidents and incidents led to the conclusion that the ADs do not provide adequate assurance that the flightcrew will be made aware of when to activate the airframe IPS. Because this problem is not unique to particular airplane designs, but exists for all airplanes that are susceptible to the icing hazards described previously, it is appropriate to address this problem through an operational rule, rather than by ADs.

Alternative Three

Alternative Three is the proposed rule. The FAA's judgment is that this is the most viable option, since the proposed rule will increase the safety of the flying public by reducing icing-related accidents in the future in the least costly way.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the

agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA believes that this proposed rule would not have a significant impact on a substantial number of small entities for the following reasons.

On October 31, 1994, at 1559 Central Standard Time, an Avions de Transport Regional Model ATR 72, operated by Simmons Airlines, Incorporated, and doing business as American Eagle flight 4184, crashed during a rapid descent after an uncommanded roll excursion. The FAA, Aerospatiale, the French Direction Générale de l'Aviation Civile, Bureau Enquete Accident, National Aeronautics and Space Administration (NASA), National Transportation Safety Board, and others have conducted an extensive investigation of this accident.

This accident and the investigation prompted the FAA to initiate a review of aircraft in-flight icing safety and determine changes that could be made to increase the level of safety. The proposed rule addresses NTSB recommendation A–07–14. The proposed rule is also one of the items listed in the FAA's In-flight Aircraft Icing Plan, April 1997. The Icing Plan details the FAA's plans for improving the safety of airplanes when they are operated in icing conditions.

This NPRM specifically applies to 14 CFR part 121 operators of airplanes that have a certificated MTOW of less than 60,000 pounds. The FAA determined which small entities could be affected by associating airplanes with a certificated MTOW of less than 60,000 pounds with part 121 operators. For this section of the analysis, the agency considered only those operators meeting the above criteria that have 1,500 or fewer employees.

To estimate the number of affected airplanes, the FAA analyzed the current active fleet of airplanes, a forecast of airplanes affected by the proposed rule entering the fleet, and a forecast of the retired affected airplanes exiting the fleet during the analysis period.

The FAA also generated a list of all U.S. operated civilian airplanes operating under 14 CFR part 121. Each airplane group was matched with its current (as of September 2008) MTOW and average age through the use of the BACK FleetPCTM database. All airplanes with an MTOW greater than 60,000 pounds were eliminated.

Using industry sources, the FAA determined which airplanes currently had primary or advisory icing detection systems. Airplanes equipped with either a primary or advisory ice detection systems are in compliance, and this proposal would impose no costs to operators of these airplanes. All turbojets affected by this proposal are in compliance, as these airplanes are equipped with either an approved primary ice detection system or advisory ice detection systems.

For the base case, the FAA used the FAA Aerospace Forecast, 2008–2025 (Table 26) for the part 121 regional turboprop retirement forecast and determined the number of turboprop airplanes that would retire over the analysis interval. The report does not forecast turboprop airplanes by equipment type. In estimating the costs, the FAA retires the older active airplanes affected by the proposal first.

Using information provided by the World Aviation Directory, SEC filings, and the Internet, scheduled and non-scheduled commercial operators that are subsidiary businesses of larger businesses were eliminated from the database. An example of a subsidiary business is Continental Express, Inc., which is a subsidiary of Continental Airlines. Using information provided by the U.S. Department of Transportation Form 41 filings, the World Aviation Directory, Winter 2000, and Dunn and Bradstreet's company databases, all businesses with more than 1,500 employees were eliminated. For the remaining businesses, the FAA obtained company revenue from these sources when the operator's revenue was public. Following this approach, six small entities operate airplanes that would be affected by this proposal.

The FAA estimated the cost of compliance per airplane and multiplied this cost by the total fleet of affected airplanes per operator, over the analysis period, to obtain the total compliance cost by small entity. The non-recurring costs, for updating the AFM for each major airplane group, were distributed equally among the airplanes in each major airplane group. These non-recurring costs occurred in year four of the analysis period. Note the more airplanes in a major airplane group, the less expensive, per airplane, the non-recurring costs are to the operators of those airplanes. In addition to the AFM cost, the additional incremental recurring costs include boot maintenance, replacement, and installation labor. These recurring costs started in year five and continued either until the airplane retired or through the end of the analysis period.

The degree to which small air operator entities can ''afford'' the cost of compliance is determined by the availability of financial resources. The initial implementation costs of the proposed rule may be financed, paid for using existing company assets, or borrowed. As a proxy for the firm's ability to afford the cost of compliance, the FAA calculated the ratio of the total annualized cost of the proposed rule as a percentage of annual revenue. This ratio is a conservative measure as the annualized value of the 20-year total compliance cost is divided by one year of annual revenue (no growth in revenues is assumed). No small business operator potentially affected by this proposed rule incurred costs greater that one percent of their annual revenue. The following table shows the base case economic impact on the small entity air operators affected by this proposed rule.

TABLE 1—ECONOMIC IMPACT ON SMALL ENTITY OPERATORS—BASE CASE

Year	Small operator A	Small operator B	Small operator C	Small operator D	Small operator E	Small operator F
1	$0	$0	$0	$0	$0	$0
2	0	0	0	0	0	0
3	0	0	0	0	0	0
4	59,717	302,084	302,084	37,540	15,591	92,992
5	58,617	87,925	87,925	7,327	0	29,308
6	58,617	73,271	80,598	7,327	0	29,308
7	58,617	65,944	65,944	0	0	21,981
8	58,617	51,290	51,290	0	0	14,654

TABLE 1—ECONOMIC IMPACT ON SMALL ENTITY OPERATORS—BASE CASE—Continued

Year	Small operator A	Small operator B	Small operator C	Small operator D	Small operator E	Small operator F
9	58,617	36,636	36,636	0	0	7,327
10	58,617	29,308	29,308	0	0	0
11	58,617	21,981	21,981	0	0	0
12	58,617	14,654	14,654	0	0	0
13	58,617	7,327	14,654	0	0	0
14	58,617	7,327	7,327	0	0	0
15	58,617	0	7,327	0	0	0
16	58,617	0	7,327	0	0	0
17	58,617	0	0	0	0	0
18	51,290	0	0	0	0	0
19	43,963	0	0	0	0	0
20	36,636	0	0	0	0	0
Total	953,623	697,748	727,056	52,194	15,591	195,571
Annualized Costs	90,012	65,860	68,627	4,927	1,472	18,460
Annual Revenue	30,000,000	76,348,000	100,000,000	78,148,212	141,000,000	18,200,000
Percentage	0.30%	0.09%	0.07%	0.01%	0.00%	0.10%

The FAA conducted a sensitivity analysis [14] where the agency relaxed the retirement assumption from the base case. For this sensitivity analysis, the FAA used the FleetPCTM database and determined turboprops are retired from U.S. certificated service at an average age (mean) of 26.4. In the base case, the FAA assumes the active affected airplanes start retiring in year one and continue to retire at the annual turboprop retirement rate estimated by the FAA forecasting group.[15] In the sensitivity analysis, the agency assumes each of the small operator's airplanes are retired when the average age for the fleet of this airplane type reaches the average retirement age of 26.4 years. For all but one operator, the sensitivity analysis results in slightly higher costs. The following table shows the results of the sensitivity analysis the FAA performed for the economic impact on the small entity air operators affected by this proposed rule.

TABLE 2—SENSITIVITY ANALYSIS ECONOMIC IMPACT ON SMALL ENTITY OPERATORS WHEN AIRPLANES ARE RETIRED AT 26.4 YEARS

Year	Small operator A	Small operator B	Small operator C	Small operator D	Small operator E	Small operator F
1	$0	$0	$0	$0	$0	$0
2	0	0	0	0	0	0
3	0	0	0	0	0	0
4	59,494	338,163	338,163	62,623	37,573	112,716
5	58,617	197,832	197,832	36,636	21,981	65,944
6	58,617	197,832	197,832	36,636	21,981	65,944
7	58,617	197,832	197,832	36,636	0	65,944
8	58,617	197,832	197,832	36,636	0	65,944
9	58,617	197,832	197,832	36,636	0	65,944
10	58,617	0	0	0	0	0
11	0	0	0	0	0	0
12	0	0	0	0	0	0
13	0	0	0	0	0	0
14	0	0	0	0	0	0
15	0	0	0	0	0	0
16	0	0	0	0	0	0
17	0	0	0	0	0	0
18	0	0	0	0	0	0
19	0	0	0	0	0	0
20	0	0	0	0	0	0
Total	411,195	1,327,321	1,327,321	245,800	81,536	442,435
Annualized Costs	38,813	125,286	125,286	23,201	7,696	41,761
Annual Revenue	30,000,000	76,348,000	100,000,000	78,148,212	141,000,000	18,200,000
Percentage	0.13%	0.16%	0.13%	0.03%	0.01%	0.23%

[14] A sensitivity analysis is the study of how the variation (uncertainty) in the output of a mathematical model can be apportioned, qualitatively or quantitatively, to different sources of variation in the input of a model.

[15] FAA Statistical and Forecast Branch, APO–110—FAA Aerospace Forecast, 2008–2025, Table 26.

For both the base case and sensitivity analysis retirement model scenarios, the FAA calculated no small business operator potentially affected by this proposed rule would incur costs greater than one percent of their annual revenue. Therefore the FAA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments regarding this determination.

International Trade Impact Analysis

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA notes the purpose is to ensure the safety of the American public, and has assessed the effects of this proposed rule to ensure it does not exclude imports that meet this objective. As a result, this proposed rule is not considered as creating an unnecessary obstacle to foreign commerce. It has been determined that this proposed rule would respond to a domestic safety objective and is not considered an unnecessary obstacle to trade.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $136.1 million in lieu of $100 million. This proposed rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore would not have federalism implications.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in Title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish appropriate regulatory distinctions. Because this proposed rule would apply to airplanes operating in Alaska, it could, if adopted, affect intrastate aviation in Alaska. The FAA, therefore, specifically requests comments on whether there is justification for applying the proposed rule differently in intrastate operations in Alaska.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined that this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 4(j) and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a ''significant energy action'' under the executive order because, while it is defined as ''significant'' under DOT's Regulatory Policies and Procedures Executive Order 12866 because it harmonizes U.S. aviation standards with those of other civil aviation authorities, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Plain English

Executive Order 12866 (58 FR 51735, Oct. 4, 1993) requires each agency to write regulations that are simple and easy to understand. The FAA invites your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain unnecessary technical language or jargon that interferes with their clarity?
- Would the proposed regulations be easier to understand if they were divided into more (but shorter) sections?
- Is the description in the preamble helpful in understanding the proposed regulations?

Please send your comments to the address specified in the **ADDRESSES** section of this preamble.

Additional Information

Comments Invited

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

The FAA will file in the docket all comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the agency will consider all comments received on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this proposal in light of the comments received.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the

information that you consider proprietary or confidential. If you send the information on a disk or CD ROM, mark the outside of the disk or CD ROM and also identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when the FAA is aware of proprietary information filed with a comment, the agency does not place it in the docket. The FAA holds it in a separate file to which the public does not have access, and the agency places a note in the docket that the FAA has received it. If the agency receives a request to examine or copy this information, the FAA treats it as any other request under the Freedom of Information Act (5 U.S.C. 552). The agency processes such a request under the DOT procedures found in 49 CFR part 7.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

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

2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/;* or

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

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

You may access all documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, from the Internet through the Federal eRulemaking Portal referenced in paragraph (1).

Appendix 1 of the Preamble

Definition of Terms Used in the Preamble of This NPRM

For purposes of the preamble of this NPRM, the following definitions are applicable.

a. *Advisory ice detection system*—A system that advises the flightcrew of the presence of ice accretion or icing conditions. Both primary ice detection systems and advisory ice detection systems can either direct the pilot to manually activate the IPS or provide a signal that automatically activates the IPS. However, because it has lower reliability than a primary system, an advisory ice detection system can only be used in conjunction with other means (most commonly, visual observation by the flightcrew) to determine the need for, or timing of, activating the anti-icing or deicing system. With an advisory ice detection system, the flightcrew is responsible for monitoring icing conditions or ice accretion as defined in the Airplane Flight Manual (AFM), typically using total air temperature and visible moisture criteria or visible ice accretion. With an advisory ice detection system, the flightcrew is responsible for activating the anti-icing or deicing system(s).

b. *Airframe icing*—Ice accretion on the airplane, except for on the propulsion system.

c. *Anti-icing*—Prevention of ice accretions on a protected surface, either by:

- Evaporating the impinging water, or
- Allowing the impinging water to run back and off the protected surface or freeze on non-critical areas.

d. *Automatic cycling mode*—A mode of operation of the airframe de-icing system that provides repetitive cycles of the system without the need for the pilot to select each cycle. This is generally done with a timer, and there may be more than one timing mode.

e. *Conditions conducive to airframe icing*—Visible moisture at or below a static air temperature of 5 °C or total air temperature of 10 °C, unless the approved Airplane Flight Manual provides another definition.

f. *Deicing*—The removal or the process of removal of an ice accretion after it has formed on a surface.

g. *Ice protection system (IPS)*—A system that protects certain critical aircraft parts from ice accretion. To be an approved system, it must satisfy the requirements of § 23.1419 or § 25.1419 and other applicable requirements.

h. *Primary ice detection system*—A detection system used to determine when the IPS must be activated. This system announces the presence of ice accretion or icing conditions, and it may also provide information to other aircraft systems. A primary *automatic* system automatically activates the anti-icing or deicing IPS. A primary *manual* system requires the flightcrew to activate the anti-icing or deicing IPS upon indication from the primary ice detection system.

i. *Reference surface*—The observed surface used as a reference for the presence of ice on the monitored surface. The reference surface may be observed directly or indirectly. Ice must occur on the reference surface before—or at the same time as—it appears on the monitored surface. Examples of reference surfaces include windshield wiper blades or bolts, windshield posts, ice evidence probes, the propeller spinner, and the surface of ice detectors. The reference surface may also be the monitored surface.

j. *Static air temperature*—The air temperature that would be measured by a temperature sensor that is not in motion in relation to that air. This temperature is also referred to in other documents as ''outside air temperature,'' ''true outside temperature,'' or ''ambient temperature.''

k. *Total air temperature*—The static air temperature plus the rise in temperature due to the air being brought to rest relative to the airplane.

l. *Visual cues*—Ice accretion on a reference surface that the flightcrew observes. The visual cue is used to detect the first sign of airframe ice accretion.

Appendix 2 of the Preamble

AIRWORTHINESS DIRECTIVES (AD) ADDRESSING OPERATIONS IN ICING CONDITIONS

Airplane model	Docket No.	Final Rule No.
Industrie Aeronautiche e Meccaniche, Model Piaggio P–180 Airplanes	99–CE–34–AD	2000–03–19 REM.
Pilatus Britten-Norman Ltd., BN–2T Series Airplanes	99–CE–35–AD	Withdrawn.
Pilatus Aircraft Ltd., Models PC–12 and PC–12/45 Airplanes	99–CE–36–AD	2000–11–14.
Partenavia Costruzioni Aeronauticas, S.p.A., Models AP68TP 300 ''Spartacus'' and AP68TP 600 ''Viator'' Airplanes.	99–CE–37–AD	2000–03–18.
Mitsubishi Heavy Industries, Ltd., MU–2B Series Airplanes	99–CE–38–AD	2000–02–25.
LET, a.s., Model L–420 Airplanes	99–CE–39–AD	Withdrawn.
British Aerospace, Jetstream Models 3101 and 3201 Airplanes	99–CE–40–AD	Withdrawn.
Harbin Aircraft Manufacturing Corp., Model Y12 IV airplanes	99–CE–41–AD	2000–02–26.
Empresa Brasileira de Aeronautica S.A. Airplanes (Embraer) Models EMB–110P1 and EMB–110P2 Airplanes.	99–CE–42–AD	2000–02–27.
Dornier Luftfahrt GmbH, 228 Series Airplanes	99–CE–43–AD	2000–06–02.
Bombardier Inc., DHC–6 Series Airplanes	99–CE–44–AD	2000–06–3.
The Cessna Aircraft Company, 208 Series	99–CE–45–AD	Withdrawn.
Raytheon Aircraft Company 90, 99, 100, 200, 300, 1900, and 2000 Series Airplanes	99–CE–46–AD	Withdrawn.
AeroSpace Technologies of Australia Pty Ltd., Models N22B and N24A	99–CE–47–AD	2000–02–28.
Short Brothers & Harland Ltd., Models SC–7 Series 2 and SC–7 Series 3 Airplanes	99–CE–48–AD	Withdrawn.
The New Piper Aircraft, Inc., PA–31 Series Airplanes	99–CE–49–AD	2000–06–06.

AIRWORTHINESS DIRECTIVES (AD) ADDRESSING OPERATIONS IN ICING CONDITIONS—Continued

Airplane model	Docket No.	Final Rule No.
The New Piper Aircraft, Inc. PA–42 Series Airplanes	2000–CE–20–AD	2000–14–08.
SOCATA—Groupe AEROSPATIALE, Model TBM 700 Airplanes	99–CE–50–AD	2000–02–29.
Twin Commander Aircraft Corporation, 600 Series Airplanes	99–CE–51–AD	2000–02–30.
Fairchild Aircraft Corporation, SA226 and SA227 Series Airplanes	99–CE–52–AD	2000–06–04.
The Cessna Aircraft Company, Models 425 and 441 Airplanes	99–CE–53–AD	Withdrawn.
Cessna Aircraft Company, Models 500, 550, and 560 Airplanes	99–NM–136–AD	Withdrawn.
Sabreliner Corporation, Models 40, 60, 70, and 80 Series Airplanes	99–NM–137–AD	99–19–03.
Gulfstream Aerospace, Model G–159 Series Airplanes	99–NM–138–AD	2000–10–11.
McDonnell Douglas Models DC–3 and DC–4 Series Airplanes	99–NM–139–AD	2000–04–03.
Mitsubishi Heavy Industries, Model YS–11 and YS–11A Series Airplanes	99–NM–140–AD	99–19–06.
Frakes Aviation, Model, G–73 (Mallard) and G–73T Series Airplanes	99–NM–141–AD	99–19–07.
Lockheed, Models L–14 and L–18 Series Airplanes	99–NM–142–AD	99–19–08.
Fairchild Models F27 and FH227 Series Airplanes	99–NM–143–AD	99–19–09.
Aerospatiale Models ATR–42/ATR–72 Series Airplanes	99–NM–144–AD	99–19–10.
Jetstream Model BAe ATP Airplanes	99–NM–145–AD	99–19–11.
Jetstream Model 4101 Airplanes	99–NM–146–AD	Withdrawn.
British Aerospace Model HS 748 Series Airplanes	99–NM–147–AD	99–19–13.
Saab Model SF340A/SAAB 340B/SAAB 2000 Series Airplanes	99–NM–148–AD	99–19–14.
CASA Model C–212/CN–235 Series Airplanes	99–NM–149–AD	99–19–15.
Dornier Model 328–100 Series Airplanes	99–NM–150–AD	99–19–16.
Lockheed Model 1329–23 and 1329–25 (Lockheed Jetstar) Series Airplanes	99–NM–151–AD	99–19–17.
de Havilland Model DHC–7/DHC–8 Series Airplanes	99–NM–152–AD	99–19–18.
Fokker Model F27 Mark 100/200/300/400/500/600/700/050 Series Airplanes	99–NM–153–AD	99–19–19.
Short Brothers Model SD3–30/SD3–60/SD3–SHERPA Series Airplanes	99–NM–154–AD	99–19–20.
Empresa Brasileira de Aeronautica, S.A., (EMBRAER) Model EMB–120 Series Airplanes.	97–NM–46–AD	97–26–06.

Notes
1. CE in the docket number indicates Part 23 airplanes. NM indicates Part 25 airplanes.
2. Some final rules were withdrawn based on data submitted by the manufacturers. The rationale for withdrawal can be found in the dockets.

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Aviation safety, Safety, Transportation.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 121 of Title 14, Code of Federal Regulations, as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

2. Add § 121.321 to read as follows:

§ 121.321 Operations in icing.

After [a date 24 months after the effective date of the final rule], no person may operate an airplane with a certificated maximum takeoff weight less than 60,000 pounds in conditions conducive to airframe icing unless it complies with this section. As used in this section, the phrase ''conditions conducive to airframe icing'' means visible moisture at or below a static air temperature of 5 °C or a total air temperature of 10 °C, unless the approved Airplane Flight Manual provides another definition.

(a) When operating in conditions conducive to airframe icing, compliance must be shown with paragraph (a)(1), or (a)(2), or (a)(3) of this section.

(1) The airplane must be equipped with a certificated primary airframe ice detection system.

(i) The airframe ice protection system must be activated automatically, or manually by the flightcrew, when the primary ice detection system indicates activation is necessary.

(ii) When the airframe ice protection system is activated, any other procedures in the Airplane Flight Manual for operating in icing conditions must be initiated.

(2) Visual cues of the first sign of ice formation anywhere on the airplane and a certificated advisory airframe ice detection system must be provided.

(i) The airframe ice protection system must be activated when any of the visual cues are observed or when the advisory airframe ice detection system indicates activation is necessary; whichever occurs first.

(ii) When the airframe ice protection system is activated, any other procedures in the Airplane Flight Manual for operating in icing conditions must be initiated.

(3) If the airplane is not equipped to comply with the provisions of paragraph (a)(1) or (a)(2) of this section, then the following apply:

(i) When operating in conditions conducive to airframe icing, the airframe ice protection system must be activated prior to, and operated during, the following phases of flight:

(A) Takeoff climb after second segment,

(B) En route climb,

(C) Go-around climb,

(D) Holding,

(E) Maneuvering for approach and landing, and

(F) Any other operation at approach or holding airspeeds.

(ii) During any other phase of flight, the airframe ice protection system must be activated and operated at the first sign of ice formation anywhere on the airplane, unless the Airplane Flight Manual specifies that the airframe ice protection system should not be used or provides other operational instructions.

(iii) Any additional procedures for operation in conditions conducive to icing specified in the Airplane Flight Manual or in the manual required by § 121.133 must be initiated.

(b) If the procedures specified in paragraph (a)(3)(i) of this section are specifically prohibited in the Airplane Flight Manual, compliance must be shown with the requirements of paragraph (a)(1) or (a)(2) of this section.

(c) Procedures necessary for safe operation of the airframe ice protection system must be established and documented in:

(1) The Airplane Flight Manual for airplanes that comply with paragraph (a)(1) or (a)(2) of this section, or

(2) The Airplane Flight Manual or in the manual required by § 121.133 for airplanes that comply with paragraph (a)(3) of this section.

(d) Procedures for operation of the airframe ice protection system must include initial activation, operation after initial activation, and deactivation. Procedures for operation after initial activation of the ice protection system must address—

(1) Continuous operation,

(2) Automatic cycling,

(3) Manual cycling if the airplane is equipped with an ice detection system that alerts the flightcrew each time the ice protection system must be cycled, or

(4) Manual cycling based on a time interval if the airplane type is not equipped with features necessary to implement paragraphs (d)(1) through (3) of this section.

(e) System installations used to comply with paragraphs (a)(1) or (a)(2) of this section must be approved through an amended or supplemental type certificate in accordance with part 21 of this chapter.

Issued in Washington, DC, on November 16, 2009.

John W. McGraw,

Acting Director, Flight Standards Service.

[FR Doc. E9–28036 Filed 11–20–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No. 28081]

RIN 2120–AI93 (Formerly 2120–AF63)

Flight Crewmember Duty Period Limitations, Flight Time Limitations and Rest Requirements; Withdrawal

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); withdrawal.

SUMMARY: The FAA is withdrawing a previously published NPRM that proposed to establish one set of duty period limitations, flight time limitations, and rest requirements for flight crewmembers engaged in air transportation. The NPRM also proposed to establish consistent and clear duty period limitations, flight time limitations, and rest requirements for domestic, flag, supplemental, commuter and on-demand operations. We are withdrawing the NPRM because it is outdated and because of the many significant issues commenters raised. The FAA intends to issue a new NPRM to address flight, duty, and rest.

DATES: The proposed rule published on December 20, 1995 (60 FR 65951), is withdrawn as of November 23, 2009.

FOR FURTHER INFORMATION CONTACT: Dale E. Roberts, Air Transportation Division (AFS–200), Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–5749; *e-mail: dale.e.roberts@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

In June 1992 the FAA announced the tasking of the Aviation Rulemaking Advisory Committee (ARAC) Flight Crewmember Flight/Duty Rest Requirements working group.[1] The tasking followed the FAA's receipt of hundreds of letters about the interpretation of existing rest requirements and several petitions to amend existing regulations. The working group was tasked to determine if regulations on air carrier flight, duty, and rest requirements were being consistently interpreted; to evaluate industry compliance and practice on scheduling of reserve duty and rest periods; and to evaluate reports of excessive pilot fatigue related to such scheduling. While the working group could not reach consensus, they submitted a final report in June 1994 with proposals from several working group members.

Following receipt of the ARAC's report, the FAA published the 1995 NPRM.[2] The proposed rule was based on proposals from the ARAC working group, the petitions for rulemaking from the industry and others, National Transportation Safety Board (NTSB) recommendations, and existing knowledge of fatigue, including research by the National Aeronautics and Space Administration (NASA). Subsequently, and in response to requests from the industry, the FAA extended the comment period closing date and answered clarifying questions to the NPRM in a 1996 notice published in the **Federal Register.**[3]

The NPRM included proposals for a 14-hour duty day for two-pilot operations; a 10-hour flight time limit; two options for reserve and standby duty; a 32-hour in 7 days limit on flight time; and a 10-hour rest period. It also included provisions for tail end ferry flights (conducted under part 91) under the proposed duty period and flight time limits.

Discussion of Comments

The FAA received over 2,000 comments to the NPRM. Although some commenters, including the NTSB, NASA, Air Line Pilots Association, and Allied Pilots Association, said the proposal would enhance safety, the same commenters had specific objections. For example, the pilot unions objected to the proposed increase in allowed flight time. These commenters also said the proposal should have included special duty and flight time limits for disruptions in circadian rhythm and for operations with multiple takeoffs and landings.

Many industry associations opposed the NPRM, stating the FAA lacked safety data to justify the rulemaking, and industry compliance would impose significant costs. The reserve duty time provisions generated the most controversy. Overwhelmingly, air carrier associations and operators strongly criticized these provisions, asserting that they had no safety basis and were extremely costly.

Subsequent Fatigue Mitigation Efforts

Given the significant issues the NPRM raised, particularly about reserve time, the FAA tasked[4] ARAC in 1998 to make recommendations on reserve time for all types of air carrier operations. ARAC held a series of public meetings across the country to seek a broad cross-section of views. While the exchange helped in identifying issues that needed to be resolved before issuing a final rule, in the end, ARAC was unable to reach consensus. The FAA had stated in the NPRM that if the proposal on reserve time was not adopted, the agency would undertake rigorous enforcement of existing flight, duty, and rest rules. Consequently, in a June 1999 notice of enforcement policy,[5] the FAA informed the industry that the agency would conduct inspections to ensure compliance with current rules. Those inspections began in December 1999. After publication of this notice, the FAA received several requests for interpretation of various provisions of the rules. We responded to these requests in a second notice of

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[1] 57 FR 26685; June 15, 1992.

[2] Flight Crewmember Duty Period Limitations, Flight Time Limitations and Rest Requirements notice of proposed rulemaking (60 FR 65951; December 20, 1995).

[3] 61 FR 11492; March 20, 1996.

[4] 63 FR 37167; July 9, 1998.

[5] Flight Crewmember Flight Time Limitations and Rest Requirements notice of enforcement policy (64 FR 32176; June 15, 1999).

enforcement policy[6] published in the **Federal Register** in May 2001.

Since 2001, the agency has undertaken other fatigue mitigation efforts. Among these efforts was the Part 125/135 Aviation Rulemaking Committee (ARC),[7] which we convened in February 2003, to do a comprehensive regulatory review of 14 CFR parts 125 and 135. This review included rules on flight, duty, and rest. The ARC submitted its recommendations in September 2005. Also, in June 2008, we held an Aviation Fatigue Management Symposium[8] that provided the industry with the latest information on fatigue science, mitigation, and management. Currently, the agency is developing an Advisory Circular on fatigue that incorporates information from the Symposium. Additionally, in June 2009, the FAA chartered the Flight and Duty Time Limitations and Rest Requirements ARC[9] comprised of labor, industry, and FAA representatives to develop recommendations for an FAA rule based on current fatigue science and a thorough review of international approaches to the issue.

Reason for Withdrawal

The FAA is withdrawing the 1995 Flight Crewmember Duty Period Limitations, Flight Time Limitations and Rest Requirements NPRM because it is outdated and because it raised many significant issues that the agency needed to consider before proceeding with a final rule. Instead of adopting the provisions of the 1995 NPRM, the FAA intends to develop a new NPRM later this year that considers the Flight and Duty Time Limitations and Rest Requirements ARC recommendations, scientific research, NTSB recommendations on fatigue and flight duty time, and the recommendations of the Part 125/135 ARC.

Conclusion

The FAA is withdrawing the December 1995 NPRM for the reasons stated in this notice and will issue a new proposed rule to address flight, duty, and rest. We will provide the opportunity for comment on the new rulemaking through the NPRM process.

[6] 66 FR 27548; May 17, 2001.

[7] 68 FR 5488; February 3, 2003 (*See also* 67 FR 42323; July 17, 2003).

[8] *See www.faa.gov/about/office%5Forg/headquarters%5Foffices/avs/offices/afs/afs200/* for the Symposium proceedings.

[9] See *http://www.faa.gov/about/office%5Forg/headquarters%5Foffices/avs/offices/afs/afs200/* for the ARC Charter.

Issued in Washington, DC, on November 17, 2009.

Chester D. Dalbey,

Deputy Director, Flight Standards Service.

[FR Doc. E9–28054 Filed 11–20–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 501

[Docket No. FDA–2009–N–0025]

RIN 0910–AG02

Animal Food Labeling; Declaration of Certifiable Color Additives

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations regarding the declaration of certified color additives on the labels of animal food including animal feeds and pet foods. FDA is proposing this amendment in response to the Nutrition Labeling and Education Act of 1990 (the 1990 amendments), which amended the Federal Food, Drug, and Cosmetic Act (the act) by requiring, among other things, the listing on food labels of the common or usual names of all color additives required to be certified by FDA. An additional purpose of this amendment is to make these regulations consistent with the regulations regarding the declaration of certified color additives on the labels of human food. The proposed rule also suggests appropriate terminology for the declaration of certification-exempt color additives on the labels of animal food.

DATES: Submit written or electronic comments on the proposed rule by February 22, 2010. Submit comments on information collection issues under the Paperwork Reduction Act of 1995 by December 23, 2009, (see the ''Paperwork Reduction Act of 1995'' section of this document).

ADDRESSES: You may submit comments, identified by Docket No. FDA–2009–N–0025 and/or RIN number 0910–AG02, by any of the following methods, except that comments on information collection issues under the Paperwork Reduction Act of 1995 must be submitted to the Office of Regulatory Affairs, Office of Management and Budget (OMB) (see the ''Paperwork Reduction Act of 1995'' section of this document).

Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal, as described previously, in the **ADDRESSES** portion of this document under *Electronic Submissions*.

Instructions: All submissions received must include the agency name and Docket No(s). and Regulatory Information Number (RIN) (if a RIN number has been assigned) for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number(s), found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: John P. Machado, Center for Veterinary Medicine (HFV–228), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–453–6854; e-mail: *john.machado@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Before passage of the 1990 amendments, the act provided that colorings could be declared collectively on food product labels using the term ''colorings.'' However, the 1990 amendments amended section 403(i) of the act (21 U.S.C. 343(i)) to require that certified color additives be declared by their common or usual names and not be designated by the term ''colorings.'' As a result of this change in the statute, each certified color additive (e.g., FD&C

Blue No. 2, FD&C Red No. 40) used in or on a food must be declared on labeling by its common or usual name, but color additives exempt from certification (e.g., caramel, paprika, and beet juice) may still be declared collectively.

In response to this statutory requirement, FDA issued a final rule on January 6, 1993 (58 FR 2850), which was codified in title 21 of the Code of Federal Regulations, § 101.22 (21 CFR 101.22). Specifically, § 101.22(k) details how color additives used in human foods are to be declared in the ingredient list. The agency also permitted the use of abbreviated names (e.g., Blue 2, Red 40) for certified color additives.

Although the 1990 amendments apply both to human and animal foods, the regulations pertaining to animal foods have not yet been issued. Nonetheless, the provisions of the 1990 amendments that amend section 403(i) of the act are self-executing and apply to animal food labels even in the absence of issued regulations under this authority. Because FDA has not published regulations applicable to animal food under the 1990 amendments, FDA has generally exercised enforcement discretion with regard to the requirements of this provision of the act as they pertain to animal food labels. Because of this exercise of enforcement discretion, as well as the decision to provide an opportunity to deplete the current stock of animal food labels prior to enforcing the requirements with regard to animal food products, a final rule issued based on this proposed rule would have a 2-year effective date.

This proposed rule adds a paragraph to § 501.22 (21 CFR 501.22), detailing how certified color additives used in or on animal foods must be declared in the ingredient list. In addition, the proposed rule sets out different ways a manufacturer can comply with the requirement that color additives not subject to certification under the act be declared collectively on the label.

II. Description of the Proposed Rule

The 1990 amendments amended section 403(i) of the act to require that certified color additives used in or on a food be declared by their common or usual names. Because section 201(f) of the act (21 U.S.C. 321(f)) defines ''food'' as any article used for food or drink for man or other animals, the changes made to section 403(i) by the 1990 amendments apply to both human and animal foods. In response to this new statutory amendment, FDA revised its human food labeling regulations by adding paragraph (k) to § 101.22. These regulations were published in the **Federal Register** on June 21, 1991 (56 FR 28592) (proposed rule) and January 6, 1993 (final rule). However, the regulations pertaining to animal foods have not yet been issued.

The changes FDA is proposing for animal food labels are similar to the ones made in § 101.22 for human food labels. Specifically, this proposed regulation adds paragraph (k) to the animal food labeling regulations at § 501.22, detailing how certified color additives used in animal foods must be declared in the ingredient list, and sets out the various ways that manufacturers may collectively declare certified-exempt color additives in the ingredient list.

New § 501.22(k) proposes that a color additive or the lake of a color additive subject to certification under section 721(c) of the act (21 U.S.C. 379(c)) shall be declared by the common or usual name of the color additive as listed in the applicable regulation in part 74 (21 CFR part 74) or part 82 (21 CFR part 82), except that it is not necessary to include the ''FD&C'' prefix or the term ''No.'' in the declaration. However, the term ''Lake'' shall be included in the declaration for the lake of a certified color additive (e.g., Blue 1 Lake). Manufacturers may parenthetically declare an appropriate alternative name of the certified color additive following its common or usual name as specified in part 74 or part 82. The new provision also provides a number of options for collectively declaring the presence in food of the certified-exempt color additives that are listed in part 73 (21 CFR part 73). Color additives not subject to certification may be declared as ''Artificial Color,'' ''Artificial Color Added,'' or ''Color Added'' (or by an equally informative term that makes clear that a color additive has been used in the food). Alternatively, such color additives may be declared as ''Colored with _____'' or ''_____ color,'' the blank to be filled with the name of the color additive listed in the applicable regulation in part 73.

III. Analysis of Impacts

FDA 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 of 1995 (Public Law 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). In accordance with Executive Order 12866, FDA has carefully analyzed the economic effects of this proposal and has determined that the final rule, if issued, will not be a significant regulatory action as defined by the Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. As discussed more fully in section IV of this document, we have prepared an initial regulatory flexibility analysis. Our initial analysis indicates that at every establishment size, the expected cost of compliance would likely be significantly less than 1 percent of revenues for each label requiring new labeling. We have, therefore, determined that the compliance costs of the proposed rule are unlikely to have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $133 million, using the most current (2008) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

A. Purpose of Rule

This proposed rule would require that the common or usual name of all color additives that are required to be certified by FDA be listed on the label of animal foods. This change would amend FDA's animal food regulations to include certain requirements of the 1990 amendments, as was previously done with the human food regulations. Additionally, the proposed rule suggests how color additives not certified by FDA should be declared on the ingredient list of animal foods. As stated previously in this document, the 1990 amendments require that all food labels list the common or usual names of all color additives that are required to be certified by FDA. Therefore, the agency lacks a great deal of flexibility in the development of this rule.

B. Benefits

The principal benefit of this rule is that it would provide additional consumer information for purchasers of pet food and other animal food products to consider in making their buying decisions for those animal food products that are not currently labeled in accordance with the provisions of this proposed rule. The agency does not have any data with which to quantify the extent to which having this additional information would result in more informed buying decisions by consumers. The rule also would provide some voluntary options for all animal food manufacturers, including options for terminology they can use when declaring certification-exempt color additives on their product labels.

C. Costs

The rule proposes that the effectiveness date be 2 years from the date of publication of the final rule. This time is intended to allow animal food manufacturers some time to deplete their current label inventories as they make the transition to the new label. We do not consider this proposal to require a major label redesign because it would likely only necessitate minor changes in wording on the ingredient list. Many animal food manufacturers are already declaring certified color additives in their labeling by their common or usual name.

The rule would impose some review costs on those animal food manufacturers that use or intend to use certified color additives. Because the vast majority of animal food products that contain certified color additives are pet foods, we limit the costs to review labels for the use of certified color additives to pet food manufacturers. Each of these manufacturers would need to review the labels of its pet food products to determine the current level of compliance with the proposed rule. Those manufacturers determined not to be in compliance with the proposed rule would incur additional costs under § 501.22(k)(1) to change the wording of their labels.

Animal feeds for a limited number of production animals, such as animal feeds for certain farm-raised fish and poultry, also contain color additives. However, we believe the color additives used in animal feeds for fish and poultry are generally certification-exempt, because such color additives can produce the desired colors in edible tissues of these animals more efficiently than certified color additives; currently, no certified color additive is approved to alter the color of the edible tissue of these animals. We invite public comment and data on the use of color additives in animal feeds for production animals in general, and in particular, on the use of certified color additives in fish and poultry feeds.

Animal food manufacturers using certification-exempt color additives in their products would only incur additional relabeling costs under § 501.22(k)(2) if they were to revise their labels to use one of the specific terminology options set forth in that provision. Although § 501.22(k)(2) lists specific terms that manufacturers can use when declaring color additives that are exempt from certification (e.g., ''Artificial Color'' or ''Color Added''), the provision also would permit such color additives to be declared using other equally informative terms that make clear that a color additive has been used in the food. FDA believes that most manufacturers of animal food products containing certification-exempt color additives are already declaring the presence of these ingredients in a manner that complies with proposed § 501.22(k)(2). We are not aware of any private incentives that would lead these manufacturers to voluntarily change their labels solely for the purpose of adopting one of the terms identified in proposed § 501.22(k)(2), although it is conceivable that some may make such a change as part of a larger effort to change their labels for other reasons, such as to comply with § 501.22(k)(1) or as part of scheduled labeling changes. Because use of the terminology specified in proposed § 501.22(k)(2) is optional and the presence of certification-exempt color additives can instead be declared in other equally informative ways, we do not expect proposed § 501.22(k)(2) to impose any new compliance costs on animal food manufacturers.

Pet food labeling costs

We do not have data sources that can be used to precisely estimate the number of pet food products. For the purpose of this analysis we assume, based on an industry source, that there are approximately 15,000 different brands of pet foods.[1] Further, we lack extensive data on pet food labels to confidently estimate the number of such labels that are currently consistent with the provisions of the proposed rule. An informal survey of pet food products for dogs, cats, rabbits and guinea pigs, however, found that only 13 of the 68 products surveyed had labels that listed color ingredients in a manner that might be determined not to be in compliance in the event the proposed rule becomes final.[2] Only 1 of the 13 products would definitely be considered out of compliance with the rule, and that was due to its failure to individually identify which of the identified certified color additives were the colors requiring certification and which were the lakes colors requiring certification.

On many of the other 12 product labels, the phrase ''and other color(s)'' or similar language followed immediately after a list of FDC colors requiring certification. In these cases, we believe it is likely that the phrase is being used to designate colors that do not require certification. However, because we could not rule out the possibility that the phrase ''and other color(s)'' or a similar phrase was being used to declare colors requiring certification that therefore would need to be listed individually by their common or usual name, we included them in the group of pet food product labels that would possibly be out of compliance. Based on the previous reasoning, we project the midpoint of the 12 possible cases of noncompliance represent actual cases of noncompliance with the proposed rule. Therefore, we project an upper end of the estimated noncompliance range at 7 of the 68 cases in the sample (6 of the possibly noncompliant cases plus the 1 case that is almost certainly out of compliance), or about 10 percent.

Due to the uncertainty surrounding pet food products in other market niches as well as those that are imported (all or almost all of those in the informal sample are products that were produced in the United States, although some ingredients may have been imported), it may be proper to account for these products by increasing the possible non-compliance level. However, because of the arguments mentioned previously concerning our likely overestimation of the upper range of our estimate in our informal survey, we have only increased our high-end estimate of products that would not be in compliance with the proposed rule to 15 percent. Although only 1.5 percent of the sample would definitely be out of compliance, to account for some uncertainty we have increased the low end of our compliance range to 5 percent. We estimate current product labeling that would not be in compliance with the proposed rule to range from 750 to 2,250

[1] Veterinary News Network, *http://www.myvnn.com*, accessed May 21, 2007. (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

[2] Informal survey of pet foods brands taken on April 20, 2007 at one grocery store and one drug store in Anne Arundel County, MD by FDA personnel.

products, or 5 to 15 percent of the estimated 15,000 different brands of pet food products. We request comment and additional data on the number of existing pet food product labels that would need to be modified if this proposed rule becomes final.

We have estimated a cost for the combined effort by pet food industry management to become familiar with the requirements of the rule, plus the effort to determine the compliance status of each of the approximately 15,000 products. We project that, on average, the compliance status of each product could be determined within 15 minutes by an industry compliance officer. In some instances, notably those involving companies with fewer products, the average may be longer due to the additional time spent on general education and awareness of the rule's requirements being apportioned over fewer products. For those companies with tens or hundreds of product labels, however, the average time to review an individual pet food ingredient label could easily be less than our estimate of 15 minutes per label. In any case, at 15 minutes per label, the one-time effort to review the 15,000 labels would amount to 3,750 hours. Using the median wage rate of $32.77 per hour for an industrial production manager (adding 35 percent to account for benefits results in a cost of $44.24 per hour), the cost of this label review would amount to about $166,000.[3]

FDA's Labeling Cost Model presents low, medium, and high cost estimates for all aspects of the label manufacturing process, from the administrative efforts through physical creation of the label, as well as an estimate for the loss of current label inventory[4]. We do not have specific data on the frequency of scheduled label changes for the pet food industry, but believe it would be similar to the human food industry. The model also includes a field that attempts to show to what extent human food labeling changes can be coordinated with scheduled labeling changes based on the time period within which the additional changes must be made. The model suggests parameters that lead to cost estimates that fall exponentially with the time allowed for labeling changes. The default or suggested percentages in the human foods model for a 2-year effectiveness date are 33 percent for private label products and 67 percent for brand name products. For pet foods, we believe the large majority of products are branded, implying that our estimate of all pet food labels that would have a scheduled label change within the 2-year effectiveness date should be closer to 67 percent than 33 percent (the Labeling Cost Model does not include data for products made by the pet food industry). Further, the general conclusion of a discussion with an industry association was that 1.5 to 2 years is a reasonable estimate for the life of a pet food label order, and for large manufacturers it is likely less than 1 year.[5] Based on these insights and lacking any other data source, we estimate that 60 percent of the pet food ingredient labeling changes could be coordinated with scheduled labeling changes. We invite public comment and data on the extent to which pet food ingredient labeling changes can be coordinated with scheduled labeling changes. (See the **COMMENTS** section of this document.)

We ran the model with several different human food items as proxies for pet foods, including canned seafood, cereal, flour meal, and bagged snack food, assuming a 2-year effectiveness date for the rule. The resulting total costs (which include label inventory loss) per stockkeeping unit (SKU) varied from low cost estimates for all but the canned seafood around $800, and with high cost estimates for canned seafood approaching $4,750. For the purpose of this analysis, we propose to use the median cost estimates from the cereal and canned seafood model results, or a range from about $1,250 per SKU to about $3,550 per SKU.

We project that only 300 to 900 pet food SKUs would be required to undertake an earlier labeling change as a result of this rule. This represents the 40 percent of SKUs that would not be able to coordinate the label change required by this rule with regularly scheduled label changes multiplied by the 750 to 2,250 SKUs that are not expected to be in compliance with the rule. Based on the range of per SKU costs described previously, the additional one-time labeling costs (including inventory loss) would range from $375,000 to about $3.2 million. Discounting these costs until the end of the 2-year transition period (at a 7-percent discount rate) results in one-time costs of about $328,000 to $2.8 million (at a 3-percent rate, the one-time cost would range from $353,000 to $3.0 million).

We estimate total pet food industry one-time costs (discounted at 7 percent) to range from about $500,000 to $3 million, including both the effort to determine compliance with the proposed rule and the labeling costs for those SKUs that would remain out of compliance after 2 years from the date of publication of the final rule. We do not project any additional annual reporting costs.

Analysis of Alternatives

Because section 403(i) of the act as amended by the 1990 amendments specifically requires certified color additives used in food to be declared by their common or usual names, we lacked the flexibility to consider other ways to declare certified color additives on the labels of animal food products. Based on the 2-year effectiveness date included in this proposal, total discounted one-time compliance costs would range from about $500,000 to $3 million. As indicated earlier, the 2-year effective date is to allow for an orderly transition from current label inventory without a significant, additional cost to the animal food products industry. FDA seeks comment on this issue.

IV. Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires agencies to prepare a regulatory flexibility analysis if a rule is expected to have a significant economic impact on a substantial number of small entities. Although we believe it is unlikely that significant economic impacts would occur, we cannot rule out the possibility completely because of uncertainty in the distribution of the affected products among establishments producing animal food products. The following constitutes the initial regulatory flexibility analysis.

One requirement of the Regulatory Flexibility Act is a succinct statement of any objectives of the rule. As stated previously in this analysis, the agency intends to amend the ingredient labeling regulations for animal feeds and pet foods to require that the common or usual name of all color additives that are required to be certified by FDA be listed on the label. This change would codify in FDA's animal food labeling regulations the requirements of the 1990 amendments, as was previously done for the food product labels for humans.

The Regulatory Flexibility Act also requires a description of the small entities that would be affected by the rule, and an estimate of the number of small entities to which the rule would apply. Dog and cat food manufacturers are classified in the North American

[3] U.S. Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics NAICS 311100—Animal Food Manufacturing (*http://www.bls.gov/oes/current/naics4_311100.htm*).

[4] *http://www.foodrisk.org/lcm.htm*. (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

[5] E-mail communication between industry association and FDA personnel on March 8, 2007.

Industrial Classification System (NAICS) under industry code 311111—Dog and Cat Food Manufacturing. Census data from 2002 in this category shows that 175 companies with 242 establishments make dog and cat foods in the United States.

NAICS industry code 311119 is identified as Other Animal Food Manufacturing. The 2002 census data for this category reported a total of 1,042 companies with 1,567 establishments. At least 629 of these establishments, however, prepared feeds for beef cattle, dairy cattle, swine, poultry (other than chickens and turkeys) and other minor production animal species. These establishments manufacture animal feed for production animals such as cattle and swine that ordinarily would not include any color additives in their products. This reduces the number of establishments in industry code 311119 that are subject to § 501.22(k)(1) to 938.

We have not reduced the number of establishments any further to account for the 350 establishments that manufacture feed or feed ingredients for chickens and turkeys, fish species and other minor species, which are the types of products that we believe are more likely to contain a color additive to aid in their marketability. Based on our understanding that feed or feed ingredients for chickens and turkeys, fish, and some other minor species typically do not contain color additives requiring certification, we believe that manufacturers of these products would only be minimally affected by proposed § 501.22(k)(1), if at all. However, because we cannot rule out the possibility that they would, at some point in the future, use a color additive requiring certification, we do not exclude them from the total of 938 establishments. Thus, using the 2002 census data, we estimate that the total number of establishments manufacturing dog, cat, and production animal foods that could be affected by § 501.22(k)(1) may be as large as 1,180 establishments (242 + 938).

The Small Business Administration defines businesses in NAICS categories 311111 and 311119 as small entities if they employ less than 500 employees. Census data shows that only 1 establishment with NAICS code 311111 employs 500 or more employees and that no establishments within NAICS code 311119 employ 500 or more employees. The existence of some multi-establishment companies in each NAICS classification would likely increase the number of companies that would not meet the definition of a small entity because companies comprised of more than one establishment are likely to have more employees. Nonetheless, we would expect that a large number of the 1,180 establishments that manufacture dog food, cat food, or other animal food that might contain a color additive requiring certification would meet the criteria to be considered small businesses.

Census data on industry shipments for dog and cat food manufacturers is not available for establishments with one to four employees in 2002. For those establishments with 5 to 9 employees, and those with 10 to 19 employees, the average annual value of shipments ranges from $3.37 to $4.16 million. For all establishments with 20 or more employees, it is much greater. If a manufacturer composed of only one establishment of five to nine employees had to undertake one product relabeling due to this rule, the one-time cost of this effort would represent only about 0.11 percent of average annual revenues. Those establishments with 10 to 19 employees could have 11 SKUs needing relabeling before their one-time costs equal 1 percent of average annual revenues, while establishments with 20 or more employees could have more than 50 SKUs needing relabeling before their one-time costs equal 1 percent of average annual revenues.

For those establishments with one to four employees that manufacture other animal foods, the average annual value of shipments is about $950,000. The average value of shipments for establishments in this industry with five or more employees is greater than $3.8 million. An average company composed of one establishment with one to four employees would expend 0.37 percent of its revenues for the cost of relabeling one SKU as a result of this rule. Establishments with 5 to 9 employees and those with 10 to 19 employees could have 11 and 24 SKUs requiring relabeling after 2 years, respectively, before their one-time costs would account for 1 percent of average annual revenues. All larger establishments could have 100 or more SKUs requiring relabeling after 2 years before their one-time costs would account for 1 percent of average annual revenues.

Although the data show that the cost for relabeling one SKU would not likely represent a significant burden on a substantial number of small companies, we do not have data on either the number of affected animal food products manufactured by establishments or firms of any size, or the distribution of those animal food products that would not have met the requirements of the rule within 2 years of the publication of the final rule. That being the case, we must allow for the possibility, however unlikely, that the rule could have a significant impact on a substantial number of small firms.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The analysis above shows that at every establishment size, the expected cost of compliance would be significantly less than 1 percent of revenues for each SKU requiring new labeling. The estimated number of SKUs requiring new labeling makes it unlikely that their distribution among establishments would result in any establishment incurring compliance costs greater than 1 percent of revenues. The agency believes, therefore, that this proposed rule would be unlikely to have a significant economic impact on a substantial number of small entities. FDA requests comment on this issue.

V. Environmental Impact

The agency has determined that establishment of this labeling requirement would not increase the existing levels of use or change the intended uses of color additives or their substitutes. Therefore, under 21 CFR 25.30(k), this proposed rule is determined to be categorically excluded from the need to prepare an environmental assessment or an environmental impact statement.

VI. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. Section 4(a) of the Executive order requires agencies to ''construe * * * a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State law conflicts with the exercise of Federal authority under the Federal statute.'' Federal law includes an express preemption provision that preempts ''any requirement for the labeling of food of the type required by * * * [21 U.S.C. 343(i)(2)] * * * that is not identical to the requirements of such section * * *'' 21 U.S.C. 343–1(a)(2). This proposed rule, if made final, would create requirements for declaring the presence of certified color additives on the labels of animal food, including animal feeds and pet foods under 21 U.S.C. 343(i)(2).

VII. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB), under

the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). A description of these provisions is given in table 1 of this document with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each 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 and other forms of information technology.

Title: Animal Food Labeling; Declaration of Certifiable Color Additives.

Description: FDA is proposing this amendment in response to the 1990 amendments, which amended the act by requiring, among other things, the listing on food labels of the common or usual names of all color additives required to be certified by FDA. An additional purpose of this amendment is to make these regulations consistent with the regulations regarding the declaration of certified color additives on the labels of human food. The proposed rule also suggests appropriate terminology for the declaration of certified-exempt color additives on the labels of animal food.

Description of Respondents: Animal feed industry, which also includes those establishments manufacturing pet foods.

Thus, FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Capital Costs	
501.22 (k)(1)	1,180	12.71	15,000	.25	3,750	$3,000,0002[2]	
501.22(k)(2)	1,180	12.71	450	.25	112.5	$1.5,000,000	

[1]There are no operating and maintenance costs associated with this collection of information.
[2]Because the range was $500,000 to $3 million, FDA has chosen to show the high figure here.

The numbers for § 501.22(k)(1) in table 1 of this document were taken from section III of this document. As discussed in section IV of this document, the total number of establishments manufacturing dog, cat, and other non-production animal foods is estimated at 1,180. The annual frequency per response (12.71) is derived by dividing the 15,000 annual responses (i.e., labels) by the number of establishments (1,180). The total hours (3,750) is derived by multiplying the number of total annual responses (15,000) by 15 minutes (.25) per response. Due to the proposed 2-year delay in the effective date of the final rule, the total capital costs range from $500,000 to $3 million, and operating and maintenance costs were estimated to be zero.

New § 501.22(k)(2) proposes appropriate terminology for the declaration of certification-exempt color additives on the ingredient list of labels of animal food. Color additives not subject to certification may be declared as ''Artificial Color,'' ''Artificial Color Added,'' or ''Color Added'' (or by an equally informative term that makes clear that a color additive has been used in the food). Alternatively, such color additives may be declared as ''Colored with _____'' or '' _____ color,'' the blank to be filled with the name of the color additive listed in the applicable regulation in part 73 of this chapter. Although the suggested appropriate terminology for labels for declaration of colors exempt from certification is optional and offers some flexibility to a manufacturer in terms of how to declare such color additives on its ingredient label, it is possible that some may voluntarily adopt the language specified in § 501.22(k)(2) when they are already relabeling their animal food products for other reasons such as for marketing purposes. The census data shows that up to 938 establishments produce animal feeds that may contain color additives exempt from certification. These additives may also be used at the 242 dog and cat food establishments in the United States. We do not have data that can be used to estimate the number of product labels that will be voluntarily changed at the 1,180 establishments as a result of proposed § 501.22(k)(2). However, our analysis of the required changes for proposed § 501.22(k)(1) estimated that about 6 percent of the products would require label changes after the 2-year effectiveness date has passed (15 percent of labels that are currently out of compliance with proposed § 501.22(k)(1) times the 40 percent of these that would remain out of compliance after regular label changes occurring over 2 years). We assume that management would choose to make fewer voluntary label changes than required label changes. For our analysis, we assume that only one-half as much, or 3 percent of these products, undergo voluntary label changes as proposed in § 501.22(k)(2). This would result in 0.38 label changes per establishment for proposed § 501.22(k)(2), or 450 label changes over the 1,180 establishments.

The hours per response for label review to determine compliance with the rule and the appropriate language to put on the label is estimated at .25 hour, which compares to the time allotted for animal food labels containing certified colors. The annual cost of label review is the hourly wage of an industrial production manager ($44.24) times .25 hours per response times the number of labels.

The upper-bound estimate of relabeling costs for the remaining labels (i.e., those reviewed for compliance with the proposed rule), is $3,350 per SKU. The total one-time cost of § 501.22(k)(2) would therefore be the cost of label review plus the cost of changing 450 labels as part of normal business practices, for an estimated total of about $1.5 million. The total hours spent, as shown in Table 1 of this document, are 112.5 (450 times .25).

The information collection provisions of this proposed rule have been submitted to OMB for review. Interested persons are requested to fax comments regarding information collection to the Office of Information and Regulatory Affairs, OMB (see the **DATES** section of this document). To ensure that comments on 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.

VIII. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 501

Animal food labeling, Specific animal food labeling requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 501 be amended as follows:

PART 501—ANIMAL FOOD LABELING

1. The authority citation for 21 CFR part 501 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371.

2. Section 501.22 is amended by adding paragraph (k) to read as follows:

§ 501.22 Animal foods; labeling of spices, flavorings, colorings, and chemical preservatives.

* * * * *

(k) The label of an animal food to which any coloring has been added shall declare the coloring in the statement of ingredients in the manner specified in paragraphs (k)(1) and (k)(2) of this section.

(1) A color additive or the lake of a color additive subject to certification under section 721(c) of the act shall be declared by the name of the color additive listed in the applicable regulation in part 74 or part 82 of this chapter, except that it is not necessary to include the ''FD&C'' prefix or the term ''No.'' in the declaration, but the term ''Lake'' shall be included in the declaration of the lake of the certified color additive (e.g., Blue 1 Lake). Manufacturers may parenthetically declare an appropriate alternative name of the certified color additive following its common or usual name as specified in part 74 or part 82 of this chapter.

(2) Color additives not subject to certification may be declared as ''Artificial Color,'' ''Artificial Color Added,'' or ''Color Added'' (or by an equally informative term that makes clear that a color additive has been used in the food). Alternatively, such color additives may be declared as ''Colored with_____'' or ''_____ color,'' the blank to be filled with the name of the color additive listed in the applicable regulation in part 73 of this chapter.

Dated: November 17, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–27984 Filed 11–20–09; 8:45 am]

BILLING CODE 4160–01–S

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4041

Purchase of Irrevocable Commitments Prior to Standard Termination

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Request for public comment.

SUMMARY: Practitioners and employers have requested guidance from PBGC on the extent to which plan administrators may purchase irrevocable commitments to provide plan benefits before initiating a standard termination under section 4041(b) of ERISA. PBGC is soliciting public comments to help develop this guidance. The issues on which PBGC seeks comments include the extent to which such purchases of irrevocable commitments violate statutory and regulatory termination requirements, safeguards for participants and beneficiaries, and sanctions for violations.

DATES: Comments must be received on or before January 22, 2010.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the Web site instructions for submitting comments.
- *E-mail: reg.comments@pbgc.gov.*
- *Fax:* 202–326–4224.
- *Mail or Hand Delivery:* Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

Comments received, including personal information provided, will be posted to *http://www.pbgc.gov.* Copies of comments may also be obtained by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026 or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

FOR FURTHER INFORMATION CONTACT: Constance Markakis or Catherine B. Klion, Attorneys, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, Suite 12300, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY–TTD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: PBGC administers the termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974 (ERISA). Under section 4041(b) of ERISA, a plan that has sufficient assets to pay all plan liabilities may terminate in a standard termination. Standard termination requirements (including reporting and disclosure requirements and restrictions on distributing plan assets during the termination process) are set forth in the statute, PBGC's regulation on Termination of Single Employer Plans, 29 CFR part 4041, and termination forms and instructions, available on PBGC's Web site, *http://www.pbgc.gov.*

Questions have been raised as to the extent to which a plan administrator may purchase irrevocable commitments for some or all participants during a period of time before initiating a standard termination. Plans sometimes consider purchase of an irrevocable commitment (an obligation by an insurer to pay benefits) to take advantage of favorable interest rates, or to gradually prepare for a termination.

Although PBGC understands these considerations, PBGC has concerns about whether such purchases could circumvent the statutory and regulatory protections afforded participants and beneficiaries under the standard termination process. PBGC has provided only limited informal guidance on this issue.[1] This notice seeks public comment to help develop more comprehensive guidance.

Standard Termination Process

Under part 4041, a single-employer plan may terminate in a standard termination if, in accordance with regulatory requirements, the plan

[1] 2009 Blue Book Q&A 8, available on PBGC's Web site, *http://www.pbgc.gov.* Blue Books are summaries of the questions and answers discussed at meetings between PBGC staff and representatives of the Enrolled Actuaries Program Committee in preparation for the annual Enrolled Actuaries Meetings. The summaries reflect the views of individual staff members and do not represent the official position of PBGC.

administrator provides to affected parties a notice of intent to terminate (NOIT) and a notice of plan benefits (NOPB), files a standard termination notice with PBGC, and distributes plan assets in satisfaction of plan benefits.

Disclosure Requirements

The NOIT must be issued to participants, beneficiaries, alternate payees, and employee organizations representing participants at least 60 days, and no more than 90 days, before the proposed termination date. The NOIT must include a statement that after plan assets have been distributed in full satisfaction of all plan benefits for a participant or beneficiary, including by the purchase of an irrevocable commitment, PBGC no longer guarantees the plan benefits. The NOIT must include the name and address of the insurers from whom (if known), or (if not) from among whom, the plan administrator intends to purchase irrevocable commitments, as well as information on state guaranty association coverage of annuities.[2]

The NOPB must be issued to participants, beneficiaries, and alternate payees no later than the time the standard termination notice is filed with PBGC. The NOPB must include the proposed termination date, the amount and form of the person's plan benefits, including the amount and form that would be payable at the earliest benefit commencement date, and information on payment in a lump sum. Except in the case of an affected party in pay status for more than a year, the NOPB must include the personal data needed to calculate the affected party's plan benefits, along with a statement requesting that the affected party promptly correct any information believed to be incorrect. If any of the personal data needed is not available, the NOPB must include the best available data, along with a statement informing the affected party of the data not available and giving the affected party an opportunity to provide it.

Standard Termination Notice

The plan must file a standard termination notice (Form 500) with PBGC on or before the 180th day after the proposed termination date. The standard termination notice includes the number of plan participants and beneficiaries as of the proposed termination date, the estimated fair market value of plan assets available to pay for plan benefits as of the proposed termination date, and the estimated present value of plan benefits (including the estimated cost of annuity contracts to provide plan benefits) as of the proposed distribution date. PBGC has 60 days (unless extended) after receipt of a standard termination notice to review the proposed termination for compliance with applicable requirements.

PBGC will issue a notice of noncompliance during the 60-day review period whenever it determines that the plan administrator failed to issue the NOIT or the NOPB in accordance with applicable requirements, the plan administrator failed to file the standard termination notice in accordance with applicable requirements, or as of the proposed distribution date, plan assets will not be sufficient to satisfy all plan benefits. PBGC may decide not to issue a notice of non-compliance based on a failure to meet those reporting or disclosure requirements if it determines that issuance of the notice would be inconsistent with the interests of participants and beneficiaries.

Closeout of Plan

If, by the end of the 60-day review period, PBGC does not issue a notice of noncompliance, the plan administrator must complete the distribution of assets to provide all plan benefits under the plan within 180 days. (If the plan has applied for an IRS determination letter by the time the standard termination notice is filed, distribution must be completed within 120 days after receipt of a favorable determination letter.) Assets are distributed by purchasing irrevocable commitments from an insurer or in another permitted form under the plan (usually payments of lump sums). To comply with Title IV, the plan administrator must select the insurer in accordance with the fiduciary standards of Title I (§ 4041.28(c)(3)).

If plan benefits are provided through the purchase of an irrevocable commitment, the plan administrator or the insurer must, within 30 days after it is available, provide the participant or beneficiary with a certificate or a copy of the annuity contract. If the certificate or contract is not provided within 90 days after the distribution deadline, the plan administrator must, by that date, provide the participant or beneficiary with a notice containing the insurer's name, address, and contact information. The notice must also state that the obligation for providing the benefit has transferred to the insurer and that the participant or beneficiary will receive from the plan administrator or insurer a certificate or a copy of the annuity contract.

Within 30 days after the last distribution date,[3] the plan administrator must file with PBGC a post-distribution certification (Form 501). The latter must include the names of insurers that provided irrevocable commitments, numbers of participants or beneficiaries for whom irrevocable commitments were purchased, and the total value of the irrevocable commitments.

Administration of Plan During Termination Process

From the first day the plan administrator issues a NOIT in a standard termination to the last day of PBGC's 60-day review period, the plan administrator may not purchase irrevocable commitments to provide any plan benefits (§ 4041.22). An exception applies if the participant has separated from active employment or is otherwise permitted under the Code to receive the distribution, the distribution is consistent with prior plan practice, and the distribution is not reasonably expected to jeopardize the plan's sufficiency for plan benefits.

Irrevocable Commitments

An irrevocable commitment is defined in § 4001.2 as ''an obligation by an insurer to pay benefits to a named participant or surviving beneficiary, if the obligation cannot be cancelled under the terms of the insurance contract (except for fraud or mistake) without the consent of the participant or beneficiary and is legally enforceable by the participant or beneficiary.''

Some plans contain provisions permitting the purchase of immediate annuity contracts that are irrevocable commitments when participants retire. Plans may also purchase deferred annuity contracts that are irrevocable commitments in connection with a plan merger, benefit freeze, or spin-off termination, to annuitize all or part of the accrued benefits of active or deferred vested participants. If the plan purchases irrevocable commitments in those situations, it may hold the certificate or give it to the participant.

A plan may also purchase annuity contracts as a funding or investment vehicle of the plan (e.g., the contract grows at a minimum guaranteed rate during the accumulation phase). Such contracts are not irrevocable commitments and do not transfer the

[2] If the identity-of-insurer information is not known at the time the NOIT is issued, the plan must provide it in a supplemental notice no later than 45 days before the distribution date.

[3] Under § 4041.29, PBGC will assess a penalty for late filing of a post-distribution certification only to the extent the certification is filed more than 90 days after the distribution deadline (including extensions).

liability of the plan for benefits to the insurance company or extinguish PBGC's obligation to guarantee plan benefits. While these contracts are often ''unallocated'' group annuity contracts, a plan may also purchase such contracts to fund individual participants' benefits. An annuity contract may at times be cashed in for its surrender value (this may occur during the termination process if the asset value is not diminished). However, a plan may not exercise a contract provision for the conversion of the contract to irrevocable commitments before the end of PBGC's 60-day review period, subject to the exception in § 4042.22(b) described above. Purchase of annuity contracts as a funding or investment vehicle of the plan does not raise termination concerns with PBGC.

For benefits provided through the purchase of irrevocable commitments, the distribution date is the date on which the obligation to provide the benefits passes from the plan to the insurer. Once an insurer has made an irrevocable commitment to pay all benefits to which a participant who is retired or separated from employment is entitled under the plan and who is either receiving plan benefits or entitled to begin receiving plan benefits in the future, the individual ceases to be a participant for purposes of part 4041 (§ 4041.2).[4] Similarly, an individual ceases to be a beneficiary under the plan for such purposes once an insurer makes an irrevocable commitment to provide all the plan benefits to which the beneficiary is entitled.

Audit and Enforcement

PBGC currently conducts post-termination audits of all plans that terminate in a standard termination with a participant count of 300 or more. For plans with fewer than 300 participants, PBGC randomly selects plans to audit. PBGC also may audit a plan when the agency has reason to believe there may be a problem. The focus of the standard termination audits is to ensure that participants receive the benefits to which they were entitled. PBGC also audits compliance with termination disclosure and reporting requirements. Failure to provide required termination-related notices and disclosures is subject to information penalties under section 4071 of ERISA.[5]

Starting in 2006, PBGC has been auditing all plans that make a final distribution of plan assets before or without filing a standard termination notice in accordance with the standard termination regulations. After PBGC identifies such a plan, generally when it fails to pay premiums, it requires the plan to file a standard termination notice and post-distribution certification. PBGC can have difficulty, however, identifying plans that purchase irrevocable commitments prior to termination, particularly when the irrevocable commitments are purchased for a group of participants (*e.g.,* retirees), but not all participants.

Section 4044.4 of PBGC's regulation on Allocation of Assets in Single-Employer Plans (part 4044) provides that a distribution in anticipation of termination is considered to be an allocation of plan assets upon termination. A plan administrator violates ERISA if plan assets are allocated or distributed upon plan termination in a manner other than that prescribed under section 4044 of ERISA and part 4044. The anticipation-of-termination rules generally do not come into play where the plan terminates in a standard termination. Those rules could be relevant, however, where plan assets are not sufficient to pay plan benefits at the time of any distribution upon termination.

PBGC Concerns

ERISA section 4041(a) provides that the rules in section 4041(b) for a standard termination or in section 4041(c) for a distress termination are the exclusive means by which a single-employer plan may voluntarily terminate. Under section 4041(b), PBGC must issue a notice of noncompliance to the plan administrator if it determines that participants and beneficiaries have not received all required notices and information or that there is reason to believe that the plan is not sufficient for benefit liabilities. PBGC has two substantial concerns when a plan purchases irrevocable commitments before initiating a related standard termination.

The first concern is that the purchase circumvents the statutory and regulatory protections afforded under the standard termination process. A participant whose plan benefits are fully satisfied through purchase of an irrevocable commitment prior to the first day a NOIT is issued in a related termination would not receive disclosures required as part of the standard termination process, including advance notice of the termination, advance information about the insurer, and a statement that PBGC no longer guarantees those plan benefits. Such participants may not have the same opportunity to correct personal information used to calculate their benefits or provide personal data not available to the plan. In addition, PBGC would not receive information necessary to determine whether participants received the correct benefits, including information on the number of persons for whom irrevocable commitments were purchased and the benefits provided through the purchase of irrevocable commitments.

The second concern is that plan assets could be insufficient for plan benefits at the time of any distribution upon termination, since plan assets used to purchase irrevocable commitments (and the investment returns on those assets) would no longer be available to pay other plan benefits. If the plan was sufficient for guaranteed benefits, it might still terminate as a distress termination, but some participants would lose nonguaranteed benefits. If the plan was not sufficient for guaranteed benefits, PBGC might have to terminate and trustee the plan, and some participants and PBGC could be harmed. This concern generally does not arise with irrevocable commitments purchased after the first day a NOIT is provided, because the exception in § 4041.22(b) applies only if the distribution is not reasonably expected to jeopardize the plan's sufficiency.

Neither concern applies if a plan purchases an annuity contract as a funding or investment vehicle of the

[4] Under IRS regulations, a plan generally is required to reflect in the plan's funding target and target normal cost the liability for benefits that are funded through insurance contracts held by the plan, and to include in plan assets the value of the corresponding insurance contracts. A plan is permitted, however, to exclude the benefits provided under such contracts and the corresponding contracts to the extent that a participant's or beneficiary's right to receive those benefits is an ''irrevocable contractual right'' based on premiums paid prior to the valuation date. See Treas. Reg. § 1.430(d)–1(c)(2), 74 FR 53004, 53038 (Oct. 15, 2009). A plan's election under IRS regulations to include or exclude irrevocable commitments in the plan's valuation and minimum funding requirements has no bearing on whether the individuals for whom the irrevocable commitments are purchased are participants for purposes of part 4041. In addition, under IRS regulations, any payment for the purchase of an irrevocable commitment is a ''prohibited payment'' that is subject to certain funding-based limitations on accelerated benefit distributions under Code section 436(d). Treas. Reg. § 1.436–1(d), 74 FR at 53083.

[5] Under section 4071 of ERISA and PBGC's information penalty regulation (part 4071), PBGC may assess a penalty of up to $1,100 a day if material information is not timely provided. PBGC's current information penalty policy (60 FR 36837, Jul. 18. 1995) provides for a guideline information penalty of $25 per day for the first 90 days of delinquency and $50 per day thereafter. Penalties are reduced proportionately for plans with fewer than 100 participants, and the total penalty is capped at $100 times the number of plan participants. The guideline penalty may be adjusted up or down based on the facts and circumstances—for example, willful failure to comply, pattern or practice of violation, or substantial harm to participants or PBGC. PBGC may waive an information penalty for ''reasonable cause.''

plan before or after the NOIT is provided, so long as it is not an irrevocable commitment. However, the same concerns would arise if the plan converted such a contract to irrevocable commitments before or after initiating a standard termination.

Request for Comments

PBGC is soliciting comments on issues related to a purchase of irrevocable commitments before the initiation of a standard termination. PBGC seeks comments on any and all relevant issues, including the following:

(1) Factors PBGC should take into account in determining whether a purchase of irrevocable commitments before the initiation of a standard termination is related to (*i.e.,* in preparation of) the standard termination (*e.g.,* plan annuitizes plan benefits of all retirees or terminated vested participants with no connection to any other plan transaction, such as a merger).

(2) Whether there should be a rebuttable presumption that a purchase of irrevocable commitments made within a specific time period (*e.g.,* a year) before the first day a NOIT is issued in a standard termination is related to a standard termination and if so, what time period.

(3) Whether there should be a safe harbor for a purchase of irrevocable commitments under specified circumstances before the first day a NOIT is issued in a standard termination. If so, what time period should apply (*e.g.,* one year, two years, or three years before a NOIT is issued)? Whether a safe harbor should be conditioned on the purpose of the purchase (*e.g.,* to lock in rates with an insurer in order to ensure plan sufficiency). Whether a safe harbor should be limited to plans in which the plan assets exceed plan benefits by a certain margin. If so, by what margin and as of what date? What reporting and disclosure requirements should be required with a safe harbor?

(4) How PBGC can better identify plans that purchase irrevocable commitments for some or all participants shortly before initiating a standard termination.

(5) Appropriate enforcement actions in the case of a purchase of irrevocable commitments before the initiation of a related standard termination.

(6) Appropriate information penalties for failures to provide notices and disclosures required as part of the termination process, including guideline information penalty amounts, and aggravating and mitigating factors (*e.g.,* before purchasing irrevocable commitments, the plan administrator provided participants with the information required in the NOIT and NOPB, or the plan reported information to PBGC about irrevocable commitments purchased).

(7) In the case of a permissible purchase of irrevocable commitments in accordance with § 4041.22(b) made after a NOIT is issued, what information should the plan be required to provide to participants? To PBGC? [6]

(8) What are employers' experiences with ''locking in'' rates for purchases of irrevocable commitments? What are the costs of locking in rates and how long do locked-in rates remain in effect? In the case of annuity contracts that are purchased as an investment vehicle, can plans lock in rates for the conversion of these contracts to irrevocable commitments at a future date and if so, at what costs and for how long?

Issued in Washington, DC, this 18th day of November 2009.

Vincent K. Snowbarger,

Acting Director, Pension Benefit Guaranty Corporation.

[FR Doc. E9–28102 Filed 11–20–09; 8:45 am]

BILLING CODE 7709–01–P

[6] 2007 Blue Book Q&A 6 provides informal guidance that PBGC staff interprets § 4041.24(a) as not requiring a plan administrator to issue a NOPB to a participant whose benefits are paid out in accordance with § 4041.22 on or before the due date for issuing the NOPB. However, the Instructions to Form 501 provide that the post-distribution certification must include such participants and beneficiaries for whom annuities are purchased after the plan's termination date in the normal course of business, including a certification of their distributions by category and amount (see also, 2008 Blue Book Q&A 7). 2009 Blue Book Q&A 11 provides informal guidance that a standard termination audit will generally cover any participant or beneficiary who is an affected party as of the plan's termination date, regardless of the timing of the distribution for that affected party.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–R01–OAR–2009–0031; A–1–FRL–8974–6]

Approval of the Clean Air Act, Section 112(l), Authority for Hazardous Air Pollutants: Perchloroethylene Air Emission Standards for Dry Cleaning Facilities: Commonwealth of Massachusetts Department of Environmental Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve Massachusetts Department of Environmental Protection's (''MassDEP'') request to implement and enforce the amended 310 CMR 70.00 Environmental Results Program (''ERP'') Certification and the amended 7.26(10)–(16) Perchloroethylene Air Emissions Standards for Dry Cleaning Facilities (together referred to as the ''amended Dry Cleaner ERP'') as a partial substitution for the amended National Emissions Standards for Hazardous Air Pollutants for Perchloroethylene Dry Cleaning Facilities (''Dry Cleaning NESHAP''), as it applies to area sources. This approval would make the Massachusetts Department of Environmental Protection's amended rules federally enforceable. Major sources would remain subject to the Federal Dry Cleaning NESHAP. In addition, dry cleaners installed in a building with a residence between December 21, 2005 and July 13, 2006 would remain subject to the Federal Dry Cleaning NESHAP.

DATES: Written comments must be received on or before December 23, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2009–0031 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: mcdonnell.ida@epa.gov.*
3. *Fax:* (617) 918–0653.
4. *Mail:* ''EPA–R01–OAR–2009–0031'', Ida McDonnell, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAP), Boston, MA 02114–2023.
5. *Hand Delivery or Courier:* Deliver your comments to: Ida McDonnell, Acting Manager, Air Permits, Toxics and Indoor Programs Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAP), Boston, MA 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Please see the direct final rule which is located in the Rules Section of this **Federal Register** for detailed instructions on how to submit comments. EPA will forward copies of all submitted comments to the Massachusetts Department of Environmental Protection.

FOR FURTHER INFORMATION CONTACT: Susan Lancey, Air Permits, Toxics and Indoor Programs Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAP), Boston, MA 02114–2023, telephone number (617) 918–1656, fax number (617) 918–0656, e-mail *lancey.susan@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules Section of this **Federal Register,** EPA is approving the Commonwealth of Massachusetts' Section 112(l) submittal as a direct final

rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register.**

Dated: October 15, 2009.

Ira W. Leighton,

Acting Regional Administrator, EPA-New England.

[FR Doc. E9–27819 Filed 11–20–09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2009–0351; FRL–8982–7]

RIN 2060–AP62

Protection of Stratospheric Ozone: The 2010 Critical Use Exemption From the Phaseout of Methyl Bromide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing uses that qualify for the 2010 critical use exemption and the amount of methyl bromide that may be produced, imported, or supplied from existing pre-phaseout inventory for those uses in 2010. EPA is taking action under the authority of the Clean Air Act to reflect a recent consensus decision taken by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer at the Twentieth Meeting of the Parties. EPA is seeking comment on the list of critical uses and on EPA's determination of the amounts of methyl bromide needed to satisfy those uses.

DATES: Comments must be submitted by December 23, 2009. Any party requesting a public hearing must notify the contact person listed below by 5 p.m. Eastern Standard Time on November 30, 2009. If a hearing is requested it will be held on December 8, 2009 and comments will be due to the Agency January 7, 2010. EPA will post information regarding a hearing, if one is requested, on the Ozone Protection Web site *http://www.epa.gov/ozone/strathome.html*. Persons interested in attending a public hearing should consult with the contact person below regarding the location and time of the hearing.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2009–0351, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-Docket@epa.gov.*
- Fax: 202–566–1741.
- Mail: Docket EPA–HQ–OAR–2009–0351, Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Mail code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- Hand Delivery: Docket EPA–HQ–OAR–2009–0351, Air and Radiation Docket at EPA West, 1301 Constitution Avenue NW., Room B108, Mail Code 6102T, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2009–0351. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through 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 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.*

FOR FURTHER INFORMATION CONTACT: For further information about this proposed rule, contact Jeremy Arling by telephone at (202) 343–9055, or by e-mail at *arling.jeremy@epa.gov* or by mail at U.S. Environmental Protection Agency, Stratospheric Protection Division, Stratospheric Program Implementation Branch (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. You may also visit the Ozone Depletion Web site of EPA's Stratospheric Protection Division at *http://www.epa.gov/ozone/strathome.html* for further information about EPA's Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and related topics.

SUPPLEMENTARY INFORMATION:

This proposed rule concerns Clean Air Act (CAA) restrictions on the consumption, production, and use of methyl bromide (a Class I, Group VI ozone-depleting substance) for critical uses during calendar year 2010. Under the Clean Air Act, methyl bromide consumption (consumption is defined under the CAA as production plus imports minus exports) and production was phased out on January 1, 2005, apart from allowable exemptions, such as the critical use exemption and the quarantine and preshipment exemption. With this action, EPA is proposing and seeking comment on the uses that will qualify for the 2010 critical use exemption as well as specific amounts of methyl bromide that may be produced, imported, or sold from pre-phaseout inventory for proposed critical uses in 2010.

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I. General Information

Regulated Entities

Entities potentially regulated by this proposed action are those associated with the production, import, export, sale, application, and use of methyl bromide covered by an approved critical use exemption. Potentially regulated categories and entities include producers, importers, and exporters of methyl bromide; applicators and distributors of methyl bromide; users of methyl bromide, e.g., farmers of vegetable crops, fruits and nursery stock; and owners of stored food commodities and structures such as grain mills and processors.

This list is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this proposed action. To determine whether your facility, company, business, or organization could be regulated by this proposed action, you should carefully examine the regulations promulgated at 40 CFR part 82, subpart A. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section.

What Should I Consider When Preparing My Comments?

1. *Confidential Business Information.* Do not submit confidential business information (CBI) to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. What Is Methyl Bromide?

Methyl bromide is an odorless, colorless, toxic gas which is used as a broad-spectrum pesticide and is controlled under the CAA as a Class I ozone-depleting substance (ODS). Methyl bromide is used in the U.S. and throughout the world as a fumigant to control a variety of pests such as insects, weeds, rodents, pathogens, and nematodes. Information on methyl bromide can be found at *http://www.epa.gov/ozone/mbr* and *http://www.unep.org/ozone.*

Methyl bromide is also regulated by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and other statutes and regulatory authority, as well as by States under their own statutes and regulatory authority. Under FIFRA, methyl bromide is a restricted use pesticide. Restricted use pesticides are subject to Federal and State requirements governing their sale, distribution, and use. Nothing in this proposed rule implementing the Clean Air Act is intended to derogate from provisions in any other Federal, State, or local laws or regulations governing actions including, but not limited to, the sale, distribution, transfer, and use of methyl bromide. Entities affected by provisions of this proposal must continue to comply with FIFRA and other pertinent statutory and regulatory requirements for pesticides (including, but not limited to, requirements pertaining to restricted use pesticides) when importing, exporting, acquiring, selling, distributing, transferring, or using methyl bromide for critical uses. The regulations in this proposed action are intended only to implement the CAA restrictions on the production, consumption, and use of methyl bromide for critical uses exempted from the phaseout of methyl bromide.

III. What Is the Background to the Phaseout Regulations for Ozone-Depleting Substances?

The regulatory requirements of the stratospheric ozone protection program that limit production and consumption of ozone-depleting substances are in 40 CFR part 82, subpart A. The regulatory program was originally published in the **Federal Register** on August 12, 1988 (53 FR 30566), in response to the 1987 signing and subsequent ratification of the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol). The Montreal Protocol is the international agreement aimed at reducing and eliminating the production and consumption of stratospheric ozone-depleting substances. The U.S. was one of the original signatories to the 1987 Montreal Protocol and the U.S. ratified the Protocol on April 12, 1988. Congress then enacted, and President George H.W. Bush signed into law, the Clean Air Act Amendments of 1990 (CAAA of 1990) which included Title VI on Stratospheric Ozone Protection, codified as 42 U.S.C. Chapter 85, Subchapter VI, to ensure that the United States could

satisfy its obligations under the Protocol. EPA issued regulations to implement this legislation and has since amended the regulations as needed.

Methyl bromide was added to the Protocol as an ozone-depleting substance in 1992 through the Copenhagen Amendment to the Protocol. The Parties to the Montreal Protocol (Parties) agreed that each industrialized country's level of methyl bromide production and consumption in 1991 should be the baseline for establishing a freeze in the level of methyl bromide production and consumption for industrialized countries. EPA published a final rule in the **Federal Register** on December 10, 1993 (58 FR 65018), listing methyl bromide as a Class I, Group VI controlled substance, freezing U.S. production and consumption at this 1991 baseline level of 25,528,270 kilograms, and setting forth the percentage of baseline allowances for methyl bromide granted to companies in each control period (each calendar year) until 2001, when the complete phaseout would occur. This phaseout date was established in response to a petition filed in 1991 under Sections 602(c)(3) and 606(b) of the CAAA of 1990, requesting that EPA list methyl bromide as a Class I substance and phase out its production and consumption. This date was consistent with Section 602(d) of the CAAA of 1990, which for newly listed Class I ozone-depleting substances provides that ''no extension [of the phaseout schedule in section 604] under this subsection may extend the date for termination of production of any class I substance to a date more than 7 years after January 1 of the year after the year in which the substance is added to the list of class I substances.''

At the Seventh Meeting of the Parties (MOP) in 1995, the Parties made adjustments to the methyl bromide control measures and agreed to reduction steps and a 2010 phaseout date for industrialized countries with exemptions permitted for critical uses. At that time, the U.S. continued to have a 2001 phaseout date in accordance with Section 602(d) of the CAAA of 1990. At the Ninth MOP in 1997, the Parties agreed to further adjustments to the phaseout schedule for methyl bromide in industrialized countries, with reduction steps leading to a 2005 phaseout.

IV. What Is the Legal Authority for Exempting the Production and Import of Methyl Bromide for Critical Uses Authorized by the Parties to the Montreal Protocol?

In October 1998, the U.S. Congress amended the CAA to prohibit the termination of production of methyl bromide prior to January 1, 2005, to require EPA to bring the U.S. phaseout of methyl bromide in line with the schedule specified under the Protocol, and to authorize EPA to provide certain exemptions. These amendments were contained in Section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Pub. L. 105–277, October 21, 1998) and were codified in Section 604 of the CAA, 42 U.S.C. 7671c. The amendment that specifically addresses the critical use exemption appears at Section 604(d)(6), 42 U.S.C. 7671c(d)(6). EPA revised the phaseout schedule for methyl bromide production and consumption in a direct final rulemaking on November 28, 2000 (65 FR 70795), which allowed for the phased reduction in methyl bromide consumption specified under the Protocol and extended the phaseout to 2005. EPA again amended the regulations to allow for an exemption for quarantine and preshipment (QPS) purposes on July 19, 2001 (66 FR 37751), with an interim final rule and with a final rule on January 2, 2003 (68 FR 238).

On December 23, 2004 (69 FR 76982), EPA published a final rule (the ''Framework Rule'') that established the framework for the critical use exemption; set forth a list of approved critical uses for 2005; and specified the amount of methyl bromide that could be supplied in 2005 from stocks and new production or import to meet the needs of approved critical uses. EPA subsequently published rules applying the critical use exemption framework to the 2006, 2007, 2008, and 2009 control periods. Under authority of section 604(d)(6) of the CAA, this action proposes the uses that will qualify as approved critical uses in 2010 and the amount of methyl bromide that may be produced, imported, or supplied from inventory to satisfy those uses.

This proposed action reflects Decision XX/5, taken at the Twentieth Meeting of the Parties in November 2008. In accordance with Article 2H(5), the Parties have issued several Decisions pertaining to the critical use exemption. These include Decisions IX/6 and Ex. I/4, which set forth criteria for review of proposed critical uses. The status of Decisions is addressed in *NRDC* v. *EPA,* (464 F.3d 1, D.C. Cir. 2006) and in EPA's ''Supplemental Brief for the Respondent,'' filed in *NRDC* v. *EPA* and available in the docket for this action. In this proposed rule, EPA is honoring commitments made by the United States in the Montreal Protocol context.

V. What Is the Critical Use Exemption Process?

A. Background of the Process

The critical use exemption is designed to permit the production and import of methyl bromide for uses that do not have technically and economically feasible alternatives and for which the lack of methyl bromide would result in significant market disruption (40 CFR 82.3). On May 8, 2003, the Agency published its first notice in the **Federal Register** (68 FR 24737) announcing the availability of the application for a critical use exemption and the deadline for submission of the requisite data. Applicants were informed that they may apply as individuals or as part of a group of users (a ''consortium'') who face the same limiting critical conditions (i.e., specific conditions that establish a critical need for methyl bromide). EPA has repeated this process annually since then.

The criteria for the exemption initially appeared in Decision IX/6. In that Decision, the Parties agreed that ''a use of methyl bromide should qualify as 'critical' only if the nominating Party determines that: (i) The specific use is critical because the lack of availability of methyl bromide for that use would result in a significant market disruption; and (ii) there are no technically and economically feasible alternatives or substitutes available to the user that are acceptable from the standpoint of environment and public health and are suitable to the crops and circumstances of the nomination.'' These criteria are reflected in EPA's definition of ''critical use'' at 40 CFR 82.3.

In response to the annual requests for critical use exemption applications published in the **Federal Register**, applicants provide data on the technical and economic feasibility of using alternatives to methyl bromide. Applicants also submit data on their use of methyl bromide, research programs into the use of alternatives to methyl bromide, and efforts to minimize use and emissions of methyl bromide.

EPA's Office of Pesticide Programs reviews the data submitted by applicants, as well as data from governmental and academic sources, to establish whether there are technically and economically feasible alternatives available for a particular use of methyl

bromide, and whether there would be a significant market disruption if no exemption were available. In addition, EPA reviews other parameters of the exemption applications such as dosage and emissions minimization techniques and applicants' research or transition plans. This assessment process culminates in the development of a document referred to as the critical use nomination (CUN). The U.S. Department of State submits the CUN annually to the United Nations Environment Programme (UNEP) Ozone Secretariat. The Methyl Bromide Technical Options Committee (MBTOC) and the Technology and Economic Assessment Panel (TEAP), which are independent advisory bodies to Parties to the Montreal Protocol, review the CUNs of the Parties and make recommendations to the Parties on the nominations. The Parties then take Decisions to authorize critical use exemptions for particular Parties, including how much methyl bromide may be supplied for the exempted critical uses. As required in Section 604(d)(6) of the CAA, for each exemption period, EPA consults with the United States Department of Agriculture and other departments and institutions of the Federal government that have regulatory authority related to methyl bromide, and provides an opportunity for public comment on the amounts of methyl bromide that the Agency is proposing as necessary for critical uses and the uses that the Agency is proposing to approve as critical uses.

On January 24, 2008, the U.S. Government (USG) submitted the sixth *Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America* to the Ozone Secretariat of the UNEP. This nomination contained the request for 2010 critical uses. In February 2008, MBTOC sent questions to the USG concerning technical and economic issues in the 2010 nomination. The USG transmitted responses to MBTOC on April 10, 2008. The USG provided additional written responses on April 16, 2009, to questions asked at MBTOC's meeting in Tel Aviv. These documents, together with reports by the advisory bodies noted above, are in the public docket for this rulemaking. The proposed critical uses and amounts reflect the analysis contained in those documents.

B. How Does This Proposed Rule Relate to Previous Critical Use Exemption Rules?

The December 23, 2004, Framework Rule (69 FR 76982) established the framework for the critical use exemption program in the U.S., including definitions, prohibitions, trading provisions, and recordkeeping and reporting obligations. The preamble to the Framework Rule included EPA's determinations on key issues for the critical use exemption program.

Since publishing the Framework Rule, EPA has annually promulgated regulations to exempt from the phaseout of methyl bromide specific quantities of production and import for each control period (each calendar year) and to indicate which uses meet the criteria for the exemption program for that year. See 71 FR 5985 (calendar year 2006), 71 FR 75386 (calendar year 2007), 72 FR 74118 (calendar year 2008), and 74 FR 19878 (calendar year 2009).

Today's action proposes critical uses for 2010 and the amounts of Critical Use Allowances (CUAs) and Critical Stock Allowances (CSAs) to be allocated for those uses. The uses that EPA is proposing to qualify as 2010 critical uses are the uses which the USG included in the sixth CUN, and which were approved by the Parties in Decision XX/5.

EPA is utilizing the existing regulatory framework for critical uses, and is therefore not reopening for comment either the provisions in the 2004 Framework Rule or the approach to determining the level of available stocks finalized in the 2008 CUE rule (published December 28, 2007), with two exceptions. EPA is proposing to ensure that upon applying the existing framework, the level of new production and import does not increase from one year to the next, barring an unforeseeable change in circumstances (e.g., withdrawal or significant change in registration status of an alternative). EPA is accepting comment on this addition to the existing framework as well as on the specific means of assessing the drawdown of pre-2005 methyl bromide.

C. Proposed Critical Uses

In Decision XX/5, taken in November 2008, the Parties to the Protocol agreed ''to permit, for the agreed critical use categories for 2010 set forth in table C of the annex to the present decision for each Party, subject to the conditions set forth in the present decision and decision Ex.I/4 to the extent that those conditions are applicable, the levels of production and consumption for 2010 set forth in table D of the annex to the present decision which are necessary to satisfy critical uses * * *.''

The following uses are those set forth in table C of the annex to Decision XX/5 for the United States:

- Commodities
- NPMA food processing structures (cocoa beans removed) [1]
- Mills and processors
- Dried cured pork
- Cucurbits
- Eggplant—field
- Forest nursery seedlings
- Nursery stock—fruit, nut, flower
- Orchard replant
- Ornamentals
- Peppers—field
- Strawberries—field
- Strawberry runners
- Tomatoes—field
- Sweet potato slips

The Decision XX/5 critical use level for U.S. critical uses in 2010 is 3,233,456 kilograms (kg) overall. This is equivalent to 12.7% of the U.S. 1991 methyl bromide consumption baseline of 25,528,270 kg. The maximum amount of allowable new production and import for U.S. critical uses in Table D of Decision XX/5 is 2,763,456 kg (10.8% of baseline), minus available stocks.

EPA is proposing a total critical use allowance in 2010 of 2,966,179 kg (11.6% of baseline) with new production or import of methyl bromide for critical uses up to 2,275,715 kg (8.9% of baseline), and with 690,464 kg (2.7% of baseline) coming from pre-phaseout inventory (i.e., stocks).

EPA is also proposing to modify 40 CFR part 82, subpart A, appendix L to reflect the agreed critical use categories identified in Decision XX/5. Additionally, the Agency is amending the table of critical uses based on the technical analysis contained in the 2010 U.S. nomination.

EPA is seeking comment on the technical analysis contained in the U.S. nomination (available for public review in the docket to this rulemaking), and seeks information regarding changes to the registration or use of alternatives that have transpired after the 2010 U.S. nomination was written. EPA recognizes that as the market for alternatives evolves, the thresholds for what constitutes ''significant market disruption'' or ''technical and economic feasibility'' change. For example, the adoption of methyl iodide in the southeast U.S could transform the circumstances under which these analyses occur.

Comments on the technical data contained in the nomination or new information could potentially alter the Agency's analysis on the uses and amounts of methyl bromide qualifying for the critical use exemption. The

[1] NPMA, National Pest Management Association, includes both food processing structures and processed foods.

Agency may, in response to new information, reduce the proposed quantities of critical use methyl bromide, or decide not to approve uses authorized by the Parties. However, the Agency will not increase the quantities or add new uses in the final rule beyond those authorized by the Parties. Therefore, if there has been a change in registration of an alternative that results in that alternative no longer being available for a use, the user should notify EPA that it requests that the U.S. nominate its use for a critical use exemption in 2011.

EPA is proposing to amend Table I: Approved Critical Uses in 40 CFR part 82, subpart A, appendix L, as follows:

TABLE I—APPROVED CRITICAL USES

Column A	Column B	Column C
Approved critical uses	Approved critical user and location of use	Limiting critical conditions that exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation
PRE-PLANT USES		
Cucurbits	(a) Growers in Delaware, Maryland, and Michigan	Moderate to severe soilborne disease infestation.
	(b) Growers in Georgia and Southeastern U.S. limited to growing locations in Alabama, Arkansas, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee, and Virginia.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe root knot nematode infestation.
Eggplant	(a) Florida growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation.
	(b) Georgia growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe pythium collar, crown and root rot. Moderate to severe southern blight infestation. Restrictions on alternatives due to karst topographical features.
	(c) Michigan growers	Moderate to severe soilborne disease infestation.
Forest Nursery Seedlings	(a) Growers in Alabama, Arkansas, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia.	Moderate to severe yellow or purple nutsedge infestation Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation.
	(b) International Paper and its subsidiaries limited to growing locations in Alabama, Arkansas, Georgia, South Carolina, and Texas.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation.
	(c) Government-owned seedling nurseries in Illinois, Indiana, Kentucky, Maryland, Missouri, New Jersey, Ohio, Pennsylvania, West Virginia, and Wisconsin.	Moderate to severe weed infestation including purple and yellow nutsedge infestation. Moderate to severe Canada thistle infestation. Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation.
	(d) Weyerhaeuser Company and its subsidiaries limited to growing locations in Alabama, Arkansas, North Carolina, and South Carolina.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode or worm infestation.
	(e) Weyerhaeuser Company and its subsidiaries limited to growing locations in Oregon and Washington.	Moderate to severe yellow nutsedge infestation. Moderate to severe soilborne disease infestation.
	(f) Michigan growers	Moderate to severe soilborne disease infestation. Moderate to severe Canada thistle infestation. Moderate to severe nutsedge infestation. Moderate to severe nematode infestation.
Orchard Nursery Seedlings	(a) Members of the Western Raspberry Nursery Consortium limited to growing locations in Washington, and members of the California Association of Nursery and Garden Centers representing Deciduous Tree Fruit Growers.	Moderate to severe nematode infestation. Medium to heavy clay soils. Local township limits prohibiting 1,3-dichloropropene.
	(b) California rose nurseries	Moderate to severe nematode infestation. Local township limits prohibiting 1,3-dichloropropene.
Orchard Replant	(a) California stone fruit, table and raisin grape, wine grape, walnut, and almond growers.	Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Replanted orchard soils to prevent orchard replant disease. Medium to heavy soils. Local township limits prohibiting 1,3-dichloropropene.

TABLE I—APPROVED CRITICAL USES—Continued

Column A	Column B	Column C
Approved critical uses	Approved critical user and location of use	Limiting critical conditions that exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation
Ornamentals	(a) California growers	Moderate to severe soilborne disease infestation.
		Moderate to severe nematode infestation.
		Local township limits prohibiting 1,3-dichloropropene.
	(b) Florida growers	Moderate to severe weed infestation.
		Moderate to severe soilborne disease infestation.
		Moderate to severe nematode infestation.
		Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation.
	(c) Michigan herbaceous perennial growers	Moderate to severe nematode infestation.
		Moderate to severe soilborne disease infestation.
		Moderate to severe yellow nutsedge and other weed infestation.
	(d) New York growers	Moderate to severe soilborne disease infestation.
		Moderate to severe nematode infestation.
Peppers	(a) Alabama, Arkansas, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation.
		Moderate to severe nematode infestation.
		Moderate to severe pythium root, collar, crown and root rots.
	(b) Florida growers	Moderate to severe yellow or purple nutsedge infestation.
		Moderate to severe soilborne disease infestation.
		Moderate to severe nematode infestation.
		Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation.
	(c) Georgia growers	Moderate to severe yellow or purple nutsedge infestation.
		Moderate to severe nematode infestation, or moderate to severe pythium root and collar rots.
		Moderate to severe southern blight infestation, crown or root rot.
		Restrictions on alternatives due to karst topographical features.
	(d) Michigan growers	Moderate to severe soilborne disease infestation.
Strawberry Fruit	(a) California growers	Moderate to severe black root rot or crown rot.
		Moderate to severe yellow or purple nutsedge infestation.
		Moderate to severe nematode infestation.
		Local township limits prohibiting 1,3-dichloropropene.
		Time to transition to an alternative.
	(b) Florida growers	Moderate to severe yellow or purple nutsedge infestation.
		Moderate to severe nematode infestation.
		Moderate to severe soilborne disease infestation.
		Carolina geranium or cut-leaf evening primrose infestation.
		Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation.
	(c) Alabama, Arkansas, Georgia, Illinois, Kentucky, Louisiana, Maryland, Mississippi, Missouri, New Jersey, North Carolina, Ohio, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation.
		Moderate to severe nematode infestation.
		Moderate to severe black root and crown rot.
Strawberry Nurseries	(a) California growers	Moderate to severe soilborne disease infestation.
		Moderate to severe yellow or purple nutsedge infestation.
		Moderate to severe nematode infestation.
Sweet Potato Slips	(a) California growers	Local township limits prohibiting 1,3-dichloropropene.
Tomatoes	(a) Michigan growers	Moderate to severe soilborne disease infestation.
		Moderate to severe fungal pathogen infestation.

TABLE I—APPROVED CRITICAL USES—Continued

Column A	Column B	Column C
Approved critical uses	Approved critical user and location of use	Limiting critical conditions that exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation
	(b) Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Restrictions on alternatives due to karst topographical features and, in Florida, soils not supporting seepage irrigation.
	(c) Maryland growers	Moderate to severe fungal pathogen infestation.
POST-HARVEST USES		
Food Processing	(a) Rice millers in the U.S. who are members of the USA Rice Millers Association.	Moderate to severe beetle, weevil, or moth infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
	(b) Pet food manufacturing facilities in the U.S. who are members of the Pet Food Institute.	Moderate to severe beetle, moth, or cockroach infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
	(c) Members of the North American Millers' Association in the U.S.	Moderate to severe beetle infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
	(d) Members of the National Pest Management Association treating processed food, cheese, herbs and spices, and spaces and equipment in associated processing and storage facilities.	Moderate to severe beetle or moth infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
Commodities	(a) California entities storing walnuts, beans, dried plums, figs, raisins, and dates (in Riverside county only) in California.	Rapid fumigation required to meet a critical market window, such as during the holiday season.
Dry Cured Pork Products	(a) Members of the National Country Ham Association and the Association of Meat Processors, Nahunta Pork Center (North Carolina), and Gwaltney and Smithfield Inc.	Red legged ham beetle infestation. Cheese/ham skipper infestation. Dermested beetle infestation. Ham mite infestation.

The critical uses and limiting critical conditions in Table I are proposed to be modified from the 2009 CUE as follows. First, EPA is proposing to add ornamental growers in New York that are subject to moderate to severe soilborne disease or nematode infestations. This reflects a new application submitted for the production of *Anemone coronaria* in greenhouses and approved as part of the U.S. nomination of ornamentals. Greenhouse-grown anemones in New York are facing a similar situation to other crops in this sector. EPA anticipates the usage of methyl bromide will be very limited, and has nominated only 272 kg for this use. Second, EPA is proposing to remove North Carolina and Tennessee strawberry nursery growers because although the U.S. nominated this use it was not authorized by the Parties in Decision XX/5. MBTOC did not recommend this use when it recommended the other critical uses for 2010. Iodomethane is registered for use on strawberry nurseries in these states and the MBTOC concluded that this substitute is a technologically and economically feasible methyl bromide alternative suitable to these crops and circumstances. In September 2010, MBTOC accepted the USG's supplemental request and agreed that time is required to conduct commercial scale up of iodomethane in this sector. MBTOC has recommended 2,018 kg for this use in 2010. The Parties have not yet authorized this crop as a critical use but will address the issue at the 21st MOP in November 2009. EPA will consider the decision taken by the Parties on this issue in the final rule. Third, EPA is proposing to remove curcurbit growers and pepper growers in Mississippi. These two uses were not part of the CUN and therefore the Parties have not authorized them as critical uses for 2010. Fourth, EPA is proposing to remove bakeries, as they have also transitioned to methyl bromide alternatives and thus did not submit an application for the 2010 control period. Fifth, EPA is proposing to remove ''export to countries which do not allow the use of sulfuryl fluoride'' as a limiting critical condition for commodities. This limiting critical condition was established for the first time in the 2009 CUE rule as a few countries that import commodities treated with sulfuryl fluoride were still in the process of establishing maximum residue levels (MRLs) for sulfuryl fluoride. All countries to which the U.S. exports such commodities have now established MRLs. Therefore, EPA no longer believes this to be a limiting critical condition. EPA seeks comment on these proposed changes to the critical uses and their limiting critical conditions.

EPA is not proposing other changes to the table but is repeating the following clarifications made in previous years for ease of reference. The ''local township limits prohibiting 1,3-dichloropropene''

are prohibitions on the use of 1,3-dichloropropene products in cases where local township limits on use of this alternative have been reached. In addition, ''pet food'' under subsection B of Food Processing refers to food for domesticated dogs and cats. Finally, ''rapid fumigation'' for commodities is when a buyer provides short (two working days or fewer) notification for a purchase or there is a short period after harvest in which to fumigate and there is limited silo availability for using alternatives.

Since the critical use exemption was first established, many critical users have transitioned to alternatives and a variety of sectors that were once critical uses no longer are. These uses include ginger, golf courses and turf production, tobacco, cocoa beans, pistachios, and now bakeries.

D. Proposed Critical Use Amounts

Section V.C. of this preamble explains that Table C of the annex to Decision XX/5 lists critical uses and amounts agreed to by the Parties to the Montreal Protocol. When added together, the authorized critical use amounts for 2010 total 3,233,456 kilograms (kg), which is equivalent to 12.7% of the U.S. 1991 methyl bromide consumption baseline of 25,528,270 kg as defined at 40 CFR 82.3. However, the maximum amount of authorized new production or import as set forth in Table D of the annex to Decision XX/5 is 2,763,456 kg (10.8% of baseline).

EPA is proposing to exempt limited amounts of new production and import of methyl bromide for critical uses for 2010 in the amount of 2,275,715 kg (8.9% of baseline) as shown in Table III. EPA is also proposing to allow sale of 690,464 kg (2.7% of baseline) of existing pre-phaseout inventory for critical uses in 2010. EPA is seeking comment on the proposed total levels of exempted new production and import for critical uses and the amount of material that may be sold from pre-phaseout inventory for critical uses. The sub-sections below explain EPA's reasons for proposing the above critical use amounts for 2010.

1. Background of Proposed Critical Use Amounts

The 2004 Framework Rule established the provisions governing the sale of pre-phaseout inventories for critical uses, including the concept of Critical Stock Allowances (CSAs) and a prohibition on the sale of pre-phaseout inventories for critical uses in excess of the amount of CSAs held by the seller. In addition, EPA noted that pre-phaseout inventories were further taken into account through the trading provisions that allow CUAs to be converted into CSAs. EPA is not proposing changes to these CSA provisions for calendar year 2010.

Paragraph 5 of Decision XX/5 further addresses pre-phaseout inventory of methyl bromide. The Decision states ''that a Party with a critical use exemption level in excess of permitted levels of production and consumption for critical uses is to make up any such differences between those levels by using quantities of methyl bromide from stocks that the Party has recognized to be available.'' In the Framework Rule (69 FR 52366), EPA issued CSAs in an amount equal to the difference between the total authorized CUE amount and the amount of new production or import authorized by the Parties.

In the 2006, 2007, 2008, and 2009 CUE Rules, EPA allocated CSAs in amounts that represented not only the difference between the total authorized CUE amount and the amount of authorized new production and import but also an additional amount to reflect available stocks. In the 2006 CUE Rule, EPA issued a total of 1,136,008 CSAs, equivalent to 4.4% of baseline. For 2006, the difference in the Parties' decision between the total CUE amount and the amount of new production and import was 3.6% of baseline. In the 2007 rule, EPA added to the minimum amount (6.3% of baseline) an additional amount (1.2% of baseline) for a total of 1,914,600 CSAs (7.5% of baseline). In the 2008 rule, EPA added to the minimum amount (3.0% of baseline) an additional amount (3.8% of baseline) for a total of 1,729,689 CSAs (6.8% of baseline). In the 2009 rule, EPA added to the minimum amount (1.2% of baseline) an additional amount (6.3% of baseline) for a total of 1,919,193 CSAs (7.5% of baseline). After determining the CSA amount, EPA reduced the portion of CUE methyl bromide to come from new production and import in each of the 2006–2009 control periods such that the total amount of methyl bromide exempted for critical uses did not exceed the total amount authorized by the Parties for that year.

As established in the earlier rulemakings, EPA views the inclusion of these additional amounts in the calculation of the year's overall CSA level as an appropriate exercise of discretion. The Agency is not required to allocate the full amount of authorized new production and consumption. The Parties only agree to ''permit'' a particular level of production and consumption; they do not—and cannot—mandate that the U.S. authorize this level of production and consumption domestically. Nor does the CAA require EPA to allow the full amount permitted by the Parties. Section 604(d)(6) of the CAA does not require EPA to exempt any amount of production and consumption from the phaseout, but instead specifies that the Agency ''may'' create an exemption for critical uses, providing EPA with substantial discretion.

When determining the CSA amount for a year, EPA considers what portion of existing stocks is ''available'' for critical uses. As discussed in prior CUE rulemakings, the Parties to the Protocol recognized in their Decisions that the level of existing stocks may differ from the level of available stocks. For example, Decision IX/6 states that ''production and consumption, if any, of methyl bromide for critical uses should be permitted only if * * * methyl bromide is not available in sufficient quantity and quality from existing stocks.'' Decision XX/5, as well as earlier decisions, refers to use of ''quantities of methyl bromide from stocks that the Party has recognized to be available.'' Thus, it is clear that individual Parties have the ability to determine their level of available stocks. Decision XX/5 further reinforces this concept by including the phrase ''minus available stocks'' as a footnote to the United States' authorized level of production and consumption in Table D. Section 604(d)(6) of the CAA does not require EPA to adjust the amount of new production and import to reflect the availability of stocks; however, as explained in previous rulemakings, making such an adjustment is a reasonable exercise of EPA's discretion under this provision.

EPA employs the concept of ''available stocks'' in determining whether to allocate additional CSAs beyond the minimum stock amount stipulated by the Parties. In response to stakeholder questions about how EPA derived its CSA amounts, the 2008 CUE rule established a refined approach for determining the amount of existing methyl bromide stocks that is ''available'' for critical uses. The approach uses a tool called the Supply Chain Factor (SCF). The SCF is EPA's technical estimate of the amount of methyl bromide inventory that would be adequate to meet the need for critical use methyl bromide after an unforeseen domestic production failure. The SCF recognizes the benefit of allowing the private sector to maintain a buffer in case of a major supply disruption. However, the SCF is not intended to set aside or physically separate stocks as an inventory reserve.

2. Calculation of Available Pre-Phaseout Inventory

For 2010, EPA proposes to calculate the amount of ''available'' stocks as follows, using the formula adopted in the 2008 CUE rule: $AS_{2010} = ES_{2009} - D_{2009} - SCF_{2010}$, where AS_{2010} is the available stocks on January 1, 2010; ES_{2009} is the existing pre-phaseout stocks of methyl bromide held in the United States by producers, importers, and distributors on January 1, 2009; D_{2009} is the estimated drawdown of existing stocks during calendar year 2009; and SCF_{2010} is the supply chain factor for 2010. Using this formula, EPA calculates that there will be no pre-phaseout stocks of methyl bromide ''available'' on January 1, 2010.

Existing Stocks. In the above formula, ''ES_{2009}'' refers to pre-phaseout inventory—methyl bromide that was produced before the January 1, 2005 phaseout date but is still held by domestic producers, distributors, and third-party applicators. ES_{2009} does not include critical use methyl bromide that was produced after January 1, 2005 and carried over into subsequent years. Nor does it include methyl bromide produced (1) under the quarantine and preshipment (QPS) exemption, (2) with Article 5 allowances to meet the basic domestic needs of Article 5 countries, or (3) for feedstock or transformation purposes. EPA considers all pre-phaseout inventory to be suitable for both pre-plant and post harvest uses. Similarly, EPA considers inventory methyl bromide to be available to all users, including users in California and the Southeastern United States. These assumptions are discussed in the 2009 CUE rule (74 FR 19887).

Supply Chain Factor. The SCF represents EPA's technical estimate of the amount of pre-phaseout inventory that would be adequate to meet a need for critical use methyl bromide after an unforeseen domestic production failure. As described in the 2008 CUE rule, and the Technical Support Document contained in the docket to this rule, EPA estimates that it would take 15 weeks for significant imports of methyl bromide to reach the U.S. in the event of a major supply disruption. Consistent with the regulatory framework used in the 2008 and 2009 rules, the SCF for 2010 conservatively reflects the effect of a supply disruption occurring in the peak period of critical use methyl bromide production, which is the first quarter of the year. While this 15-week disruption is based on shipping capacity and does not change year to year, other inputs to EPA's analysis do change each year including the total U.S. and global authorizations for methyl bromide and the average seasonal production of critical use methyl bromide in the U.S. Using updated numbers, EPA estimates that critical use production in the first 15 weeks of each year (the peak supply period) currently accounts for approximately 63% of annual critical use methyl bromide demand. EPA, therefore, estimates that the peak 15-week shortfall in 2010 could be 2,035,000 kg (63% × 3,233,456 kg).

As EPA stated in the 2008 and 2009 CUE Rules, the SCF is not a ''reserve'' or ''strategic inventory'' of methyl bromide but is merely an analytical tool used to provide greater transparency regarding how the Agency determines CSA amounts. Its use in the equation above demonstrates that for 2010 no ''additional'' stocks are available to allocate beyond what is required by the Parties. Further general discussion of the SCF is in the final 2008 CUE rule (72 FR 74118) and further detail about the analysis used to derive the value for the 2010 supply chain factor is provided in the Technical Support Document available on the public docket for this rulemaking.

Estimated Drawdown. In the 2008 CUE rule, EPA estimated the drawdown of existing stocks (the D_{2009} term in the above equation) by using a simple linear fit estimation of inventory data from all available years. In the 2009 CUE proposed rule, however, EPA estimated drawdown using an exponential model. The Agency did so because it appeared that the rate of drawdown was slowing and because EPA believed that the exponential estimate provided a more reasonable reflection of market conditions than the linear estimate. The end-of-year data for 2008, which EPA received in February 2009, however, were contrary to that trend and showed that the use of inventory in 2008 increased rather than continued to decrease. Ultimately, EPA did not need to estimate the drawdown because it had end-of-year data. These new data suggest that EPA should reconsider the use of the exponential model and instead use a linear model as was done for 2008.

Commenters on the 2009 CUE rule suggested two other forecasting techniques: Time series forecasting (extrapolating past behavior into the future) and change-point detection methods (change-point detection is the identification of abrupt changes in the generative parameters of sequential data—looking at data and calculating when it changes its slope). EPA is not proposing to use these methods because they would require more data than the six data points that EPA currently has on annual inventory levels. EPA welcomes comment on these techniques for forecasting future drawdown amounts.

EPA also welcomes comment on whether the estimate should be limited to a statistical analysis of past inventory levels or whether EPA should collect additional data or consider other factors. For example, one commenter on the 2009 proposed rule suggested that EPA collect information on pre-phaseout inventory levels near the end of the calendar year before the final rule is issued instead of in February. The Methyl Bromide Industry Panel (MBIP) voluntarily collected such data in early December 2008 in support of its comment on the 2009 CUE Rule. EPA could estimate the drawdown in the proposed rule and then collect the actual data on stocks near the end of the calendar year through EPA's information gathering authority under section 114 of the Clean Air Act. Alternatively, EPA could revise the regulations to add a reporting requirement to facilitate the early collection of this information in future years. If EPA did collect actual data on stocks before the end of the calendar year, the Agency would still need to estimate stock drawdown for the remaining portion of the year in order to calculate the total drawdown for 2009. For example, in November 2009 EPA could collect data on the first three quarters of the year and use those data to estimate fourth quarter drawdown. EPA requests comment on the feasibility, accuracy, and burden imposed by such an approach.

EPA is proposing to estimate the drawdown of inventory in 2009 based on a linear projection. Using this method, EPA projects that the pre-phaseout methyl bromide inventory, which was 4,271,226 kg on January 1, 2009, will be drawn down by 2,834,226 kg during 2009. This will result in a pre-phaseout inventory of 1,437,000 kg on January 1, 2010. EPA's proposed methodology for estimating the inventory drawdown is described in more detail in the Technical Support Document available in the public docket for this rulemaking.

3. Approach for Determining Critical Use Amounts

In developing this proposed rule, EPA applied the approach described in Section V.D.2 above, as it did for 2008 and 2009, to calculate ''available stocks.'' EPA has calculated that in 2010 there will no longer be an amount of pre-phaseout inventory that meets the definition of ''available stocks.'' EPA recognized in the 2008 rule that its

formula for calculating ''available'' stocks would in some future rulemaking yield a number less than the minimum effectively stipulated by the Parties (the difference between the total authorized critical use amount and the authorized amount of new production and imports). In the preambles to the 2008 and 2009 rules, EPA indicated that when that occurred, it would issue CSAs equal to the minimum amount stipulated by the Parties. However, for the 2010 control period there is an additional circumstance not discussed in prior CUE rulemakings. If EPA were to issue CSAs equal to the minimum amount stipulated by the Parties, and issue CUAs for the remaining amount of the total critical need, then new production and import in 2010 could exceed the previous year's level.

To ensure continued progress in reducing U.S. production and import of critical use methyl bromide, EPA is proposing to limit 2010 CUAs (i.e., production and import) to the same level as in 2009. EPA is proposing to make up the remaining critical need by using its discretion to increase the CSA allocation proportionately. EPA is proposing to allocate only the amount of CSAs necessary to make up the difference between the overall U.S. critical need and the CUA amount in the 2009 CUE rule and consistent with levels authorized by the Parties.

EPA's proposed action continues to meet the needs of critical users. EPA is also limiting this proposal to the situation where the total need can continue to be met through a combination of newly-produced or -imported methyl bromide and stocks. Ascertaining which uses of methyl bromide in a control period are critical, and in which amounts, is integral to the critical use process. The USG submits an annual critical use nomination to the Ozone Secretariat that reflects rigorous EPA review of applications to ensure that the nomination identifies only those uses meeting the criteria of Decision IX/6. The nominated critical uses and amounts are refined further during evaluation by the Methyl Bromide Technical Options Committee (MBTOC), such that the authorization for a particular control period ultimately reflects the Parties' best assessment of the actual critical need. EPA's critical use rulemakings reflect the U.S. critical need identified by the Parties, with further adjustments only to account for carryover of unsold critical use methyl bromide from a previous year, new information regarding availability of alternatives, and (in some cases) research amounts.

Second, EPA's proposed action continues U.S. progress in phasing down the production and import of critical use methyl bromide. The proposed 2010 allocations reflect the consistent trend that the allocation for newly-produced or -imported critical use methyl bromide has decreased each and every year since the start of the critical use exemption process in 2005. Not allowing an increase in production or import is appropriate given that this is the sixth year following the methyl bromide phaseout under the Montreal Protocol (i.e., the international goal for developed countries has been zero new production and import since 2005), and considering that the remainder of the U.S.'s 2010 critical need can be met from pre-phaseout stockpiles.

EPA recognizes that this approach would allocate more from stocks than the Agency indicated it would when describing the supply chain factor in the 2008 and 2009 CUE rules. However, even if EPA issued CSAs equal to what the Parties authorized, as was discussed in those rules, the pre-phaseout inventory levels would be less than the supply chain factor calculated for 2010. As stated in prior CUE rulemakings, the supply chain factor is neither a reserve nor a guarantee. EPA will continue to calculate the SCF to determine whether additional amounts should be taken from stocks and, if so, in what amounts. In this rule, EPA is proposing to allocate CSAs as described in the decision of the Parties plus an additional amount to prevent an increase in new production. In future rules, if EPA calculates available stocks to be less than the SCF amount, EPA will only issue CSAs in the amounts authorized by the Parties, provided that this level does not increase new production compared to a prior year. EPA is not revisiting the concept of allowing the private sector to maintain limited amounts of inventory. Nor is EPA proposing to allocate the entire remaining amount of the stockpile as CSAs in today's proposed action.

The proposed reduction to the CUA level is greater than the reductions EPA would otherwise make based on the approach described in the 2008 and 2009 rules. Of the reductions described in the 2008 and 2009 rules—for carryover amounts, research amounts, and uptake of alternatives—EPA would make a reduction only for carryover amounts because the other two adjustments are not applicable to the 2010 control period. EPA would not propose to make reductions for research amounts, because, as discussed below, the USG did not nominate a separate, additional amount specifically for research purposes. At this time EPA also would not propose adjustments to reflect uptake of alternatives, although the Agency may make adjustments in the final rule to reflect information obtained during the comment period, if such adjustments would exceed the reduction made to bring the 2010 CUA level down to the 2009 CUA level.

If EPA were to apply only the carryover reduction, the amount of CUAs for 2010 would be 236,150 kg (0.9% of baseline) higher than the CUA amount allocated in the 2009 CUE rule. Thus, new production in 2010 could exceed the level of new production in 2009. EPA does not believe that an increase in new production is merited when existing pre-phaseout inventory can be used. As discussed above, EPA estimates that there will be a pre-phaseout inventory of 1,437,000 kg on January 1, 2010. EPA therefore proposes to reduce the calculated CUA amount by 236,150 kg to maintain CUAs at the same level as in the 2009 CUE rule.

EPA considered two approaches to ensuring that the CUAs for one year do not exceed the CUA level adopted in the previous year's CUE rule. The approach EPA is proposing would, for 2010, reduce the calculated level of CUAs by 236,130 kg so that the CUA allocation declines from 2,981,865 kg (11.7% of baseline) to 2,745,715 (10.8% of baseline) and increase the CSA amount to 690,464 kg so as to meet the overall level of proposed critical needs. Under the second approach, EPA considered maintaining the CSA level at 470,000 kg in order to allow private entities to maintain as much as possible of the supply chain factor amount. EPA prefers the first approach because it meets the overall U.S. CUE need and it appropriately gives greater importance to meeting the current authorized need than a hypothetical future need.

EPA is not addressing the circumstance in which existing inventory cannot make up the difference between the production amount and the total critical need. Rather, EPA is proposing that it not increase new production while there is sufficient existing inventory. When the inventory is depleted or reaches a negligible amount, EPA may revisit the issue of whether there are circumstances in which production could be allowed to increase.

Although EPA's proposed 2010 CUEs reflect a policy goal of not allowing an increase in new production and import in 2010, EPA is also seeking comment on applying its existing approach (as described in the 2008 and 2009 CUE rules) without this modification. Under that approach, EPA would allocate

470,000 kg of CSAs to reflect the minimum amount from stocks stipulated in the Parties' decision, reduce the production level authorized by the Parties by the carryover amount of 251,591 kg (see the detailed discussion below), and allocate 2,511,865 kg of CUAs, which is a 236,150 kg increase over the 2009 CUA level. Although this is not the preferred policy option for 2010, EPA is seeking comment on whether it should continue to apply the 2008–2009 approach without modification. That approach would also enable the total critical need for 2010 to be met, but would do so in a way that allowed private entities to maintain a greater level of pre-phaseout inventory.

4. Treatment of Carryover Material

As discussed in the Framework Rule, EPA does not permit the building of stocks of methyl bromide produced or imported after January 1, 2005, under the critical use exemption. Quantities of methyl bromide produced, imported, exported, or sold to end-users under the critical use exemption in a control period must be reported to EPA the following year. EPA uses the reported information to calculate the amount of methyl bromide produced or imported under the critical use exemption, but not exported or sold to end-users in that year. EPA deducts an amount equivalent to this ''carryover,'' whether pre-plant or post-harvest, from the total level of allowable new production and import in the year following the year of the data report. Carryover material (which is produced using critical use allowances) is not included in EPA's definition of existing stocks (ES) (which applies to pre-phaseout material) because this would lead to a double-counting of carryover amounts, and a double reduction of critical use allowances (CUAs).

In 2009, companies reported that 3,036,130 kg of critical use methyl bromide was acquired through production or import in 2008. The information reported to EPA is that 2,784,539 kg of critical use methyl bromide was exported or sold to end-users in 2008. EPA calculates that the carryover amount at the end of 2008 was 251,591 kg, which is the difference between the reported amount of critical use methyl bromide acquired in 2008 and the reported amount of exports or sales of that material to end users in 2008 (3,036,130 − 2,784,539 = 251,591 kg). EPA's calculation of the amount of carryover at the end of 2008 is consistent with the method used in previous CUE rules, and with the method agreed to by the Parties in Decision XVI/6, which established the Accounting Framework for critical use methyl bromide, for calculating column L of the U.S. Accounting Framework. The 2008 U.S. Accounting Framework is available in the public docket for this rulemaking. EPA notes that the carryover value in the Accounting Framework is higher by 17 MT due to additional reports received after EPA provided the Accounting Framework to UNEP. EPA may take into account additional reports received within a reasonable time in calculating the carryover amount for the final 2010 rule.

As discussed in the section above, if EPA were to apply only the carryover reduction, the amount of CUAs for 2010 would be 236,150 kg (0.9% of baseline) higher than the CUA amount allocated in the 2009 CUE rule. EPA is proposing not to authorize new production in 2010 at a level that could exceed the level of new production in 2009. Thus, while EPA has calculated the carryover amount, its value does not affect the new production level under the preferred option. If EPA were to apply the approach set forth in the 2008 CUE rule without making an adjustment to avoid an increase in new production, EPA would reduce the total level of new production and import for critical uses by 251,591 kg to reflect the total level of carryover material in existence at the end of 2008.

5. Methyl Bromide Alternatives

EPA considers new data regarding alternatives that were not available at the time the U.S. Government submitted its Critical Use Nomination (CUN) to the Parties, and adjusts the allocation for new production accordingly. For 2010, EPA is not proposing to make further reductions in post-harvest or pre-plant critical use allowances to reflect the transition to alternatives because the 2010 CUN applied transition rates for all critical use sectors. The TEAP report of October 2008 included reductions in its recommendations for critical use categories based on the transition rates in the 2010 CUN. The TEAP's recommendations were then considered in the Parties' 2010 authorization amounts, as listed in Decision XX/5. Therefore, transition rates, which account for the uptake of alternatives, have already been applied for authorized 2010 critical use amounts.

Furthermore, the 2011 CUN, which represents the most recent analysis and the best available data for methyl bromide alternatives, does not conclude that transition rates should be increased for 2010. As the 2011 CUN reflects, the United States Government has not found new information that supports changing the 2010 transition rates included in the 2010 CUN and applied by MBTOC. EPA continues to gather information about methyl bromide alternatives through the CUE application process, and by other means.

In the 2009 CUE rule, EPA took into consideration new information about iodomethane and Telone. Iodomethane transition rates were not included in the 2009 CUN due to a lack of registrations at the time the nomination was prepared. EPA estimated iodomethane uptake during the 2009 CUE rulemaking based on new information regarding federal and state registrations. EPA also took into consideration information regarding a shortage of Telone and concluded that it should not make a reduction for iodomethane in view of the decline in Telone production. EPA therefore did not adjust the amount of new production either upward or downward in the final 2009 CUE rule.

Unlike the 2009 CUN, the 2010 CUN did include transition rates for iodomethane, and as stated above, there is no new information that would suggest changing those rates. Currently, iodomethane is registered for use in 47 states. We note that California has not yet decided whether to register iodomethane for use in the state. EPA may adjust the proposed uptake of iodomethane if additional state registrations occur within a reasonable time prior to signature of the final rule. EPA is not proposing at this point any further adjustment based on iodomethane beyond those already incorporated into the nominated amounts. EPA specifically invites comments on the availability, uptake, and use of iodomethane as an alternative to methyl bromide.

EPA also does not intend to make any adjustments to account for the reduced production of Telone in 2009. EPA has been made aware that Dow AgroSciences is seeking to restore production of Telone to full levels by the end of 2009. EPA does not believe that the shortage will continue into 2010 and therefore sees no need to account for it in the 2010 CUE allocation. EPA also seeks comment on its assumption that Telone supply will return to pre-shortage levels by 2010.

Finally, EPA seeks comment on its proposal not to make further reductions in 2010 to account for the uptake of methyl bromide alternatives because the Agency has already accounted for these other alternatives' transition rates. EPA continues to support research and adoption of methyl bromide alternatives, and to request information about the economic and technical

feasibility of all existing and potential alternatives.

E. The Criteria in Decisions IX/6 and Ex. I/4

Paragraphs 2 and 7 of Decision XX/5 request Parties to ensure that the conditions or criteria listed in Decisions Ex. I/4 and IX/6, paragraph 1, are applied to exempted critical uses for the 2010 control period. A discussion of the Agency's application of the criteria in paragraph 1 of Decision IX/6 appears in sections V.A., V.C., V.D., and V.H. of this preamble. In section V.C. the Agency solicits comments on the technical and economic basis for determining that the uses listed in this proposed rule meet the criteria of the critical use exemption (CUE). The critical use nominations (CUNs) detail how each proposed critical use meets the criteria listed in paragraph 1 of Decision IX/6, apart from the criterion located at (b)(ii), as well as the criteria in paragraphs 5 and 6 of Decision Ex. I/4.

The criterion in Decision IX/6(1)(b)(ii), which refers to the use of available stocks of methyl bromide, is addressed in sections V.D., V.G., and V.H. of this preamble. The Agency has previously provided its interpretation of the criterion in Decision IX/6(1)(a)(i) regarding the presence of significant market disruption in the absence of an exemption, and EPA refers readers to the 2006 CUE final rule (71 FR 5989) as well as to the memo on the docket titled ''Development of 2003 Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America'' for further elaboration.

The remaining considerations, including the lack of available technically and economically feasible alternatives under the circumstance of the nomination; efforts to minimize use and emissions of methyl bromide where technically and economically feasible; the development of research and transition plans; and the requests in Decision Ex. I/4(5) and (6) that Parties consider and implement MBTOC recommendations, where feasible, on reductions in the critical use of methyl bromide and include information on the methodology they use to determine economic feasibility, are addressed in the nomination documents.

The USG's approach to research changed slightly in the 2010 nomination. In previous years, while the nomination was broad enough to cover both research and non-research uses, the USG nominated a separate, additional amount specifically for research purposes. Decision XVII/9 requested that the Parties ''endeavor to use stocks, where available, to meet any demand for methyl bromide for the purposes of research and development.'' Therefore, when allocating allowances, EPA subtracted the separate research amount from the Parties' authorized production level. This in effect encouraged the use of stocks for research purposes. This year, the USG did not nominate a separate, additional amount specifically for research purposes; thus, EPA is not proposing to adjust the production level to subtract this amount. However, the nomination was again broad enough to cover both research and non-research uses. As discussed below, research continues to be a key element of the critical use process. EPA therefore proposes that research on the critical use crops shown in the table in Appendix L to subpart A remain a critical use of methyl bromide. The USG may or may not nominate additional amounts for research in future years.

EPA maintains that research is a critical use as research on critical use crops is fundamental to the critical use process. Decision IX/6, which sets forth the criteria for a ''critical use'' determination, requires ongoing research programs in order for a Party to receive critical uses:

> (b) That production and consumption, if any, of methyl bromide for a critical use should be permitted only if: (iii) It is demonstrated that an appropriate effort is being made to evaluate, commercialize and secure national regulatory approval of alternatives and substitutes, taking into consideration the circumstances of the particular nomination * * *. Non-Article 5 Parties [e.g., the U.S.] must demonstrate that research programmes are in place to develop and deploy alternatives and substitutes * * *.

Though the USG did not request an additional amount for 2010, the nomination remains consistent with past nominations both in discussing how current research affects the use and uptake of alternatives as well as the USG's efforts to conduct research. The nomination states, ''As noted in our previous nomination, the USG provides a great deal of funding and other support for agricultural research, and in particular, for research into alternatives for methyl bromide. This support takes the form of direct research conducted by the Agricultural Research Service (ARS) of USDA, through grants by ARS and CSREES, by IR–4, the national USDA-funded project that facilitates research needed to support registration of pesticides for specialty crop vegetables, fruits and ornamentals, through funding of conferences such as MBAO, and through the land grant university system.'' Consistent with past practice, EPA proposes that research be a critical use in 2010. EPA requests that researchers use pre-phaseout inventory when possible. EPA is seeking comment on this approach for addressing researching amounts in 2010.

Some of these criteria are evaluated in other documents as well. For example, the U.S. has further considered matters regarding the adoption of alternatives and research into methyl bromide alternatives, criterion (1)(b)(iii) in Decision IX/6, in the development of the National Management Strategy submitted to the Ozone Secretariat in December 2005 and in ongoing consultations with industry. The National Management Strategy addresses all of the aims specified in Decision Ex.I/4(3) to the extent feasible and is available in the docket for this rulemaking.

F. Emissions Minimization

Decision XX/5, paragraph 11 states that Parties shall request critical users to employ ''emission minimization techniques such as virtually impermeable films, barrier film technologies, deep shank injection and/or other techniques that promote environmental protection, whenever technically and economically feasible.'' In the judgment of USG scientists, use of virtually impermeable film (VIF) tarps allows pest control with lower application rates in addition to minimizing emissions. The quantity of methyl bromide nominated by the USG reflects the lower application rates necessary when using tarps.

Users of methyl bromide should make every effort to minimize overall emissions of methyl bromide to the extent consistent with State and local laws and regulations. The Agency encourages researchers and users who are successfully utilizing such techniques to inform EPA of their experiences as part of their comments on this proposed rule and to provide such information with their critical use applications. In addition, the Agency welcomes comments on the implementation of emission minimization techniques and whether and how further emissions could be reduced further.

G. Critical Use Allowance Allocations

EPA is proposing to allocate 2010 critical use allowances for new production or import of methyl bromide up to the amount of 2,275,715 kg (8.9% of baseline) as shown in Table III below. EPA is seeking comment on the total levels and allocations of exempted new production or import for pre-plant and post-harvest critical uses in 2010. Each

critical use allowance (CUA) is equivalent to 1 kg of critical use methyl bromide. These allowances expire at the end of the control period and, as explained in the Framework Rule, are not bankable from one year to the next. This proposal for allocating the following number of pre-plant and post-harvest CUAs to the entities listed below is subject to the trading provisions at 40 CFR 82.12, which are discussed in section V.G. of the preamble to the Framework Rule (69 FR 76982):

TABLE III—PROPOSED ALLOCATION OF CRITICAL USE ALLOWANCES

Company	2010 Critical use allowances for pre-plant uses * (kilograms)	2010 Critical use allowances for post-harvest uses * (kilograms)
Great Lakes Chemical Corp., a Chemtura Company	1,282,653	100,299
Albemarle Corp	527,456	41,245
ICL–IP America	291,483	22,793
TriCal, Inc	9,076	710
Total **	2,110,668	165,047

* For production or import of Class I, Group VI controlled substance exclusively for the Pre-Plant or Post-Harvest uses specified in appendix L to 40 CFR part 82.
** Due to rounding, numbers do not add exactly.

Paragraph six of Decision XX/5 states ''that Parties shall endeavor to license, permit, authorize or allocate quantities of critical-use methyl bromide as listed in tables A and C of the annex to the present decision.'' This is similar to language in Decisions authorizing prior critical uses. The language from these Decisions calls on Parties to endeavor to allocate critical use methyl bromide on a sector basis.

The Framework Rule proposed several options for allocating critical use allowances, including a sector-by-sector approach. The Agency evaluated the various options based on their economic, environmental, and practical effects. After receiving comments, EPA determined that a lump-sum, or universal, allocation, modified to include distinct caps for pre-plant and post-harvest uses, was the most efficient and least burdensome approach that would achieve the desired environmental results, and that a sector-by-sector approach would pose significant administrative and practical difficulties. For the reasons discussed in the preamble to the 2009 CUE rule (74 FR 19894), the Agency believes that under the approach adopted in the Framework Rule, the actual critical use will closely follow the sector breakout listed in the Parties' decisions.

H. Critical Stock Allowance Allocations

EPA is proposing to allocate critical stock allowances (CSAs) to the entities listed below in Table IV for the 2010 control period in the amount of 690,464 kg (2.7% of baseline). As described previously, EPA's calculations indicate that there are no ''available stocks'' for allocation in 2010, and thus EPA is proposing to allocate only the amount of stocks stipulated by the Parties in Decision XX/5.

In 2006, the United States District Court for the District of Columbia upheld EPA's treatment of company-specific methyl bromide inventory information as confidential. *NRDC* v. *Leavitt,* 2006 WL 667327 (D.D.C. March 14, 2006). EPA's allocation of CSAs is based on each company's proportionate share of the aggregate inventory. Therefore, the documentation regarding company-specific allocation of CSAs is in the confidential portion of the rulemaking docket and the individual CSA allocations are not listed in the table below. EPA will inform the listed companies of their CSA allocations in a letter following publication of the final rule.

TABLE III—PROPOSED ALLOCATION OF CRITICAL STOCK ALLOWANCES

Company:		
Albemarle	Hy Yield Bromine	Royster-Clark, Inc.
Bill Clark Pest Control, Inc.	ICL–IP America	Trical Inc.
Burnside Services, Inc.	Industrial Fumigation Company	Trident Agricultural Products
Cardinal Professional Products	Pacific Ag	UAP Southeast (NC)
Chemtura Corp.	Pest Fog Sales Corp.	UAP Southeast (SC)
Degesch America, Inc.	Prosource One	Univar
Helena Chemical Co.	Reddick Fumigants	Western Fumigation
Hendrix & Dail		
Total—690,464 kilograms		

I. Stocks of Methyl Bromide

An approved critical user may purchase methyl bromide produced or imported with CUAs as well as limited inventories of pre-phaseout methyl bromide, the combination of which constitute the supply of ''critical use methyl bromide'' intended to meet the needs of agreed critical uses. The Framework Rule established provisions governing the sale of pre-phaseout inventories for critical uses, including the concept of CSAs and a prohibition on the sale of pre-phaseout inventories for critical uses in excess of the amount of CSAs held by the seller. It also established trading provisions that allow critical use allowances (CUAs) to be converted into CSAs. EPA is not proposing to change these provisions.

The aggregate amount of pre-phaseout methyl bromide reported as being in inventory at the beginning of 2009 is 4,271,226 kg. EPA estimates that the

aggregate inventory on January 1, 2010, will be approximately 1,437 MT. Thus, while EPA calculates that there will be no ''available stocks'' in 2010, for purposes of determining whether and how to allocate additional amounts from stocks beyond the minimum stipulated in Decision XX/5, EPA does not mean that the pre-phaseout inventory will be zero in 2010. As in prior years, the Agency will continue to closely monitor CUA and CSA data. Further, as stated in the final 2006 CUE rule, safety valves continue to exist. If an inventory shortage occurs, EPA may consider various options including authorizing the conversion of a limited number of CSAs to CUAs through a rulemaking, bearing in mind the upper limit on U.S. production/import for critical uses. In sections V.D. and V.G. of this preamble, EPA seeks comment on the amount of critical use methyl bromide to come from stocks compared to new production and import.

As explained in the 2008 CUE final rule, the Agency intends to continue releasing the aggregate of methyl bromide stockpile information reported to the Agency under the reporting requirements at 40 CFR 82.13 for the end of each control period. EPA notes that if the number of competitors in the industry were to decline appreciably, EPA would revisit the question of whether the aggregate is entitled to treatment as confidential information and whether to release the aggregate without notice. EPA is not proposing to change the treatment of submitted information but welcomes information concerning the composition of the industry in this regard. The aggregate information for 2003 through 2008 is available in the docket for this rulemaking.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action proposes a ''significant regulatory action.'' This action is likely to result in a rule that may raise novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The application, recordkeeping, and reporting requirements have already been established under previous Critical Use Exemption rulemakings and this action does not propose to change any of those existing requirements. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 82 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0482. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business that is identified by the North American Industry Classification System (NAICS) Code in the Table below; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Category	NAICS code	SIC code	NAICS small business size standard (in number of employees or millions of dollars)
Agricultural production	1112—Vegetable and Melon farming.	0171—Berry Crops	$0.75 million.
	1113—Fruit and Nut Tree Farming	0172—Grapes.	
	1114—Greenhouse, Nursery, and Floriculture Production.	0173—Tree Nuts	
		0175—Deciduous Tree Fruits (except apple orchards and farms).	
		0179—Fruit and Tree Nuts, NEC.	
		0181—Ornamental Floriculture and Nursery Products.	
		0831—Forest Nurseries and Gathering of Forest Products.	
Storage Uses	115114—Postharvest Crop activities (except Cotton Ginning).		$7 million.
	311211—Flour Milling	2041—Flour and Other Grain Mill Products.	500 employees.
	311212—Rice Milling	2044—Rice Milling	500 employees.
	493110—General Warehousing and Storage.	4225—General Warehousing and Storage.	$25.5 million.
	493130—Farm Product Warehousing and Storage.	4221—Farm Product Warehousing and Storage.	$25.5 million.
Distributors and Applicators	115112—Soil Preparation, Planting and Cultivating.	0721—Crop Planting, Cultivation, and Protection.	$7 million.
Producers and Importers	325320—Pesticide and Other Agricultural Chemical Manufacturing.	2879—Pesticides and Agricultural Chemicals, NEC.	500 employees.

Agricultural producers of minor crops and entities that store agricultural commodities are categories of affected entities that contain small entities. This proposed rule will only affect entities that applied to EPA for an exemption to the phaseout of methyl bromide. In most cases, EPA received aggregated requests for exemptions from industry consortia. On the exemption application, EPA asked consortia to describe the number and size distribution of entities their application covered. EPA estimated that 3,218 entities petitioned EPA for an exemption for the 2005 control period. EPA now estimates there to be 2,000 end users of critical use methyl bromide. Since many applicants did not provide information on the distribution of sizes of entities covered in their applications, EPA estimated that, based on the above definition, between one-fourth and one-third of the entities may be small businesses. In addition, other categories of affected entities do not contain small businesses based on the above description.

After considering the economic impacts of this proposed rule on small entities, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' (5 U.S.C. 603–604). Thus, an Agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves a regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Since this rule exempts methyl bromide for approved critical uses after the phaseout date of January 1, 2005, this action confers a benefit to users of methyl bromide. EPA believes the estimated value for users of methyl bromide is between $20 million and $30 million annually. We have therefore concluded that this proposed rule will relieve regulatory burden for all small entities.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. Instead, this action provides an exemption for the manufacture and use of a phased out compound and does not impose any new requirements on any entities. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

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

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule is expected to primarily affect producers, suppliers, importers and exporters and users of methyl bromide. Thus, Executive Order 13132 does not apply to this proposed rule.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule does not significantly or uniquely affect the communities of Indian tribal governments nor does it impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order No. 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This proposed rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This proposed rule does not pertain to any segment of the energy production economy nor does it regulate any manner of energy use. Therefore, we have concluded that this proposed rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

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

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs,

policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations, because it affects the level of environmental protection equally for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. Any ozone depletion that results from this proposed rule will impact all affected populations equally because ozone depletion is a global environmental problem with environmental and human effects that are, in general, equally distributed across geographical regions.

List of Subjects in 40 CFR Part 82

Environmental protection, Ozone depletion, Chemicals, Exports, Imports.

Dated: November 12, 2009.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, 40 CFR part 82 is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

2. Section 82.8 is amended by revising the table in paragraph (c)(1) and paragraph (c)(2) to read as follows:

§ 82.8 Grant of essential use allowances and critical use allowances.

* * * * *

(c) * * *

(1) * * *

Company	2010 Critical use allowances for pre-plant uses* (kilograms)	2010 Critical use allowances for post-harvest uses* (kilograms)
Great Lakes Chemical Corp., a Chemtura Company	1,282,653	100,299
Albemarle Corp	527,456	41,245
ICL–IP America	291,483	22,793
TriCal, Inc	9,076	710
Total **	2,110,668	165,047

* For production or import of Class I, Group VI controlled substance exclusively for the Pre-Plant or Post-Harvest uses specified in appendix L to this subpart.

** Due to rounding, numbers do not add exactly.

(2) Allocated critical stock allowances granted for specified control period. The following companies are allocated critical stock allowances for 2009 on a pro-rata basis in relation to the inventory held by each.

Company:		
Albemarle	Hy Yield Bromine	Royster-Clark, Inc.
Bill Clark Pest Control, Inc	ICL–IP America	Trical Inc.
Burnside Services, Inc	Industrial Fumigation Company	Trident Agricultural Products.
Cardinal Professional Products	Pacific Ag	UAP Southeast (NC).
Chemtura Corp	Pest Fog Sales Corp	UAP Southeast (SC).
Degesch America, Inc	Prosource One	Univar.
Helena Chemical Co	Reddick Fumigants	Western Fumigation.
Hendrix & Dail		
Total—690,464 kilograms		

3. Appendix L to Subpart A of Part 82 is revised to read as follows:

Appendix L to Subpart A of Part 82—Approved Critical Uses and Limiting Critical Conditions for Those Uses for The 2010 Control Period

Column A	Column B	Column C
Approved critical uses	Approved critical user and location of use	Limiting critical conditions that exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation:
PRE-PLANT USES		
Cucurbits	(a) Growers in Delaware, Maryland, and Michigan	Moderate to severe soilborne disease infestation.
	(b) Growers in Georgia and Southeastern U.S. limited to growing locations in Alabama, Arkansas, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee, and Virginia.	Moderate to severe yellow or purple nutsedge infestation.
		Moderate to severe soilborne disease infestation.
		Moderate to severe root knot nematode infestation.
Eggplant	(a) Florida growers	Moderate to severe yellow or purple nutsedge infestation.
		Moderate to severe soilborne disease infestation.

Column A	Column B	Column C
Approved critical uses	Approved critical user and location of use	Limiting critical conditions that exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation:
		Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation.
	(b) Georgia growers	Moderate to severe yellow or purple nutsedge infestation.
		Moderate to severe nematode infestation.
		Moderate to severe pythium collar, crown and root rot.
		Moderate to severe southern blight infestation.
		Restrictions on alternatives due to karst topographical features.
	(c) Michigan growers	Moderate to severe soilborne disease infestation.
Forest Nursery Seedlings	(a) Growers in Alabama, Arkansas, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia.	Moderate to severe yellow or purple nutsedge infestation.
		Moderate to severe soilborne disease infestation.
		Moderate to severe nematode infestation.
	(b) International Paper and its subsidiaries limited to growing locations in Alabama, Arkansas, Georgia, South Carolina, and Texas.	Moderate to severe yellow or purple nutsedge infestation.
		Moderate to severe soilborne disease infestation.
	(c) Government-owned seedling nurseries in Illinois, Indiana, Kentucky, Maryland, Missouri, New Jersey, Ohio, Pennsylvania, West Virginia, and Wisconsin.	Moderate to severe weed infestation including purple and yellow nutsedge infestation.
		Moderate to severe Canada thistle infestation.
		Moderate to severe nematode infestation.
		Moderate to severe soilborne disease infestation
	(d) Weyerhaeuser Company and its subsidiaries limited to growing locations in Alabama, Arkansas, North Carolina, and South Carolina.	Moderate to severe yellow or purple nutsedge infestation.
		Moderate to severe soilborne disease infestation.
		Moderate to severe nematode or worm infestation.
	(e) Weyerhaeuser Company and its subsidiaries limited to growing locations in Oregon and Washington.	Moderate to severe yellow nutsedge infestation.
		Moderate to severe soilborne disease infestation.
	(f) Michigan growers	Moderate to severe soilborne disease infestation.
		Moderate to severe Canada thistle infestation.
		Moderate to severe nutsedge infestation.
		Moderate to severe nematode infestation.
Orchard Nursery Seedlings	(a) Members of the Western Raspberry Nursery Consortium limited to growing locations in Washington, and members of the California Association of Nursery and Garden Centers representing Deciduous Tree Fruit Growers.	Moderate to severe nematode infestation.
		Medium to heavy clay soils.
		Local township limits prohibiting 1,3-dichloropropene.
	(b) California rose nurseries	Moderate to severe nematode infestation.
		Local township limits prohibiting 1,3-dichloropropene.
Orchard Replant	(a) California stone fruit, table and raisin grape, wine grape, walnut, and almond growers.	Moderate to severe nematode infestation.
		Moderate to severe soilborne disease infestation.
		Replanted orchard soils to prevent orchard replant disease.
		Medium to heavy soils.
		Local township limits prohibiting 1,3-dichloropropene.
Ornamentals	(a) California growers	Moderate to severe soilborne disease infestation.
		Moderate to severe nematode infestation.
		Local township limits prohibiting 1,3-dichloropropene.
	(b) Florida growers	Moderate to severe weed infestation.
		Moderate to severe soilborne disease infestation.
		Moderate to severe nematode infestation.
		Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation.
	(c) Michigan herbaceous perennial growers	Moderate to severe nematode infestation.
		Moderate to severe soilborne disease infestation.
		Moderate to severe yellow nutsedge and other weed infestation.
	(d) New York growers	Moderate to severe soilborne disease infestation.
		Moderate to severe nematode infestation.
Peppers	(a) Alabama, Arkansas, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation.

Column A	Column B	Column C
Approved critical uses	Approved critical user and location of use	Limiting critical conditions that exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation:
		Moderate to severe pythium root, collar, crown and root rots.
	(b) Florida growers	Moderate to severe yellow or purple nutsedge infestation.
		Moderate to severe soilborne disease infestation.
		Moderate to severe nematode infestation.
		Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation.
	(c) Georgia growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation, or moderate to severe pythium root and collar rot.
		Moderate to severe southern blight infestation, crown or root rot.
		Restrictions on alternatives due to karst topographical features.
	(d) Michigan growers	Moderate to severe soilborne disease infestation.
Strawberry Fruit	(a) California growers	Moderate to severe black root rot or crown rot.
		Moderate to severe yellow or purple nutsedge infestation.
		Moderate to severe nematode infestation.
		Local township limits prohibiting 1,3-dichloropropene.
		Time to transition to an alternative.
	(b) Florida growers	Moderate to severe yellow or purple nutsedge infestation.
		Moderate to severe nematode infestation.
		Moderate to severe soilborne disease infestation.
		Carolina geranium or cut-leaf evening primrose infestation.
		Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation.
	(c) Alabama, Arkansas, Georgia, Illinois, Kentucky, Louisiana, Maryland, Mississippi, Missouri, New Jersey, North Carolina, Ohio, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation.
		Moderate to severe nematode infestation.
		Moderate to severe black root and crown rot.
Strawberry Nurseries	(a) California growers	Moderate to severe soilborne disease infestation.
		Moderate to severe yellow or purple nutsedge infestation.
		Moderate to severe nematode infestation.
Sweet Potato Slips	(a) California growers	Local township limits prohibiting 1,3-dichloropropene.
Tomatoes	(a) Michigan growers	Moderate to severe soilborne disease infestation.
		Moderate to severe fungal pathogen infestation.
	(b) Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation.
		Moderate to severe soilborne disease infestation.
		Moderate to severe nematode infestation.
		Restrictions on alternatives due to karst topographical features and, in Florida, soils not supporting seepage irrigation.
	(c) Maryland growers	Moderate to severe fungal pathogen infestation.
POST-HARVEST USES		
Food Processing	(a) Rice millers in the U.S. who are members of the USA Rice Millers Association.	Moderate to severe beetle, weevil, or moth infestation.
		Presence of sensitive electronic equipment subject to corrosion.
		Time to transition to an alternative.
	(b) Pet food manufacturing facilities in the U.S. who are members of the Pet Food Institute.	Moderate to severe beetle, moth, or cockroach infestation.
		Presence of sensitive electronic equipment subject to corrosion.
		Time to transition to an alternative.

Column A	Column B	Column C
Approved critical uses	Approved critical user and location of use	Limiting critical conditions that exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation:
	(c) Members of the North American Millers' Association in the U.S.	Moderate to severe beetle infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
	(d) Members of the National Pest Management Association treating processed food, cheese, herbs and spices, and spaces and equipment in associated processing and storage facilities.	Moderate to severe beetle or moth infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
Commodities	(a) California entities storing walnuts, beans, dried plums, figs, raisins, and dates (in Riverside county only) in California.	Rapid fumigation required to meet a critical market window, such as during the holiday season.
Dry Cured Pork Products	(a) Members of the National Country Ham Association and the Association of Meat Processors, Nahunta Pork Center (North Carolina), and Gwaltney and Smithfield Inc.	Red legged ham beetle infestation. Cheese/ham skipper infestation. Dermested beetle infestation. Ham mite infestation.

[FR Doc. E9–27822 Filed 11–20–09; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 440 and 441

[CMS–2261–WN]

RIN 0938–A081

Medicaid Program; Coverage for Rehabilitative Services; Withdrawal

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Withdrawal of proposed rule.

SUMMARY: This document withdraws a proposed rule that was published in the **Federal Register** on August 13, 2007. The proposed rule discussed our proposal to amend the definition of Medicaid ''rehabilitative services.'' It also clarified the broad general language of the current regulation to ensure that rehabilitative services are provided in a coordinated manner, are limited to rehabilitative purposes, and are furnished by qualified providers.

DATES: Effective November 23, 2009, the proposed rule published on August 13, 2007 (72 FR 45201) is withdrawn.

FOR FURTHER INFORMATION CONTACT: Melissa Harris, (410) 786–3397.

SUPPLEMENTARY INFORMATION: On August 13, 2007, we published a proposed rule in the **Federal Register** entitled ''Medicaid Program; Coverage for Rehabilitative Services'' (72 FR 45201). The rule proposed to amend the definition of Medicaid ''rehabilitative services'' to include a requirement for a person-centered written rehabilitation plan and maintenance of case records.

We received a total of 1,845 public comments in response to the August 13, 2007 proposed rule. In addition, following the publication of the proposed rule, in section 206 of the Medicare, Medicaid, and SCHIP Extension Act of 2007, Public Law 110–173, the Congress enacted a moratorium on December 29, 2007 that included a prohibition on the Secretary taking any action, including publication of a final rule that was more restrictive with respect to coverage or payment for rehabilitative services than the requirements in place as of July 1, 2007. That moratorium was extended until April 1, 2009 by section 7001(a)(2) of the Supplemental Appropriations Act of 2008, Public Law 110–52.

Before the expiration of that congressional moratorium, the American Recovery and Reinvestment Act of 2009, Public Law 111–5, was enacted on February 17, 2009 and, at section 5003(d), stated that it was the ''sense of Congress'' that the Secretary should not promulgate as a final regulation the August 13, 2007 proposed regulation concerning rehabilitative services.

In light of the clear congressional concern indicated by the statutory moratorium and the resolution opposing issuance of a final rule based on the proposed rule, as well as the complexity of the underlying issues and of the public comments received, we have decided to withdraw the August 2007 proposed rule in order to assure agency flexibility in re-examining the issues and exploring options and alternatives with stakeholders.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: October 28, 2009.

Charlene Frizzera,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: November 17, 2009.

Kathleen Sebelius,

Secretary.

[FR Doc. E9–27954 Filed 11–17–09; 4:15 pm]
BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 89

RIN 0991–AB60

Organizational Integrity of Entities Implementing Leadership Act Programs and Activities

AGENCY: U.S. Department of Health and Human Services.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Health and Human Services (HHS) is issuing this Notice of Proposed Rulemaking (NPRM) to obtain input from stakeholders and other interested parties. This is a proposal to amend the rule governing the separation that must exist between a recipient of HHS funds to implement HIV/AIDS programs and activities under the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003 and an affiliate organization that engages in activities that are not consistent with a policy opposing prostitution and sex trafficking. The proposed rule relaxes the criteria for recipient—affiliate separation, and simplifies the process for compliance with the statutory requirement that recipients of HHS Leadership Act HIV/AIDS funds have a policy explicitly opposing prostitution and sex

trafficking. This proposal eliminates the requirement that recipients prepare and file additional documentation specifically to demonstrate adherence to this policy. The documentation will instead consist of a statement in the awarding document to which the prime recipient must agree in order to receive Leadership Act HIV/AIDS funds.

DATES: To be assured consideration, submit electronic comments on or before December 23, 2009 via the Internet at *http://www.regulations.gov.*

ADDRESSES: You may submit comments, identified by RIN 0991–AB60, through the Federal eRulemaking Portal: *http://www.regulations.gov.*

Instructions: For detailed information on submitting comments and additional information on the rulemaking process, visit *http://www.regulations.gov.* All submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Diana Perez-Rivera or Natarsha Wright, Office of Global Health Affairs, Hubert H. Humphrey Building, Room 639H, 200 Independence Avenue, SW., Washington, DC 20201, Tel: 202–690–6174, E-mail: *ogha.os@hhs.gov.*

SUPPLEMENTARY INFORMATION: The Preamble to this NPRM is organized as follows:

I. Public Participation
II. Summary
III. Background
IV. Discussion of the Proposed Rule
V. Impact Analysis

I. Public Participation

Comments will be available for public inspection at *http://www.regulations.gov.*

Electronic Access: You can download an electronic version of the NPRM at *http://www.regulations.gov.* HHS/OGHA has also posted the NPRM and related materials to its Web site at the following Internet address: *http://www.globalhealth.gov/.*

II. Summary

Statutory Authority

This proposal would amend the ''Regulation on the Organizational Integrity of Entities That Are Implementing Programs and Activities Under the Leadership Act,'' 73 FR 78997 (Dec. 24, 2008), which implements subsection 7631(f) of the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act (''Leadership Act''), Public Law 108–25 (May 27, 2003), as amended, 22 U.S.C. 7631(f).

III. Background

Congress enacted the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003, 22 U.S.C. §§ 7601–7682, (''Leadership Act'') in May 2003. The Leadership Act contains limitations on the use of funds provided to carry out HIV/AIDS activities under the Act (''Leadership Act HIV/AIDS funds''). Subsection 7631(f) prohibits the use of Leadership Act HIV/AIDS funds ''to provide assistance to any group or organization that does not have a policy explicitly opposing prostitution and sex trafficking.'' (Subsection 7631(f) of the Leadership Act was amended in 2004 to exempt certain public international organizations. Consolidated Appropriations Act of 2004 and 2005, Division D—Foreign Operations, Export Financing, and Related Programs Appropriations (''FY 04 and FY 05 Appropriations Act''), Title II—Bilateral Economic Assistance, United States Agency for International Development, Child Survival Health Programs Fund. Reauthorization of the Leadership Act in 2008 did not amend Subsection 7631(f)). Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008, Public Law 110–293 (July 30, 2008).

During legislative debate on the Leadership Act, in response to a question from Senator Leahy on the Senate floor regarding subsection 7631(f), Senator Frist stated that ''a statement in the contract or grant agreement between the U.S. Government and such organization that the organization is opposed to the practices of prostitution and sex trafficking because of the psychological and physical risks they pose for women * * * would satisfy the intent of the provision.'' 149 Cong. Rec. S6457 (daily ed. May 15, 2003) (statement of Sen. Frist).

By December, 2003, HHS had begun including a requirement in all of its grant and cooperative agreement funding announcements that required all recipients under the Leadership Act of HIV/AIDS funds to have a policy explicitly opposing prostitution and sex trafficking. In March, 2004, HHS exempted domestic U.S. recipients from this restriction, but withdrew the exemption in May, 2005. On July 23, 2007, HHS published sub-regulatory ''Organizational Integrity Guidance'' in the **Federal Register** to clarify the scope of the policy requirement by stating that Leadership Act HIV/AIDS funding recipients may have affiliates that do not have a policy against prostitution and sex trafficking. HHS followed the issuance of this guidance with a notice of proposed rulemaking (NPRM) on April 17, 2008, 73 FR 29096, which initiated the notice-and-comment rulemaking process. The final rule was published on December 24, 2008, 73 FR 78997, corrected on January 16, 2009, 74 FR 2888 (codified at 45 CFR part 89), and took effect on January 20, 2009. The final rule established the legal, financial, and organizational standards for determining whether a funding recipient had objective integrity and independence from an affiliated organization that engaged in activities inconsistent with a policy opposing prostitution and sex trafficking. The final rule also required all Leadership Act HIV/AIDS funding recipients, including sub-recipients, to certify compliance with the rule.

The proposed amendment to the present rule modifies the criteria for evaluating the separation between recipients and affiliated organizations, while complying with the statutory requirement regarding opposition to prostitution and sex trafficking. It is important to implementation of the Leadership Act that recipients of Leadership Act funds to implement HIV/AIDS programs and activities not confuse the U.S. Government's message opposing prostitution and sex trafficking by undertaking activities or advocating positions that conflict with this policy. However, HHS has determined after further study that the objectives of the Leadership Act can be effectuated through the application of standards that are less burdensome for funding recipients than the standards set out in the present rule.

HHS is working in coordination with USAID to ensure consistent administration of these programs for recipients and subrecipients.

Nothing in the proposed amendment is intended to lessen or relieve relevant prohibitions on Federal Government funding under other applicable Federal laws.

IV. Discussion of the Proposed Rule

These sections discuss the proposed amendment to the rule, including changes to the regulatory separation requirements and deletion of the requirement for certification.

Section 89.2 Organizational Integrity of Recipients

This section of the proposed rule describes the separation that must exist between a recipient of HHS funds to

implement HIV/AIDS programs and activities under the Leadership Act and an affiliated organization that engages in activities inconsistent with a policy opposing prostitution and sex trafficking. Proposed amendments to the criteria for evaluating separation are discussed in greater detail below. As amended, this section would also provide that recipients will no longer be required to submit separate documentation certifying that they have a policy explicitly opposing prostitution. Rather, the policy requirement will be included in the notices of availability of funds and similar announcements, and acknowledged by recipients in the documents awarding the funds.

Paragraph (a) states the policy to which recipients must adhere under subsection 7631(f), and identifies the criteria that will be used to evaluate the organizational integrity and independence of the recipient from affiliated organizations. Under the amendment, the recipient would agree that it is opposed to the practices of prostitution and sex trafficking because of the psychological and physical risks they pose for women, men and children. With respect to criteria, the paragraph retains the prohibition against affiliated organizations that do not satisfy subsection (f)'s requirement of opposing prostitution and sex trafficking from receiving Leadership Act HIV/AIDS funds. The paragraph continues to prohibit the use of Leadership Act HIV/AIDS funds to subsidize activities inconsistent with a policy opposing prostitution and sex trafficking. However, paragraph (a) would no longer mandate that the affiliate must be ''a legally separate entity,'' but would instead provide that the legal status of the affiliate is one of the factors to be considered in deciding whether there is adequate separation between the recipient and the affiliate. This change recognizes the reported burden on recipients operating overseas in satisfying this criterion in certain cases, and the difficulty inherent in HHS's analyzing foreign legal requirements. A similar change would be made to the factor suggesting evaluation of ''[t]he existence of separate personnel, management, and governance.'' The proposal now refers to ''[t]he existence of separate personnel or other allocation of personnel that maintains adequate separation between the recipient and affiliate.'' Again, this proposed change reflects reported difficulties in meeting a requirement for fully separate personnel in some situations. The proposed rule also deletes the requirement for consideration of separate ''management'' and ''governance'' and for separate ''accounts'' because those elements of the relationship are not necessary to maintain sufficient separation between recipients and affiliated organizations to prevent confusion of the Government's message opposing prostitution and sex trafficking. Other factors have been simplified and relaxed. Moreover, a further and very significant change to paragraph (a) provides that recipients must meet the criteria for separation ''to the extent practicable in the circumstances,'' which will permit practical factors to be taken into account in a specific case. In sum, these changes to paragraph (a) are intended to allow a recipient to maintain a relationship with an affiliated organization that may engage in restricted activities, without jeopardizing the recipient's eligibility for HIV/AIDS funding under the Leadership Act.

Paragraph (b) requires HHS agencies to include in funding notices and award instruments a statement that recipients of Leadership Act HIV/AIDS funds from HHS agree that they are opposed to the practices of prostitution and sex trafficking because of the psychological and physical risks they pose for women, men, and children. By entering into the award agreement and accepting Leadership Act HIV/AIDS funds, recipients acknowledge this opposition, but are relieved from the necessity of preparing and submitting additional documentation.

Paragraph (c) recognizes the statutory exemption for the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization, the International AIDS Vaccine Initiative and any United Nations Agency from subsection 7631(f), and is not affected by this amendment.

Section 89.3 Certifications

This proposed amendment to the rule deletes this section requiring separate documents certifying compliance with the Leadership Act because the materials described in subsection 89.2(b) will provide the necessary assurances.

V. Impact Analysis

Paperwork Reduction Act

To obtain or retain Leadership Act HIV/AIDS funding, under the December 24, 2008 final rule, HHS required recipients to submit certifications attesting to their non-involvement in activities supporting prostitution and human trafficking and policies to that effect. The title of the information collection was ''Certification Regarding the Organizational Integrity of Entities Implementing Leadership Act Programs and Activities.''

HHS estimated that 555 respondents had to prepare documents to validate that recipients had objective integrity and independence from organizations that engage in activities inconsistent with policies opposing prostitution and sex trafficking. HHS also estimates that the average cost per hour will be $26.44, with a 0.5 hour estimated time burden per response. In total, the estimated burden cost is approximately $7337.10.

This proposed rule removes the certification requirements of the December 24, 2008 rule. As a result, the burden estimate of 0.5 hours per applicant for Leadership Act HIV/AIDS funds is removed along with the associated costs.

Executive Order 12866—Regulatory Planning and Review

HHS has drafted and reviewed this regulation in accordance with Executive Order 12866, section (b), Principles of regulation. HHS has determined this rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f)(4), because it raises novel legal or policy issues that arise out of legal mandates and the President's priorities, and accordingly, the Office of Management and Budget has reviewed it.

As explained above, this rule modifies a previously issued final rule on the same subject, published on December 24, 2008 in the **Federal Register** (P. 78997 to 79002). As explained earlier in this notice, the modification does not change policy, but reduces burden in complying with the established policy. Policy under the Leadership Act has been consistent and clear: The U.S government is opposed to prostitution and sex trafficking. Contractors and subcontractors cannot use Leadership Act HIV/AIDS funds to carry out activities that call into question the anti-trafficking/anti-prostitution policy. Enforcement of this policy was originally through language inserted in awards at the time they were executed. The December 24, 2008 final rule required further statements and formal documentation from recipients before they could receive Leadership Act HIV/AIDS funds. The Impact Analysis and the Paperwork Reduction Act in the December 24, 2008 final rule estimated the burden and cost of writing the additional documentation. This rule no longer requires this additional documentation. It reestablishes the earlier requirement contained in the funding agreement prohibiting activities

and policies that support prostitution and sex trafficking in human beings. As a result, applicants for Leadership Act HIV/AIDS funds will no longer have to incur the costs outlined in the December 24, 2008 impact analysis and paperwork burden analysis.

The benefits of this rule are the reduction in burden and the possible encouragement of additional applicants because of the burden reduction.

The costs of the rule are minimal as there are no changes in policy and we have determined that the methods of achieving compliance prior to December 24, 2008 are fully compatible with the purposes of the Act.

We are republishing the impact table from the December 24, 2008 final rule. The burden estimate was $7337 calculated by assuming an additional half hour of clerical work to prepare documentation on behalf of 555 grantees at an hourly rate of $26.44.

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Average cost per hour	Total burden hours	Total burden cost
Certifications	555	1	0.5	$26.44	277.5	$7,337

Regulatory Flexibility Act

The Secretary certifies under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this rule will not result in a significant impact on a substantial number of small entities. Since enactment of the policy requirement in the Leadership Act, HHS has required its contract solicitations and grant announcements for Leadership Act HIV/AIDS funding to include a section regarding ''Prostitution and Related Activities'' Furthermore, the proposed rule proposes to remove the requirements for certification that were imposed on recipients in the December 24, 2008 final rule.

Executive Order 13132—Federalism

Executive Order 13132 on Federalism requires Federal Departments and agencies to consult with State and local Government officials in the development of regulatory policies with implications for Federalism. This rule does not have Federalism implications for State or local Governments, as defined in the Executive Order.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered Federal Department or agency prepare a cost-benefit analysis before promulgating a rule that includes any Federal mandate that could result in the expenditure by State, local, and tribal Governments, in the aggregate, or by the private sector, of $100 million or more in any one year adjusted for inflation. The current threshold for preparing a cost-benefit analysis is $133 million. HHS has determined that this rule would not impose a mandate that will result in the expenditure by State, local, and Tribal Governments, in the aggregate, or by the private sector, of more than $133 million in any one year.

Assessment of Federal Regulation and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal Departments and agencies to determine whether a final policy or regulation could affect family well-being. If the determination is affirmative, then the Department or agency must prepare an impact assessment to address criteria specified in the law. This rule will not have an impact on family well-being, as defined in this legislation.

List of Subjects in 45 CFR Part 89

Administrative practice and procedure, Federal aid programs, Grant programs, Grants administration.

For the reasons stated in the preamble, the Department of Health and Human Services proposes to amend 45 CFR Part 89 as follows:

PART 89—ORGANIZATIONAL INTEGRITY OF ENTITIES IMPLEMENTING PROGRAMS AND ACTIVITIES UNDER THE LEADERSHIP ACT.

1. The authority citation for part 89 continues to read as follows:

Authority: 22 U.S.C. 7631(f) and 5 U.S.C. 301.

2. Revise § 89.2 to read as follows:

§ 89.2 Organizational integrity of recipients.

(a) A recipient must have objective integrity and independence from any affiliated organization that engages in activities inconsistent with the recipient's opposition to the practices of prostitution and sex trafficking because of the psychological and physical risks they pose for women, men, and children (''restricted activities''). A recipient will be found to have objective integrity and independence from such an organization if:

(1) The organization receives no transfer of Leadership Act HIV/AIDS funds, and Leadership Act HIV/AIDS funds do not subsidize restricted activities; and

(2) The recipient is, to the extent practicable in the circumstances, legally, physically, and financially separate from the affiliated organization. Mere bookkeeping separation of Leadership Act HIV/AIDS funds from other funds is not sufficient. HHS will determine, on a case-by-case basis and based on the totality of the facts, whether sufficient legal, physical, and financial separation exists. The presence or absence of any one or more factors will not be determinative. Factors relevant to this determination shall include, but will not be limited to, the following:

(i) Whether the organization is a legally separate entity;

(ii) The existence of separate personnel or other allocation of personnel that maintains adequate separation of the activities of the affiliated organization from the recipient;

(iii) The existence of separate accounting and timekeeping records;

(iv) The degree of separation of the recipient's facilities from facilities in which restricted activities occur, and the extent of such restricted activities by the affiliated organization; and

(v) The extent to which signs and other forms of identification that distinguish the recipient from the affiliated organization are present.

(b) HHS agencies shall include in the public announcement of the availability of the grant, cooperative agreement, contract, or other funding instrument involving Leadership Act HIV/AIDS funds the requirement that recipients agree that they are opposed to the practices of prostitution and sex trafficking because of the psychological and physical risks they pose for women, men, and children. This statement shall also be included in the award documents for any grant, cooperative agreement or other funding instrument

involving Leadership Act HIV/AIDS funds entered into with the recipient.

(c) This regulation applies to all recipients, including prime recipients and sub-recipients, unless they are exempted from the policy by statute.

§ 89.3 [Removed]

3. Remove § 89.3.

Dated: October 29, 2009.

John Monahan,

Interim Director, Office of Global Health Affairs.

Dated: October 29, 2009.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. E9–28127 Filed 11–19–09; 4:15 pm]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R6–ES–2009–0080; 92210–1111–0000–B2]

Endangered and Threatened Wildlife and Plants; Notice of Intent to Conduct a Status Review of Gunnison sage-grouse (*Centrocercus minimus*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to conduct status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), under the authority of the Endangered Species Act of 1973, as amended (Act), give notice of our intent to conduct a status review of Gunnison sage-grouse (*Centrocercus minimus*). We conduct status reviews to determine whether the species should be listed as endangered or threatened under the Act. Through this notice, we encourage all interested parties to provide us information regarding Gunnison sage-grouse.

DATES: To allow us adequate time to conduct this review, we request that we receive information on or before December 23, 2009. After this date, you must submit information directly to the Field Office (see **FOR FURTHER INFORMATION CONTACT** section below). Please note that we may not be able to address or incorporate information that we receive after the above requested date.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept faxed comments.

FOR FURTHER INFORMATION CONTACT: Al Pfister, Western Colorado Field Office; telephone (970) 243–2778, ext. 29. Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Information Solicited

To ensure that the status review is based on the best available scientific and commercial information and to provide an opportunity to any interested parties to provide information for consideration, we are requesting information concerning Gunnison sage-grouse. We request information from the public, other concerned governmental agencies, Native American tribes, the scientific community, industry, and any other interested party. We are seeking:

(1) General information concerning the taxonomy, biology, ecology, genetics, and status of the Gunnison sage-grouse;

(2) Specific information on the conservation status of Gunnison sage-grouse, including information on distribution, abundance, and population trends;

(3) Specific information on threats to Gunnison sage-grouse, including: (i) The present or threatened destruction, modification, or curtailment of its habitat or range; (ii) overutilization for commercial, recreational, scientific, or educational purposes; (iii) disease or predation; (iv) the inadequacy of existing regulatory mechanisms; and (v) other natural or manmade factors affecting its continued existence; and

(4) Specific information on conservation actions designed to improve Gunnison sage-grouse habitat or reduce threats to Gunnison sage-grouse and their habitat.

If you submit information, we request you support it with documentation such as data, maps, bibliographic references, methods used to gather and analyze the data, or copies of any pertinent publications, reports, or letters by knowledgeable sources.

Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. If you submit information that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so.

Information and supporting documentation that we received and used in preparing this finding will be available for you to review by appointment during normal business hours at the U.S. Fish and Wildlife Service, Western Colorado Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

The sage-grouse (*Centrocercus* spp.) is the largest grouse in North America and was first described by Lewis and Clark in 1805 (Schroeder *et al.* 1999, p. 1). Sage-grouse are most easily identified by their large size; dark brown color; distinctive black bellies; long, pointed tails; and association with sagebrush habitats. They are dimorphic in size, with females being smaller. Both sexes have yellow-green eye combs, which are less prominent in females. Sage-grouse are known for their elaborate mating ritual where males congregate on strutting grounds called leks and ''dance'' to attract a mate. During the breeding season males have conspicuous filoplumes (specialized erectile feathers on the neck) and exhibit yellow-green apteria (fleshy bare patches of skin) on their breasts (Schroeder *et al.* 1999, pp. 2, 18).

For many years sage-grouse were considered a single species. Young *et al.* (2000, pp. 447–451) identified Gunnison sage-grouse (*Centrocercus minimus*) as a distinct species based on morphological (Hupp and Braun 1991, pp. 257–259; Young *et al.* 2000, pp. 447–448), genetic (Kahn *et al.* 1999, pp. 820–821; Oyler-McCance *et al.* 1999, pp. 1460–1462), and behavioral (Barber 1991, pp. 6–9; Young 1994; Young *et al.* 2000, p. 449–451) differences and geographical isolation.

Gunnison sage-grouse are smaller than greater sage-grouse (*C. urophasianus*), weighing approximately one-third less (Hupp and Braun 1991, p. 257; Young *et al.* 2000, p. 447). Their filoplumes are longer and give the appearance of a ''ponytail'' during the courtship display, unlike the filoplumes on greater sage-grouse. Gunnison sage-grouse retrices (tail feathers) have distinctive barring, unlike the mottled pattern on greater sage-grouse retrices (Young *et al.* 2000, p. 448). Gunnison sage-grouse mating displays are slower

than those of greater sage-grouse (Young *et al.* 2000, p. 449). Mating calls also are distinct. Gunnison sage-grouse ''pop'' their apteria nine times instead of twice like greater sage-grouse (Young *et al.* 2000, p. 449). Female Gunnison sage-grouse do not respond favorably when they hear playback of recorded male greater sage-grouse mating calls, and differences in courtship vocalizations are likely a barrier to mating between Gunnison and greater sage-grouse (Young 1994, p. 71).

DNA sequence information from mitochrondrial and nuclear genomes indicates there is no gene flow between Gunnison and greater sage-grouse (Oyler-McCance *et al.* 1999, pp. 1460–1462; Young *et al.* 2000, p. 451). Based on these morphologic, behavioral, and genetic differences, the American Ornithologist's Union (2000, pp. 849–850) accepted the Gunnison sage-grouse as a distinct species. The current ranges of the two species are not overlapping (Schroeder *et al.* 2004, p. 369). Additional species information can be found in the Final Listing Determination for the Gunnison sage-grouse (April 18, 2006; 71 FR 19954).

Previous Federal Actions

We have published a number of documents on Gunnison sage-grouse, and we describe our actions relevant to this notice below:

On January 18, 2000, we designated the Gunnison sage-grouse as a candidate species under the Act, with a listing priority of 5. However, Candidate Notices of Review are only published annually, and, therefore, the **Federal Register** notice regarding this decision was not published until December 28, 2000 (65 FR 82310). Candidate species are plants and animals for which the Service has sufficient information on their biological status and threats to propose them as endangered or threatened under the Act, but for which the development of a proposed listing regulation is precluded by other higher priority listing activities. A listing priority of 5 indicates the species faces high magnitude, nonimminent threats.

On January 26, 2000, American Lands Alliance, Biodiversity Legal Foundation, and others petitioned the Service to list the species (Webb 2000). In 2003, the U.S. District Court ruled that the species was designated as a candidate by the Service prior to receipt of the petition because the candidate form was signed on January 18, 2000, and that the determination that a species should be on the candidate list is equivalent to a 12-month finding (*American Lands Alliance* v. *Gale A. Norton,* C.A. No. 00–2339, D.D.C.).

Section 4(b)(3)(B) of the Act requires that for species on the candidate list for listing as threatened or endangered we conduct annual status reviews and make a determination of whether listing the candidate species is: (a) Not warranted, (b) warranted, or (c) warranted but precluded by other higher priority listing determinations. In the 2003 Candidate Notice of Review, we elevated the listing priority number for Gunnison sage-grouse from 5 to 2 (69 FR 24876), as the imminence of the threats had increased. In the 2004 and 2005 Candidate Notice of Reviews (69 FR 24876 and 70 FR 24870, respectively) we maintained the listing priority number for Gunnison sage-grouse as a 2.

Plaintiffs amended their complaint in May 2004 to allege that the Service's warranted-but-precluded finding and decision not to emergency-list the Gunnison sage-grouse were in violation of the Act. The parties filed a stipulated settlement agreement with the court on November 14, 2005, which included a provision that the Service would make a proposed listing determination by March 31, 2006. On March 28, 2006, the plaintiffs agreed to a 1-week extension (April 7, 2006) for this determination.

In April 2005, the Colorado Division of Wildlife (CDOW) applied to the Service for an Enhancement of Survival Permit for the Gunnison sage-grouse pursuant to section 10(a)(1)(A) of the Act. The permit application included a proposed Candidate Conservation Agreement with Assurances (CCAA) between CDOW and the Service. The standard that a CCAA must meet is that the ''benefits of the conservation measures implemented under a CCAA, when combined with those benefits that would be achieved if it is assumed that conservation measures were also to be implemented on other necessary properties, would preclude or remove any need to list the species.'' The CCAA, the permit application, and the Environmental Assessment were made available for public comment on July 6, 2005 (70 FR 38977). Public comments and other internal comments from the Service and CDOW were incorporated into revisions of the CCAA and Environmental Assessment and finalized in October 2006. The permit for the CCAA was signed on October 23, 2006. Landowners with eligible property in southwestern Colorado who wish to participate can voluntarily sign up under the CCAA and associated permit through a Certificate of Inclusion. These participants provide certain Gunnison sage-grouse habitat protection or enhancement measures on their lands. If the Gunnison sage-grouse is listed under the Act, the permit authorizes incidental take of Gunnison sage-grouse due to otherwise lawful activities in accordance with the terms of the CCAA (*e.g.,* crop cultivation, crop harvesting, livestock grazing, farm equipment operation, commercial/residential development, etc.), as long as the participating landowner is performing activities identified in the Certificate of Inclusion. Three Certificates of Inclusion have been issued by the CDOW and Service to private landowners to date.

On April 11, 2006, the Service determined that listing the Gunnison sage-grouse as a threatened or endangered species was not warranted and published the final listing determination on April 18, 2006, in the **Federal Register** (71 FR 19954). Consequently, we removed Gunnison sage-grouse from the candidate species list at the time of the final listing determination. On November 14, 2006, Plaintiffs (the County of San Miguel, Colorado; Center for Biological Diversity; WildEarth Guardians; Public Employees for Environmental Responsibility; National Audubon Society; The Larch Company; Center for Native Ecosystems; Sinapu; Sagebrush Sea Campaign; Black Canyon Audubon Society; and Sheep Mountain Alliance) filed a Complaint for Declaratory and Injunctive relief, pursuant to the Act, and on October 24, 2007, filed an Amended Complaint for Declaratory and Injunctive relief, alleging that the 12-month finding on the Gunnison sage-grouse violated the Act. On August 18, 2009, a Stipulated Settlement Agreement and Order was filed with the court, with a June 30, 2010 date by which the Service shall submit to the **Federal Register** a 12-month finding, pursuant to 16 U.S.C. 1533(b)(3)(B), that listing the Gunnison sage-grouse under the Act is (a) warranted; (b) not warranted; or (c) warranted but precluded by higher priority listing actions. With this notice, we are initiating a new status review for the Gunnison sage-grouse.

References Cited

A complete list of all references is available upon request from the Field Supervisor (see **ADDRESSES**).

Author

The primary author of this document is Al Pfister, U.S. Fish and Wildlife Service, Western Colorado Field Office.

Authority

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

Dated: November 13, 2009.

Sam D. Hamilton,

Director, U.S. Fish and Wildlife Service.

[FR Doc. E9–28047 Filed 11–20–09; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 74, No. 224

Monday, November 23, 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

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's (RBS) intention to request information collection in support of the Rural Business Enterprise Grant (RBEG) program and Televisions Demonstration Grants (7 CFR part 1942–G).

DATES: Comments on this notice must be received by January 22, 2010 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Lori Washington, Specialty Programs Division, Rural Business-Cooperative Service, U.S. Department of Agriculture, Stop 3225, 1400 Independence Ave., SW., Washington, DC 20250–3225, Telephone (202) 720–9815, E-mail: *lori.washington@wdc.usda.gov.*

ADDRESSES: Submit written comments on the collection via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Stop 0742, 1400 Independence Avenue, SW., Washington, DC 20250–0742.

SUPPLEMENTARY INFORMATION:

Title: Rural Business Enterprise Grants and Televisions Demonstration Grants.

OMB Number: 0570–0022.

Expiration Date of Approval: May 31, 2010.

Type of Request: Extension of a currently approved information collection.

Abstract: The objective of the RBEG program is to facilitate the development of small and emerging private businesses in rural areas. This purpose is achieved through grants made by RBS to public bodies and nonprofit corporations. Television Demonstration grants are available to private nonprofit public television systems to provide information on agriculture and other issues of importance to farmers and the rural residents. The regulation contains various requirements for information from the grantees, and some requirements may cause the grantees to require information from other parties. The information requested is vital for RBS to be able to process applications in a responsible manner, make prudent program decisions, and effectively monitor the grantees' activities to protect the Government's financial interest and ensure that funds obtained from the Government are used appropriately. It includes information to determine eligibility; the specific purpose for which grant funds will be used; timeframes; who will be carrying out the grant purposes; project priority; applicant experience; employment improvement; and mitigation of economic distress.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.5 hours per response.

Respondents: Nonprofit corporations and public bodies.

Estimated Number of Respondents: 720.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 7,763.

Estimated Total Annual Burden on Respondents: 19,479.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch, at (202) 692–0043.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RBS, including whether the information will have practical utility; (b) the accuracy of the RBS estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Cheryl Thompson, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: November 17, 2009.

Curtis Wiley,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. E9–27996 Filed 11–20–09; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's intention to request an extension for a currently approved information collection in support of the program for 7 CFR part 4284, subpart F.

DATES: Comments on this notice must be received by January 22, 2010 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Andrew Jermolowicz, Deputy Administrator, Cooperative Programs, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 3250, Washington, DC 20250, telephone (202) 720–0054, e-mail: *Andrew Jermolowicz@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Small Socially-Disadvantaged Producer Grant Program.

OMB Number: 0570–0052.

Expiration Date of Approval: January 31, 2010.

Type of Request: Extension of a currently approved information collection.

Abstract: The purpose of this information collection is to obtain information necessary to evaluate grant applications to determine the eligibility of the applicant and the project for the program and to qualitatively assess the project to determine which projects should be funded.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.7 hours per grant application.

Respondents: Cooperatives and Association of Cooperatives.

Estimated Number of Respondents: 30.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 200.

Estimated Total Annual Burden on Respondents: 347.5 hours.

Copies of this information collection can be obtained from Linda Watts Thomas, Regulations and Paperwork Management Branch, Support Services Division at (202) 692–0226.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Rural Business-Cooperative Service, including whether the information will have practical utility; (b) the accuracy of the Rural Business-Cooperative Service's estimate of the burden of the proposed collection of information, including validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Linda Watts Thomas, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: November 17, 2009.

Curtis Wiley,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. E9–28008 Filed 11–20–09; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–945

Prestressed Concrete Steel Wire Strand from the People's Republic of China: Postponement of the Preliminary Determination of the Antidumping Duty Investigation

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

EFFECTIVE DATE: November 23, 2009.

FOR FURTHER INFORMATION CONTACT: Alan Ray, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–5403.

Background

On June 23, 2009, the Department of Commerce (''Department'') published in the **Federal Register** the initiation of the investigation of prestressed concrete steel wire strand (''PC Strand'') from the People's Republic of China (''PRC''), covering the period of October 1, 2008, through March 31, 2009.[1] On July 28, 2009, the Department selected two companies as mandatory respondents for this investigation: Tianjin Shengte PC Steel Strand Co., (''Tianjin Shengte'') and Silvery Dragon PC Steel Products (''Silvery Dragon'').[2] On August 14, 2009, the Department selected Jiangxi Xinhua Metal Products Co. (''Xinhua Metal'') as a new mandatory respondent, to replace Silvery Dragon, who had indicated that they would not participate in this investigation.[3] Subsequent to that, Silvery Dragon failed to respond to a supplemental questionnaire and the Department selected Wuxi Jinyang Metal Products Co., Ltd. (''WJMP'') as a voluntary respondent.[4]

On November 16, 2009, Petitioners[5] requested a fourteen–day postponement of the preliminary determination pursuant to 733(c)(1)(B)(i) of the Tariff Act of 1930, as amended, (''the Act''). The preliminary determination of this antidumping duty investigation is currently due on December 3, 2009.

Statutory Time Limits

Pursuant to section 733(c)(1)(B) of the Act, the Department can extend the period for a preliminary determination until not later than 190 days after the date on which the administrative authority initiates an investigation if the Department concludes that the parties concerned are cooperating and determines that:

The case is extraordinarily complicated by the reason of (I) the number and complexity of the transactions to be investigated or adjustments to be considered, (II) the novelty of the issues presented, or (III) the number of firms whose activities must be investigated, and (ii) additional time is necessary to make the preliminary determination.

Extension of Time Limit of Preliminary Determination

Although the respondent[6] and a separate rates applicant are cooperating, the Department intends to issue additional supplemental questionnaires addressing certain adjustments that impact factors of production and the U.S. sales data that may need to be considered, thereby making it extraordinarily complicated because of the complexity of the adjustments to be considered. Therefore, the Department finds it necessary to extend the current preliminary determination deadline pursuant to section 733(c)(1)(B)(i)(I) of the Act. In addition, as noted above, Petitioners requested a postponement of the preliminary determination on November 16, 2009.

Therefore, for the reasons identified above, and pursuant to section 733(c)(1)(B)(i)(I) we are postponing the preliminary determination under section 733(c)(1) of the Act by fourteen days from December 3, 2009, to December 17, 2009.

This notice is published pursuant to sections 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

[1] *Prestressed Concrete Steel Wire Strand From the People's Republic of China: Initiation of Antidumping Duty Investigation*, 74 FR 29665 (June 23, 2009).

[2] Memorandum to James C. Doyle, Office 9 Director, through Alex Villanueva, Office 9 Program Manager, from Alexis Polovina, Office 9 Case Analyst, dated July 28, 2009, Antidumping Duty Investigation of Prestressed Concrete Steel Wire Strand from the People's Republic of China (''PRC''): Respondent Selection (''Respondent Selection Memo'').

[3] *See* Memorandum to the File from Alan Ray, Office 9 Case Analyst, through Alex Villanueva, Office 9 Program Manager, dated August 14, 2009.

[4] *See* Memorandum to the File from Alan Ray, Office 9 Case Analyst, through Alex Villanueva, Office 9 Program Manager, dated September 11, 2009.

[5] American Spring Wire Corp., Insteel Wire Products Company, and Sumiden Wire Products Corp.

[6] Xinhua Metal and WJMP.

Dated: November 17, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–28049 Filed 11–20–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XQ85

Atlantic Highly Migratory Species; Exempted Fishing, Scientific Research, Display, and Chartering Permits; Letters of Acknowledgment

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

ACTION: Notice of intent; request for comments.

SUMMARY: NMFS announces its intent to issue Exempted Fishing Permits (EFPs), Scientific Research Permits (SRPs), Display Permits, Letters of Acknowledgment (LOAs), and Chartering Permits for the collection of Atlantic Highly Migratory Species (HMS) in 2010. In general, EFPs and related permits would authorize collection of a limited number of tunas, swordfish, billfishes, and sharks from Federal waters in the Atlantic Ocean, Caribbean Sea, and Gulf of Mexico for the purposes of scientific data collection and public display. Chartering permits allow the collection of HMS on the high seas or in the Exclusive Economic Zone of other nations. Generally, these permits will be valid from the date of issuance through December 31, 2010, unless otherwise specified, subject to the terms and conditions of individual permits.

DATES: Written comments on these activities received in response to this notice will be considered by NMFS when issuing EFPs and related permits and must be received on or before *December 23, 2009.*

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

* *E-mail: HMSEFP.2010@noaa.gov.* Include in the subject line the following identifier: 0648–XQ85.

* *Mail:* Craig Cockrell, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

* *Fax:* (301) 713–1917.

FOR FURTHER INFORMATION CONTACT: Craig Cockrell, phone: (301) 713–2347, fax: (301) 713–1917.

SUPPLEMENTARY INFORMATION: Issuance of EFPs and related permits are necessary for the collection of HMS for public display and scientific research outside of regulations (*e.g.,* seasons, prohibited species, authorized gear, and minimum sizes) that may prohibit the collection of live animals or biological samples. Collection for scientific research and display represents a small portion of the overall fishing mortality for HMS, and this mortality is counted against the quota of the species harvested, as appropriate. The terms and conditions of individual permits are unique; however, all permits will include reporting requirements, limit the number and species of HMS to be collected, and only authorize collection in Federal waters of the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea.

EFPs and related permits are issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) and/or the Atlantic Tunas Convention Act (ATCA) (16 U.S.C. 971 *et seq.*). Regulations at 50 CFR 600.745 and 50 CFR 635.32 govern scientific research activity, exempted fishing, chartering arrangements, and exempted educational activities with respect to Atlantic HMS. Since the Magnuson-Stevens Act does not consider scientific research to be ''fishing,'' scientific research is exempt from this statute, and NMFS does not issue EFPs for bona fide research activities (*e.g.,* research conducted from a research vessel and not a commercial or recreational fishing vessel) involving species that are only regulated under the Magnuson-Stevens Act (*e.g.,* most species of sharks) and not under ATCA. NMFS requests copies of scientific research plans for these activities and indicates concurrence by issuing an LOA to researchers to indicate that the proposed activity meets the definition of research and is therefore exempt from regulation. Examples of research conducted under LOAs include tagging and releasing of sharks during bottom longline surveys to understand the distribution and seasonal abundance of different shark species, and collecting and sampling sharks caught during trawl surveys for life history studies.

Scientific research is not exempt under ATCA. NMFS issues SRPs for collection of species managed under this statute (*e.g.,* tunas, swordfish, billfish, and some species of sharks), which authorize researchers to collect HMS from bona fide research vessels. One example of research conducted under SRPs consists of scientific surveys of HMS conducted from the NOAA research vessels. EFPs are issued to researchers collecting ATCA-managed species and conducting research from commercial or recreational fishing vessels. NMFS regulations concerning the implantation or attachment of archival tags in Atlantic HMS require scientists to report their activities associated with these tags. Examples of research conducted under EFPs include deploying pop-up satellite archival tags on billfish, sharks, and tunas to determine migration patterns of these species, conducting billfish larval tows to determine billfish habitat use, life history, and population structure, and determining catch rates and gear characteristics of the swordfish buoy gear fishery.

NMFS is also seeking public comment on its intent to issue Display Permits for the collection of sharks and other HMS for public display in 2010. Collection of sharks and other HMS sought for public display in aquara often involves collection when the commercial fishing seasons are closed, collection of otherwise prohibited species, and collection of fish below the minimum size for recreational permit holders. NMFS established a 60-metric ton (mt) whole weight (ww) (approximately 3,000 sharks) quota for the public display and research of sharks (combined) in the final Fishery Management Plan (FMP) for Atlantic Tunas, Swordfish, and Sharks (1999 FMP). The quotas available for scientific research and public display of sandbar and dusky sharks were modified in Amendment 2 to the 2006 Consolidated HMS FMP (June 24, 2008, 73 FR 35778; corrected on July 15, 2008 73 FR 40658) in light of the results of recent stock assessments. The public display and scientific research quotas for sandbar sharks are now limited to 2.78 mt ww (2 mt dressed weight (dw)): 1.39 mt ww for public display and 1.39 mt ww for scientific research. Furthermore, Amendment 2 limited dusky shark collection to bona fide scientific research and prohibits dusky shark collection for public display. The rule did not modify the overall 60 mt ww quota, rather; it adjusted the proportion of the quota allocated to sandbar and dusky sharks. These quotas have been analyzed in conjunction with other sources of mortality under Amendment 2 to the 2006 Consolidated HMS FMP, and NMFS has determined that harvesting this amount for public display will not have a significant

impact on the stocks. The number of sharks harvested for display and research has remained under the annual 60 mt ww quota every year since inception of the quota. In 2008, approximately 10 percent of the sharks authorized for public display and scientific research purposes were actually harvested or discarded dead.

NMFS may also consider applications for bycatch reduction research in closed areas of the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea to test gear modifications and fishing techniques aimed to avoid incidental capture of non-target species. These permits may require further National Environmental Policy Act (NEPA) analyses. NMFS will seek additional public comment on these applications, as necessary, unless the research is being conducted from bona fide scientific research vessels.

On January 3, 2008, NMFS announced a final decision to issue EFPs to conduct research in portions of the East Florida Coast (EFC) and Charleston Bump closed areas using a limited number of pelagic longline (PLL) vessels. The goals of the research are to collect baseline data in closed areas under current PLL fishery conditions; evaluate existing PLL bycatch reduction measures; and collect data to examine the effectiveness of existing PLL area closures to meet current conservation and harvesting goals. As part of this research, NMFS issued EFPs to three PLL vessels, only two of which may fish at any one time, to conduct 289 PLL sets consisting of 500, 18/0 non-offset circle hooks each, over a 12 month period. One-half of the sets will be made inside the closed areas and one-half of the sets will be made outside of the closed areas. All participating vessels are required to carry NMFS-certified observers. The current EFPs for this research expire on February 28, 2010. However, since only approximately 60 percent of the sets are anticipated to be completed by February 28, 2010, NMFS is considering extending these EFPs to allow for completion of the research.

During this PLL research, 25 research trips occurred between February 2008 and August 2009. During these trips, 122 PLL sets were made, with 64 sets deployed inside the closed areas, 58 sets deployed outside of the closed areas. Inside the closed areas, 689 swordfish were kept, 108 swordfish were released alive, and 151 swordfish were discarded dead. Fourteen yellowfin tuna were kept and 2 yellowfin tuna were discarded dead. There were 3 bigeye tuna kept, 1 bigeye tuna released alive, and 1 bigeye tuna discarded dead. Two albacore tuna were kept and 3 unidentified tunas were discarded dead. Additionally, 24 blue marlin, 4 white marlin, and 44 sailfish were captured. Fifteen blue marlin were released alive, 9 blue marlin were discarded dead, and all of the white marlin were released alive. Forty-three of the sailfish were released alive and 1 was discarded dead.

Outside of the closed areas, 275 swordfish were kept; 36 swordfish were released alive; 74 swordfish were discarded dead; 255 bigeye tuna were kept; 6 bigeye tuna were released alive; 12 bigeye tuna were discarded dead; 49 yellowfin tuna were kept; 2 yellowfin tuna were released alive; 2 yellowfin tuna were discarded dead; 20 albacore tuna were kept; 3 albacore tuna were discarded dead; and 4 unidentified tuna were discarded dead. Additionally, 22 blue marlin were released alive and 12 were discarded dead; 3 white marlin were released alive and 1 was discarded dead; 23 sailfish were released alive and 4 were discarded dead; and 5 roundscale spearfish/white marlin were released alive and 1 was discarded dead. No bluefin tuna were caught during any of the 122 PLL research sets. Additionally, 5 sea turtles were captured during research in both the closed and open areas. Three leatherback sea turtles were captured on PLL gear deployed inside the closed areas, and 2 loggerhead sea turtles were captured on PLL gear deployed outside of the closed areas. All of the sea turtles were released alive with no trailing gear attached. There were no marine mammal interactions during any of the 122 PLL research sets. The research is ongoing and updates will be provided as data become available.

Comments are also requested on the issuance of Chartering Permits to U.S. vessels fishing for HMS while operating under chartering arrangements. The vessel chartering regulations can be found at 50 CFR 635.5(a)(5) and 635.32(e).

In addition, Amendment 2 to the Consolidated HMS FMP implemented a shark research fishery. This research fishery is conducted under the auspices of the exempted fishing program. Research fishery permit holders assist NMFS in collecting valuable shark life history data and data for future shark stock assessments. Fishermen must fill out an application for a shark research permit under the exempted fishing program to participate in the shark research fishery. Shark research fishery participants are subject to 100 percent observer coverage in addition to other terms and conditions. A **Federal Register** notice describing the objectives for the shark research fishery in 2010 was published on October 30, 2009 (74 FR 56177).

The authorized number of species for 2009, as well as the number of specimens collected in 2008, is summarized in Table 1. The number of specimens collected in 2009 will be available when all 2009 interim and annual reports are submitted to NMFS. In 2008, the number of specimens collected was less than the number of authorized specimens for most permit types, with the exception of the number of larvae collected under billfish exempted fishing permits. It is difficult to control the quantity of larvae that may be collected when sampling fish larvae. However, the impacts of these collections on fish populations are not expected to be significant given the high level of natural mortality of fish larvae. In all cases, mortality associated with an EFP, SRP, Display, or LOA (except for larvae) is counted against the appropriate quota. A total of 32 EFPs, SRPs, Display Permits, and LOAs were issued by NMFS in 2008 for the collection of HMS. As of October 2009, there have been a total of 30 EFPs, SRPs, Display Permits, and LOAs issued.

TABLE 1—SUMMARY OF HMS EXEMPTED PERMITS ISSUED IN 2008 AND 2009. "HMS" REFERS TO MULTIPLE SPECIES BEING COLLECTED UNDER A GIVEN PERMIT TYPE

Permit type	2008 Permits issued	2009 Authorized fish (Num)	Authorized larvae (Num)	Fish kept/ discarded dead (Num)	Larvae kept (Num)	Permits issued	Authorized fish (Num)	Authorized larvae (Num)
EFP:								
HMS	7	1,703	0	165	0	6	1,273	0
Shark	4	410	0	101	0	4	304	0
Tuna	5	1,105	0	70	0	4	20	1,000
Billfish	3	95	1,000	1	4,086	1	454	0

TABLE 1—SUMMARY OF HMS EXEMPTED PERMITS ISSUED IN 2008 AND 2009. "HMS" REFERS TO MULTIPLE SPECIES BEING COLLECTED UNDER A GIVEN PERMIT TYPE—Continued

Permit type	2008 Permits issued	2009 Authorized fish (Num)	Authorized larvae (Num)	Fish kept/ discarded dead (Num)	Larvae kept (Num)	Permits issued	Authorized fish (Num)	Authorized larvae (Num)
SRP:								
HMS	1	685	0	66	0	0	0	0
Shark	0	.....	.....	.....	.....	4	454	0
Display:								
HMS	1	36	0	0	0	2	135	0
Shark	5	250	0	02	0	4	140	0
Total	26	4,284	1,000	.....	.....	25	2,326	0
LOA*								
Shark	6	2,625	0	815	0	5	3,025	0

*LOAs are issued for bona fide scientific research activities involved non-ATCA managed species (*e.g.,* most species of sharks). Collections made under a LOA are not authorized; rather this estimated harvest for research is acknowledged by NMFS. Permitees are encouraged to report all fishing activities in a timely manner.

Final decisions on the issuance of any EFPs, SRPs, Display, and Chartering Permits will depend on the submission of all required information about the proposed activities, NMFS' review of public comments received on this notice, an applicant's reporting history on past permits issued, past law enforcement violations, consistency with relevant NEPA documents, and any consultations with appropriate Regional Fishery Management Councils, States, or Federal agencies. NMFS does not anticipate any significant environmental impacts from the issuance of these EFPs as assessed in the 1999 FMP and Amendment 2 to the Consolidated HMS FMP.

Authority: 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*

Dated: November 17, 2009.

Alan Risenhoover,

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

[FR Doc. E9–28063 Filed 11–20–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–831]

Stainless Steel Sheet and Strip in Coils From Taiwan: Notice of Extension of Time Limit for the Final Results of the 2007–2008 Administrative Review

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

FOR FURTHER INFORMATION CONTACT: Henry Almond at (202) 482–0049, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street, and Constitution Avenue, NW., Washington, DC 20230.

Background

On August 5, 2009, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results and partial rescission of the antidumping duty administrative review of stainless steel sheet and strip in coils from Taiwan covering the period July 1, 2007, through June 30, 2008. See Stainless Steel Sheet and Strip in Coils From Taiwan: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review, 74 FR 39055 (August 5, 2009). The final results for this administrative review are currently due no later than December 3, 2009, the next business day after 120 days from the date of publication of the preliminary results of review.

Extension of Time Limit for the Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the final results of an administrative review within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the deadline for the final results to a maximum of 180 days after the date on which the preliminary results are published.

We determine that it is not practicable to complete this administrative review within the original time limits mandated by section 751(a)(3)(A) of the Act because we require additional time to properly consider the complex issues related to middleman dumping raised by interested parties during the briefing process in this case. Therefore, the Department is extending the time limit for completion of the final results of this review by 60 days, in accordance with section 751(a)(3)(A) of the Act. The final results are now due no later than February 1, 2010.

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

Dated: November 13, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–27836 Filed 11–20–09; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XS68

Incidental Takes of Marine Mammals During Specified Activities; Seabird and Pinniped Research Activities in Central California

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, regulations, NMFS has received an application from PRBO Conservation Science (PRBO) for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by incidental harassment, while conducting proposed seabird and

pinniped research activities on Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore in central California. Pursuant to the MMPA, NMFS requests comments on its proposal to authorize PRBO to incidentally take, by Level B harassment only, small numbers of marine mammals, at Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore for one year. Since the proposed activities would occur in the vicinity of pinniped haul out sites, marine mammals could be disturbed as a result of seabird research and human presence; therefore, PRBO has requested an IHA.

DATES: Comments and information must be received no later than December 23, 2009.

ADDRESSES: Comments on the application should be addressed to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing email comments is PR1.0648–XS68@noaa.gov. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size.

All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*.

Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jeannine Cody, NMFS, Office of Protected Resources, NMFS, (301) 713–2289 or Monica DeAngelis, NMFS Southwest Regional Office, (562) 980–3232.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the MMPA (16 U.S.C. 1371 (a)(5)(D)) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional, taking of marine mammals, for periods of not more than one year, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made, if the taking is limited to incidental harassment, and the Secretary publishes a notice of a proposed authorization in the **Federal Register** for public review.

Authorization for incidental taking of small numbers of marine mammals shall be granted if NMFS finds, based on the best available scientific evidence, that the taking will have a negligible impact on the species or stock(s), the number of marine mammals taken will be small and the taking will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. The authorization must set forth the permissible methods of taking, and other means of effecting the least practicable adverse impact on the species or stock(s) and related habitat(s) and monitoring and reporting of such takings. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [''Level A harassment'']; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [''Level B harassment''].

Section 101(a)(5)(D) of the MMPA establishes a 45-day time limit for NMFS' review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Not later than 45 days after the close of the public comment period, the Secretary will either deny the request or make the findings set forth in section 101(a)(5)(D)(i) of the MMPA, and issue the final authorization with appropriate conditions to meet the requirements of section 101(a)(5)(D)(ii) of the MMPA. The Secretary will publish a notice of the issuance or denial of the request within 30 days of making the foregoing determination.

Summary of Request

On October 13, 2009, NMFS received an application from PRBO requesting an authorization for the harassment of small numbers of California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina richardsi*), northern elephant seals (*Mirounga angustirostris*), and Steller sea lions (*Eumetopias jubatus*) incidental to conducting seabird and pinniped research operations on Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore in central California (CA). The proposed action area consists of the following three locations:

South Farallon Islands (SFI)

SFI consists of Southeast Farallon Island (SEFI) and West End Island (WEI). These two islands are directly adjacent to each other and separated by only a 30–foot (ft) (9.1 meters (m)) channel. The SFI have a land area of approximately 120 acres (0.49 square kilometers (km)) and are part of the Farallon National Wildlife Refuge. The islands are located near the edge of the continental shelf 28 miles (mi) (45.1 km) west of San Francisco, CA, and lie within the waters of the Gulf of the Farallones National Marine Sanctuary (NMS).

Año Nuevo Island (ANI)

ANI is located one-quarter mile (402 m) offshore of Año Nuevo Point in San Mateo County, CA). This small 25–acre (0.1 square km) island is part of the Año Nuevo State Reserve, all of which is owned and operated by California State Parks. ANI lies within the Monterey Bay NMS and the newly established Año Nuevo State Marine Conservation Area.

Point Reyes National Seashore (PRNS)

PRNS is located 40 miles (64.3 km) north of San Francisco Bay and lies within close proximity (6 mi, 9.6 km) of the Cordell Bank NMS. The proposed research areas are within the headland coastal areas of this large national park.

Specified Activities

Seabird Research on SEFI

Seabird research activities involve observational and marking (i.e. netting and banding for capture-mark-recapture) studies of breeding seabirds and viewing breeding seabirds from an observation blind or censusing shorebirds. This activity usually involves one or two observers who

access the island's two landings, the North Landing and the East Landing, by 14 to 18 ft (4.3 to 5.5 m) open motorboats which are hoisted onto the island using a derrick system.

Researchers visit the sites approximately one to three times per day for a maximum of 1080 visits per year. Most visits to these areas are brief (approximately 15 minutes (min)). From early April through early August, seabird observers are present from two to five hours daily at North Landing to conduct observational studies on breeding common murres (Uria aalge).

Most intertidal areas of the island, where marine mammals are present, are rarely visited in seabird research. In both locations (North Landing and East Landing) the observers are located greater than 50 ft (15.2 m) above any pinnipeds–primarily California sea lions or northern elephant seals and to a lesser extent harbor seals–which may be hauled out. Most potential for incidental take will occur on the island's two landings. However, the likelihood of encountering the eastern stock of Steller sea lions at both sites is rare.

Field Station Resupply on SEFI

PRBO will resupply the field station once every two weeks for a maximum of 26 visits per year. These visits to either the North Landing or East Landing will last one to three hours and involve launching of the boat with one operator along with two to four researchers assisting with the operations from land. At East Landing–the primary landing site–all personnel assisting with the landing will stay on the loading platform 30 ft (9.1 m) above the water. At North Landing, loading operations occur at the water level in the intertidal. Again, the likelihood of encountering eastern Steller sea lions at this location is rare.

Pinniped Research on West End Island (WEI)

Pinniped research activities involve surveying breeding elephant seals on WEI between early December and late February. There are approximately five surveys per year, each lasting approximately two hours. These surveys involve three observers moving approximately 1500 ft (457.2 m) above pinniped colonies to census northern elephant seal areas. Any transit above eastern Steller sea lion haulout areas will last approximately 30 min in duration.

Seabird Research on Año Nuevo Island (ANI)

Seabird research activities involve monitoring seabird burrow nesting habitat quality and habitat restoration between the seabird breeding season and the elephant seal pupping season. All work is conducted by PRBO in collaboration with Oikonos - Ecosystem Knowledge through a collaborative agreement with California State Parks.

This activity involves two to three researchers who may access the island by a 12 ft (3.7 m) Zodiac boat to conduct research once a week April through August; restoration and monitoring from September-November; and intermittent visits during the rest of the year. Landings and visits to the nest boxes are brief in duration (approximately 15 min) and the maximum number of visits to the island would be 30 per year.

Most potential for incidental take would occur at the landing beach on the north side of the island when the researchers arrive and depart to check the boxes. Non-breeding pinnipeds may occasionally be present, including California sea lions that may be hauled out near a small group of subterranean seabird nest boxes on the island terrace. In both locations researchers are located more than 50 ft (15.2 m) away from any pinnipeds which may be hauled out.

Seabird Research on Point Reyes National Seashore (PRNS)

The National Park Service in collaboration with PRBO conducts: marine mammal research (see NMFS Scientific Permit 373–1868); monitoring of seabird breeding and roosting colonies; habitat restoration; removal of non-native plants, intertidal monitoring, and maintenance of coastal dune habitat.

Seabird monitoring usually involves one or two observers conducting the survey by small boats (12 to 22 ft) along the PRNS shoreline. Observers will visit the site year round, with an emphasis during the seabird nesting season with occasional, intermittent visits during the rest of the year. The maximum number of visits per year by PRBO to the PRNS is 18.

A majority of the research occurs in areas where marine mammals are not present. However, the potential for incidental harassment will occur at the landing beaches along Point Reyes Headland, boat ramps, or parking lots where northern elephant seals, harbor seals, or California sea lions may be hauled out in the vicinity.

Description of the Marine Mammals Potentially Affected by the Activity

The marine mammals most likely to be harassed incidental to conducting seabird research at the proposed research areas on SEFI, ANI, and PRNS are primarily California sea lions, northern elephant seals, Pacific harbor seals, and to a lesser extent Steller sea lions.

The marine mammals most likely to be harassed incidental to conducting research on harbor seals and northern elephant seals (NMFS Scientific Research Permit (SRP) 373–1868–00) are primarily Steller sea lions. Incidental harassment of elephant seals, harbor seals, California sea lions, and northern fur seals is authorized by SRP 373–1868–00.

General information of these species can be found in Caretta *et al.* (2008) and Angliss and Allen (2008) and is available at the following URLs: *http://www.nmfs.noaa.gov/pr/pdfs/sars/po2008.pdf* and *http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2008.pdf*. Refer to these documents for information on these species. Additional information on these species is presented below this section.

Northern Elephant Seal

Northern elephant seals are not listed as threatened or endangered under the ESA, nor are they categorized as depleted under the MMPA.The northern elephant breeding population is distributed from central Baja California, Mexico, to the Point Reyes Peninsula in northern California. Along this coastline there are 13 major breeding colonies.

Populations of northern elephant seals in the U.S. and Mexico were all originally derived from a few tens or a few hundreds of individuals surviving in Mexico after being nearly hunted to extinction (Stewart *et al.*, 1994). Given the very recent derivation of most rookeries, no genetic differentiation would be expected. Although movement and genetic exchange continues between rookeries, most elephant seals return to their natal rookeries when they start breeding (Huber *et al.*, 1991). The California breeding population is now demographically isolated from the Baja California population. No international agreements exist for the joint management of this species by the U.S. and Mexico. The California breeding population is considered to be a separate stock (Caretta *et al.*, 2008).

A complete population count of elephant seals is not possible because all age classes are not ashore at the same time. Elephant seal population size is typically estimated by counting the number of pups produced and multiplying by the inverse of the expected ratio of pups to total animals (McCann, 1985). Stewart *et al.*, (1994) used McCann's multiplier of 4.5 to extrapolate from 28,164 pups to a population estimate of 127,000 elephant seals in the U.S. and Mexico in 1991.

The multiplier of 4.5 was based on a non-growing population. Boveng (1988) and Barlow *et al.* (1993) suggest that a multiplier of 3.5 is more appropriate for a rapidly growing population such as the California stock of elephant seals. Based on the estimated 35,549 pups born in California in 2005 and this 3.5 multiplier, the California stock was approximately 124,000 in 2005.

At Point Reyes, the population grew at 32.8 percent per year between 1988 and 1997 (Sydeman and Allen, 1999) and around 10 percent per year since 2000 (S. Allen, unpubl. data), and in 2006 around 700 pups were born at three primary breeding areas. The population on the Farallon Islands has declined by 3.4 percent per year since 1983, and in recent years numbers have fluctuated between 100 and 200 pups (W. Sydeman, D. Lee, unpubl. data).

Elephant seals congregate in central California to breed from late November to March. Females typically give birth to a single pup and attend the pup for up to six weeks. Breeding occurs after the pup is weaned by attending males. After breeding, seals migrate to the Gulf of Alaska or deeper waters in the eastern Pacific. Adult females and juveniles return to terrestrial colonies to molt in April and May, and males return in June and July to molt, remaining onshore for around three weeks.

Pacific Harbor Seal

Pacific harbor seals are not listed as threatened or endangered under the ESA, nor are they categorized as depleted under the MMPA. The animals inhabit near-shore coastal and estuarine areas from Baja California, Mexico, to the Pribilof Islands in Alaska. Pacific harbor seals are divided into two subspecies: *P. v. stejnegeri* in the western North Pacific, near Japan, and *P. v. richardsi* in the northeast Pacific Ocean. The latter subspecies, recognized as three separate stocks, inhabits the west coast of the continental United States, including: the outer coastal waters of Oregon and Washington states; Washington state inland waters; and Alaska coastal and inland waters. Two of these stocks, the California stock and Oregon/Washington coast stock, of Pacific harbor seals are identified off the coast of Oregon and California for management purposes under the MMPA. However, the stock boundary is difficult to distinguish because of the continuous distribution of harbor seals along the west coast and any rigid boundary line is (to a greater or lesser extent) arbitrary, from a biological perspective (Carretta *et al.*, 2008). Due to the location of the proposed project which is situated near the border of Oregon and California, both stocks could be present within the proposed project area.

In 2008, the estimated population of the California of Pacific harbor seals ranged from 31,600 to 34,233 animals and the maximum population growth rate was 3.5 percent. The estimated population of the Oregon/Washington coast stocks was 22,380 animals and the maximum population growth rate was 4.0 percent. (Carretta *et al.*, 2008)

In California, over 500 harbor seal haulout sites are widely distributed along the mainland and offshore islands, and include rocky shores, beaches and intertidal sandbars (Lowry *et al.*, 2005). Harbor seals mate at sea and females give birth during the spring and summer, although, the pupping season varies with latitude. Pups are nursed for an average of 24 days and are ready to swim minutes after being born. Harbor seal pupping takes place at many locations and rookery size varies from a few pups to many hundreds of pups.

At Point Reyes, the harbor seal population is estimated to be 7,524 for the molt season based on a correction factor of 1.65 (Lowry *et al.*, 2005; Manna *et al.*, 2006).

California Sea Lion

California sea lions are not listed as threatened or endangered under the ESA, nor are they categorized as depleted under the MMPA. The California sea lion includes three subspecies: *Z. c. wollebaeki* (on the Galapagos Islands), *Z. c. japonicus* (in Japan, but now thought to be extinct), and Z. c. californianus (found from southern Mexico to southwestern Canada; herein referred to as the California sea lion). The subspecies is comprised of three stocks: (1) the U.S. stock, beginning at the U.S./Mexico border extending northward into Canada; (2) the western Baja California stock, extending from the U.S./Mexico border to the southern tip of the Baja California peninsula; and (3) the Gulf of California stock, which includes the Gulf of California from the southern tip of the Baja California peninsula and across to the mainland and extends to southern Mexico (Lowry *et al.*, 1992).

In 2008, the estimated population of the U.S. stock of California sea lion ranges from 141,842 to 238,000 animals and the maximum population growth rate was 6.52 percent when pup counts from El Niño years (1983, 1984, 1992, 1993, 1998, and 2003) were removed (Carretta *et al.*, 2008).

Major rookeries for the California sea lion exist on the Channel Islands off southern California and on the islands situated along the east and west coasts of Baja California. Males are polygamous, establishing breeding territories that may include up to fourteen females. They defend their territories with aggressive physical displays and vocalization. Sea lions reach sexual maturity at four to five years old and the breeding season lasts from May to August. Most pups are born from May through July and weaned at 10 months old.

The U.S. stock of California sea lion is the only stock present in the proposed research area and in recent years, California sea lions have begun to breed annually in small numbers at ANI and SFI, CA. On the Farallon Islands, California sea lions haul out in many intertidal areas year round, fluctuating from several hundred to several thousand animals. Breeding animals are concentrated in areas where researchers would not visit (PRBO, unpublished data).

California sea lions at PRNS haul out at only a couple locations, but will occur on human structures such as boat ramps. The annual population averages around 300 to 500 during the fall through spring months, although on occasion, several thousand sea lions can arrive depending upon local prey resources (S. Allen, unpublished data).

Steller Sea Lion

The Steller sea lion eastern stock is listed as threatened under the ESA and is categorized as depleted under the MMPA. Steller sea lions range along the North Pacific Rim from northern Japan to California (Loughlin *et al.*, 1984), with centers of abundance and distribution in the Gulf of Alaska and Aleutian Islands, respectively. Two separate stocks of Steller sea lions were recognized within U.S. waters: an eastern U.S. stock, which includes animals east of Cape Suckling, Alaska (144° W), and a western U.S. stock, which includes animals at and west of Cape Suckling (Loughlin, 1997). The species is not known to migrate, but individuals disperse widely outside of the breeding season (late May through early July), thus potentially intermixing with animals from other areas.

In 2008, the estimated population of the eastern U.S. stock ranged from 44,404 to 55,832 animals and the maximum population growth rate was 3.1 percent (Angliss and Allen, 2009).

The eastern U.S. stock of Steller sea lions breeds on rookeries located in southeast Alaska, British Columbia, Oregon, and California; there are no rookeries located in Washington state. Counts of pups on rookeries conducted near the end of the birthing season are

nearly complete counts of pup production.

Despite the wide-ranging movements of juveniles and adult males in particular, exchange between rookeries by breeding adult females and males (other than between adjoining rookeries) appears low, although males have a higher tendency to disperse than females (NMFS, 1995, Trujillo *et al.*, 2004, Hoffman *et al.*, 2006). A northward shift in the overall breeding distribution has occurred, with a contraction of the range in southern California and new rookeries established in southeastern Alaska (Pitcher *et al.*, 2007).

The current population of eastern Steller sea lions in the proposed research area is estimated to number between 50 and 750 animals. The PRBO estimates that between 50 and 150 Steller sea lions live on the Farallon Islands, and the NMFS Southwest Fisheries Science Center (SWFSC) estimates between 400 and 600 live on ANI (PRBO unpublished data, 2008; SWFSC unpublished data, 2008).

On SEFI, the abundance of females declined an average of 3.6 percent per year from 1974 to 1997 (Sydeman and Allen 1999). Pup counts at ANI declined 5 percent annually through the 1990s (NOAA Stock Assessment, 2003), and have apparently stabilized between 2001 and 2005 (M. Lowry, SWFSC unpublished data).

In 2000, the combined pup estimate for both islands was 349. In 2005, the pup estimate was 204 on ANI. Pup counts on the Farallon Islands have generally varied from five to 15 (Hastings and Sydeman, 2002; PRBO unpublished data). Pups have not been born at Point Reyes Headland since the 1970s and Steller sea lions are seen in very low numbers there currently (S. Allen, unpubl. data).

Steller sea lions give birth in May through July and breeding commences a couple of weeks after birth. Non-reproductive animals congregate at a few haul out sites, including at ANI and Point Reyes Headland. Pups are weaned during the winter and spring of the following year.

Potential Effects on Marine Mammals

The only anticipated impacts would be temporary disturbances caused by the appearance of researchers near the pinnipeds. The potential disturbance might alter pinniped behavior and cause animals to flush from the area. Animals may return to the same site once researchers have left or go to an alternate haul out site, which usually occurs within 30 min (Allen *et al.*, 1985). Long term effects of this disturbance are unlikely, as very few breeding animals will be present in the vicinity of the proposed seabird research areas.

It is expected that any incidental disturbance to pinnipeds from both types of research would have minimal, short-term effects and no long-term effects on the individuals. Incidental disturbance is believed to have minimal impacts because pinnipeds usually return to a site or a nearby site within 30 min upon conclusion of research activities (Allen *et al.*, 1985). Numerous IHAs and Letters of Authorizations issued under the MMPA, Incidental Take Statements issued under Section 10(a)(1)(b) of the ESA (e.g. 72 FR 124, January 3, 2007), and reports on more localized areas (e.g., Demarchi and Bentley, 2004) have analyzed the potential effects of incidental disturbance to pinnipeds from various sources. Based on these reports, the effects to pinnipeds appear, at the most, to displace the animals temporarily from their haul out sites. Based on previous monitoring reports from PRBO, maximum disturbance to Steller sea lions would result in the animals flushing into the water in response to presence of the researchers. It is not expected that pinnipeds would permanently abandon a haul-out site during PRBO's research, as precautions would be taken to not disturb the same haul-out site on frequent occasions.

No research would occur on pinniped rookeries; therefore, mother and pup separation or crushing of pups is not a concern. Incidental harassment may occur as researchers approach the haul out sites with vessels and during capture and sampling activities of harbor seals and northern elephant seals.

In PRBO's final report of activities conducted between December 12, 2007 to December 11, 2008 for the 2007 IHA, they reported disturbing three Steller sea lions on SEFI and 13 Steller sea lions on ANI during all surveys.

Potential Impacts on Habitat

Neither the proposed seabird research, nor the proposed pinniped research would result in the physical altering of marine mammal habitat. Further, incidental marine mammal takes will not result in the physical altering of marine mammal habitat or major breeding habitat. No survey or sampling equipment will be left in habitat areas; no toxic chemicals will be present; and all state and federal marine regulations, including those from National Marine Sanctuaries, will be followed in regards to boat emissions.

Potential Impacts to Subsistence Harvest of Marine Mammals

There is no subsistence harvest of marine mammals in the proposed research area; therefore, there will be no impact of the activity on the availability of the stocks of marine mammals for subsistence uses.

Number of Marine Mammals Expected to Be Taken

It is estimated that approximately 5,000 California sea lions, 418 harbor seals, 253 northern elephant seals, and 20 Steller sea lions could be potentially affected by Level B behavioral harassment over the course of the proposed IHA. This estimate is based on previous research experiences, with the same activities conducted in the proposed research area, and on marine mammal research activities in these areas. These incidental harassment take numbers represent approximately two percent of the U.S. stock of California sea lion, 1.2 percent of the California stock of Pacific harbor seal, less than one percent of the California breeding stock of northern elephant seal, and 0.04 percent of the eastern U.S. stock of Steller sea lion. All of the potential takes are expected to be Level B behavioral harassment only. All of the potential takes are expected to be Level B behavioral harassment only. Because of the mitigation measures that will be required and the likelihood that some pinnipeds will avoid the area, no injury or mortality to pinnipeds is expected or requested.

Proposed Monitoring and Mitigation Measures

To reduce the potential for disturbance from visual and acoustic stimuli associated with these activities, PRBO proposes to undertake the following marine mammal mitigation measures:(1) researchers would keep their voices hushed and bodies low in the visual presence of pinnipeds; (2) seabird observations at North Landing on Southeast Farallon Island would be conducted in an observation blind where researchers are shielded from the view of hauled out pinnipeds; (3) beach landings on Año Nuevo Island would only occur after any pinnipeds that might be present on the landing beach have entered the water; (4) Año Nuevo Island researchers accessing seabird nest boxes would crawl slowly if pinnipeds are within view; (5) visits to intertidal areas of Southeast Farallon Island during research activities would be coordinated to reduce potential take; (6) all research goals on Año Nuevo Island would be coordinated to minimize the

necessary number of trips to the island; (7) once on Año Nuevo Island, researchers would coordinate monitoring schedules so that areas near any pinnipeds would be accessed only once per visit; and (8) the lead biologist would always serve as an observer to evaluate incidental take and halt any research activities should the potential for incidental take be too great.

Proposed Monitoring and Reporting

Researchers would take notes of sea lions and seals observed within the proposed research area during studies. The notes would provide dates, time, tidal height, species, numbers of sea lions and seals present, and any disturbances. PRBO would submit a final report, including these notes, to NMFS within 90 days after the expiration of the Incidental Harassment Authorization (IHA), if it is issued.

National Environmental Policy Act (NEPA)

In 2007, NMFS prepared a draft Environmental Assessment (EA) on the issuance of an IHA to PRBO to take marine mammals by Level B harassment incidental to conducting seabird research in central California. The draft EA was released for public review and comment along with the application and the proposed IHA (72 FR 41294, July 27, 2007). All comments were addressed in full in the **Federal Register** Notice of Issuance of an IHA for PRBO (72 FR 71121, December 14, 2007). At that time, NMFS determined that conducting the seabird research would not have a significant impact on the quality of the human environment and issued a Finding of No Significant Impact. In 2008, NMFS prepared a supplemental EA (SEA) to address new available information regarding the effects of PRBO's seabird and pinniped research activities that may have cumulative impacts to the physical and biological environment. At that time, NMFS concluded that issuance of an IHA for the December 2008 through 2009 season would not significantly affect the quality of the human environment and issued a FONSI for the 2008 SEA regarding PRBO's activities. In conjunction with this year's application, NMFS has again reviewed the EA and SEA and determined that there are no new direct, indirect or cumulative impacts to the human and natural environment associated with the proposed IHA requiring evaluation in a supplemental EA and NMFS therefore reaffirms the 2008 FONSI.

Endangered Species Act

NMFS Headquarters' Office of Protected Resources, Permits, Conservation, and Education Division conducted a formal section 7 consultation under the ESA with the NMFS Headquarters' Office of Protected Resources, Endangered Species Division. On November 18, 2008, NMFS issued a Biological Opinion (BiOp) and concluded that the issuance of an IHA is likely to affect, but not likely to jeopardize the continued existence of Steller sea lions. The BiOp included an incidental take statement (ITS) for Steller sea lions. The ITS contains reasonable and prudent measures implemented by terms and conditions to minimize the effects of this take. NMFS has reviewed the BiOp and determined that there is no new information regarding effects to Stellar sea lions; the action has not been modified in a manner which would cause adverse effects not previously evaluated; there has been no new listing of species or designation of critical habitat that could be affected by the action; and, the action will not exceed the extent or amount of incidental take authorized in the BiOp. Therefore, the proposed IHA does not require the reinitiation of Section 7 consultation under the ESA.

Preliminary Conclusions

Based on the preceding information, and provided that the proposed mitigation and monitoring are incorporated, NMFS has preliminarily concluded that the impact of PRBO conducting proposed seabird and pinniped research activities on Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore in central CA would incidentally take, by level B behavioral harassment only, small numbers of Steller sea lions, California sea lions, Pacific harbor seals, and northern elephant seals in the vicinity of the proposed activities.

While behavioral modifications, including temporarily vacating the area during the lighthouse restoration and maintenance period, may be made by these species to avoid the resultant visual disturbance from human presence, the availability of alternate areas within these areas and haul-out sites, and the short and sporadic duration of the restoration and maintenance activities, have led NMFS to preliminarily determine that this proposed action will have a negligible impact on affected stocks of Steller sea lions, California sea lions, Pacific harbor seals, and northern elephant seals.

There is no subsistence harvest of marine mammals on or near SEFI, ANI, and PRNS; therefore, there will be no impact of the activity on the availability of the stocks of marine mammals for subsistence uses. Harassment takes should be at the lowest level practicable due to incorporation of the mitigation measures proposed in this document. Take by Level A harassment or death is not anticipated.

Proposed Authorization

NMFS proposes to issue an IHA to PRBO to conduct seabird and pinniped research activities on Southeast Farallon Island, Año Nuevo Island, and Point Reyes National Seashore during December 22, 2009, through December 23, 2009, provided that the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: November 18, 2009

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–28065 Filed 11–20–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XT04

Marine Mammals; File No. 1058–1733

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

ACTION: Notice; issuance of permit amendment.

SUMMARY: Notice is hereby given that Mark Baumgartner, Ph.D., MS 133, Woods Hole Oceanographic Institute, Woods Hole, Massachusetts, 02543, has been issued an amendment to scientific research Permit No. 1058–1733.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices: See **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Kristy Beard, (301)713–2289.

SUPPLEMENTARY INFORMATION: On December 24, 2008, notice was published in the **Federal Register** (73 FR 79058) that an amendment to Permit No. 1058–1733, issued July 27, 2007 (72 FR 36429), had been requested by the above-named individual. The requested amendment has been granted under the authority of the Marine Mammal

Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 1058–1733 authorizes the permit holder to examine baleen whale foraging and diving behaviors in the Southern Ocean as well as to determine the overlap of diving behaviors with the vertical structure of fixed fishing gear in the North Atlantic Ocean. In the Southern Ocean, researchers may closely approach humpback (*Megaptera novaeangliae*), blue (*Balaenoptera musculus*), fin (*B. physalus*), sei (*B. borealis*), and Antarctic minke (*B. bonaerensis*) whales during vessel surveys for photo-identification, behavioral observation, suction-cup tagging, tracking, and incidental harassment. In the North Atlantic, researchers may closely approach up to 324 of each species of humpback, fin, and sei whales annually during vessel surveys for photo-identification, behavioral observation, tracking, and incidental harassment. Of these animals, up to 108 of each species may be suction-cup tagged annually during surveys.

This amendment: (1) expands the study area to include waters of the North Pacific and Arctic Oceans and the North Atlantic Ocean to the U.S. Exclusive Economic Zone; (2) authorizes five additional large whale species or populations: North Atlantic right (*Eubalaena glacialis*), North Pacific right (*E. japonica*), Northern blue (*B. musculus musculus*), Eastern gray (*Eschrichtius robustus*), and bowhead whales (*Balaena mysticetus*) to be harassed during vessel surveys for the above authorized activities; and (3) authorizes the tagging of humpback, fin and sei whales in the North Atlantic and species listed in (2) with archival tags using sub-dermal attachments. This research will provide a better understanding of large whale distribution and foraging ecology by gathering data on predator-prey relationships, diving behavior, day vs. night behavior, and acoustic behavior. The amendment is valid until the permit expires on May 31, 2012.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an environmental assessment was prepared analyzing the effects of the permitted activities. After a Finding of No Significant Impact, the determination was made that it was not necessary to prepare an environmental impact statement.

Issuance of this amended permit, as required by the ESA, was based on a finding that such permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Documents may be reviewed in the following locations:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018;

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978)281–9328; fax (978)281–9394; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727)824–5312; fax (727)824–5309.

Dated: November 17, 2009.

P. Michael Payne,

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

[FR Doc. E9–28064 Filed 11–20–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Commerce Spectrum Management Advisory Committee Meeting

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

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a public meeting of the Commerce Spectrum Management Advisory Committee (Committee). The Committee provides advice to the Assistant Secretary for Communications and Information on spectrum policy matters.

DATES: The meeting will be held on December 9, 2009, from 9:30 a.m. to 2:00 p.m., Eastern Standard Time.

ADDRESSES: The meeting will be held at the U.S. Department of Commerce, 1401 Constitution Avenue, NW, Room 4813, Washington, DC 20230. Public comments may be mailed to Commerce Spectrum Management Advisory Committee, National Telecommunications and Information Administration, 1401 Constitution Avenue, NW, Room 4725, Washington, DC 20230 or emailed to spectrumadvisory@ntia.doc.gov.

FOR FURTHER INFORMATION CONTACT: Joe Gattuso, Designated Federal Officer, at (202) 482–0977 or jgattuso@ntia.doc.gov; and/or visit NTIA's web site at www.ntia.doc.gov.

SUPPLEMENTARY INFORMATION:

Background: The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information on needed reforms to domestic spectrum policies and management to enable the introduction of new spectrum-dependent technologies and services, including long-range spectrum planning and policy reforms for expediting the American public's access to broadband services, public safety, and digital television. This Committee is subject to the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 and is consistent with the National Telecommunications and Information Administration Act, 47 U.S.C. § 904(b). The Committee functions solely as an advisory body in compliance with the FACA. For more information about the Committee visit http://www.ntia.doc.gov/advisory/spectrum.

Matters to Be Considered: The Committee is expected to hear presentations on spectrum related issues from representatives of the Federal Communications Commission and from NTIA staff. It also will receive status reports from its subcommittees on work plans and benchmarks.

There also will be an opportunity for public comment at the meeting.

Time and Date: The meeting will be held on December 9, 2009, from 9:30 a.m. to 2:00 p.m. Eastern Standard Time. The times and the agenda topics are subject to change. The meeting may be webcast. Please refer to NTIA's web site, http://www.ntia.doc.gov, for the most up-to-date meeting agenda.

Place: The meeting will be held at the U.S. Department of Commerce, 1401 Constitution Avenue, NW, Room 4813, Washington, DC 20230. The meeting will be open to the public and press on a first-come, first-served basis. Space is limited. The public meeting is physically accessible to people with disabilities. Individuals requiring

special services, such as sign language interpretation or other ancillary aids, are asked to notify Mr. Gattuso at (202) 482–0977 or jgattuso@ntia.doc.gov, at least five (5) business days before the meeting.

Status: Interested parties are invited to attend and to submit written comments with the Committee at any time before or after a meeting. Parties wishing to submit written comments for consideration by the Committee in advance of this meeting should send them to the above-listed address and must be received by close of business on December 2, 2009, to provide sufficient time for review. Comments received after December 2, 2009, will be distributed to the Committee but may not be reviewed prior to the meeting. It would be helpful if paper submissions also include a compact disc (CD) in HTML, ASCII, Word or WordPerfect format (please specify version). CDs should be labeled with the name and organizational affiliation of the filer, and the name of the word processing program used to create the document. Alternatively, comments may be submitted electronically to spectrumadvisory@ntia.doc.gov. Comments provided via electronic mail also may be submitted in one or more of the formats specified above.

Records: NTIA maintains records of all Committee proceedings. Committee records are available for public inspection at NTIA's office at the address above. Documents including the Committee's charter, membership list, agendas, minutes, and any reports are available on NTIA's Committee web page at http://www.ntia.doc.gov/advisory/spectrum.

Dated: November 17, 2009.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. E9–28072 Filed 11–20–09; 8:45 am]

BILLING CODE 3510–60–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–469–814)

Chlorinated Isocyanurates from Spain: Rescission of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: November 23, 2009.

FOR FURTHER INFORMATION CONTACT: Myrna Lobo or Andrew Huston, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2371 or (202) 482–4261 respectively.

Background

On June 1, 2009, the Department of Commerce (''the Department'') published in the **Federal Register** a notice of ''Opportunity to Request an Administrative Review'' of the antidumping order on chlorinated isocyanurates from Spain for the period June 1, 2008 through May 31, 2009. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 74 FR 26202 (June 1, 2009). On June 23, 2009, in accordance with 19 CFR 351.213(b), the Department received a timely request from Aragonesas Industrias y Energia (Aragonesas) to conduct an administrative review of Aragonesas. On June 30, 2009, Clearon Corporation and Occidental Chemical Corporation, (collectively, petitioners), submitted a timely request to conduct an administrative review of Aragonesas.

On July 29, 2009, the Department published a notice of initiation of an antidumping duty administrative review of Aragonesas' exports of chlorinated isocyanurates from Spain. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Review*, 74 FR 37690 (July 29, 2009). On October 19, 2009 Aragonesas timely withdrew its request for review. Petitioners timely withdrew their request on October 27, 2009.

Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation of the requested review. On October 19, 2009 Aragonesas withdrew its request for review, and petitioners withdrew their request on October 27, 2009. All parties withdrew their requests before the 90-day deadline. Therefore, in response to the parties' timely withdrawals of their requests for review, and pursuant to 19 CFR 351.213(d)(1), the Department is rescinding the administrative review of the antidumping duty order on chlorinated isocyanurates from Spain for the period June 1, 2008 through May 31, 2009.

Assessment

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. Since Aragonesas' review is being rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CPB 15 days after publication of this rescission notice in the **Federal Register**.

Notification to Importers

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

Notification Regarding Administrative Protective Order

This notice serves as a final reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with 19 CFR 351.213(d)(4).

Dated: November 17, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–28051 Filed 11–20–09; 8:45 am]

BILLING CODE 3510–DS–S

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed deletions from procurement list.

SUMMARY: The Committee is proposing to delete products and services previously furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received on or Before: 12/21/2009.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. If approved, the action may result in authorizing small entities to furnish the products and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for deletion from the Procurement List.

End of Certification

The following products and services are proposed for deletion from the Procurement List:

Products

NSN: 7530–01–450–5414—Appointment Book Refill, 2008.
NSN: 7510–01–450–5407—Calendar Pad, Type I, 2008.
NSN: 7510–01–450–5425—Calendar Pad, Type II, 2008.
NPA: The Easter Seal Society of Western Pennsylvania, Pittsburgh, PA.
Contracting Activity: GSA/FSS OFC SUP CTR—Paper Products, New York, NY.

Services

Service Type/Location: Food Service Attendant, Rickenbacker Reserve, Redtail Building Reserve Base, 7370 Minuteman Way, Columbus, OH.
NPA: Goodwill Columbus Outsource Solutions, Columbus, OH.
Contracting Activity: Dept of the Army, XRAW7NU USPFO Activity OH ARNG, Columbus, OH.

Service Type/Location: Janitorial/Custodial, TSA Office Space: Norfolk International Airport, 2200 Norview Avenue, Norfolk, VA.
NPA: Portco, Inc., Portsmouth, VA.
Contracting Activity: GSA/PBS/R03 Richmond, VA.

Service Type/Location: Tape Cleaning, Robins Air Force Base, GA.
NPA: Epilepsy Association of Georgia, Warner Robins, GA.
Contracting Activity: Dept of the Air Force, FA8501 WR ALC PKO, Robins AFB, GA.

Service Type/Location: Parts Sorting, Defense Reutilization and Marketing Office, Robins AFB, GA.
NPA: Epilepsy Association of Georgia, Warner Robins, GA.
Contracting Activity: Defense Logistics Agency, DLA Support Services—DSS, Ft Belvoir, VA.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. E9–27964 Filed 11–20–09; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List services to be provided by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 12/21/2009.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 9/11/2009, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (74 FR 46748–46749) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will provide the services to the Government.
2. The action will result in authorizing small entities to provide the services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Custodial Services, USDA APHIS National Detector Dog Training Center, 360 Walt Sanders Memorial Drive, Newnan, GA.
NPA: WORKTEC, Jonesboro, GA.
Contracting Activity: USDA, Animal and Plant Health Inspection Service, Minneapolis, MN.

Service Type/Location: Switchboard Operation, James J Peters VA Medical Center, 130 West Kingsbridge Road, Bronx, NY.
NPA: Association for Vision Rehabilitation and Employment, Inc., Binghamton, NY.
Contracting Activity: Department of Veterans Affairs, VISN 3 Consolidated Acquisition, Bronx, NY.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. E9–27965 Filed 11–20–09; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61020]

Joint Order To Exclude Indexes Composed of Certain Index Options From the Definition of Narrow-Based Security Index Pursuant to Section 1a(25)(B)(vi) of the Commodity Exchange Act and Section 3(a)(55)(C)(vi) of the Securities Exchange Act of 1934

AGENCY: Commodity Futures Trading Commission and Securities and Exchange Commission.

ACTION: Joint order.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'') and the Securities and Exchange Commission (''SEC'') (collectively, ''Commissions'') by joint order under the Commodity Exchange Act (''CEA'') and the Securities Exchange Act of 1934 (''Exchange Act'') are excluding certain security indexes from the definition of ''narrow-based security index.'' Specifically, the Commissions are excluding from the definition of the term ''narrow-based security index'' certain volatility indexes composed of series of index options on broad-based security indexes.

DATES: *Effective Date:* November 17, 2009.

FOR FURTHER INFORMATION CONTACT:

CFTC: Thomas M. Leahy, Jr., Branch Chief, Market and Product Review Section, Division of Market Oversight, telephone: (202) 418–5278 or Julian E. Hammar, Assistant General Counsel, telephone: (202) 418–5118, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

SEC: Richard R. Holley III, Senior Special Counsel, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. Telephone (202) 551–5614.

SUPPLEMENTARY INFORMATION:

I. Background

Futures contracts on single securities and on narrow-based security indexes (collectively, ''security futures'') are jointly regulated by the CFTC and the SEC.[1] To distinguish between security futures on narrow-based security indexes, which are jointly regulated by the Commissions, and futures contracts on broad-based security indexes, which are under the exclusive jurisdiction of the CFTC, the CEA and the Exchange Act each includes an objective definition of the term ''narrow-based security index.'' A futures contract on an index that meets the definition of a narrow-based security index is a security future. A futures contract on an index that does not meet the definition of a narrow-based security index is a futures contract on a broad-based security index.[2]

Section 1a(25)(A) of the CEA[3] *and Section 3(a)(55)(B) of the Exchange Act*[4] *provide that an index is a ''narrow-based security index'' if, among other things, it meets one of the following four criteria:*

(i) The index has nine or fewer component securities;

(ii) any component security of the index comprises more than 30 percent of the index's weighting;

(iii) the five highest weighted component securities of the index in the aggregate comprise more than 60 percent of the index's weighting; or

(iv) the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting have an aggregate dollar value of average daily trading volume of less than $50,000,000 (or in the case of an index with 15 or more component securities, $30,000,000), except that if there are two or more securities with equal weighting that could be included in the calculation of the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting, such securities shall be ranked from lowest to highest dollar value of average daily trading volume and shall be included in the calculation based on their ranking starting with the lowest ranked security.

The first three criteria evaluate the composition and weighting of the securities in the index. The fourth criterion evaluates the liquidity of an index's component securities.

Section 1a(25)(B)(vi) of the CEA[5] and Section 3(a)(55)(C)(vi) of the Exchange Act[6] provide that, notwithstanding the above criteria, an index is not a narrow-based security index if a contract of sale for future delivery on the index is traded on or subject to the rules of a board of trade and meets such requirements as are jointly established by rule, regulation, or order by the Commissions. Pursuant to that authority, the Commissions may jointly exclude an index from the definition of the term ''narrow-based security index.''

Using this authority, on March 25, 2004, the Commissions issued a joint order excluding volatility indexes that satisfy certain conditions from the definition of ''narrow-based security index''.[7]

II. Discussion

The statutory definition of the term ''narrow-based security index'' is designed to distinguish among indexes composed of individual stocks. As a result, certain aspects of that definition are designed to take into account the trading patterns of individual stocks rather than those of other types of exchange-traded securities, such as security index options. However, the Commissions believe that the definition is not limited to indexes on individual stocks. In fact, Section 1a(25)(B)(vi) of the CEA[8] and Section 3(a)(55)(C)(vi) of the Exchange Act[9] give the Commissions joint authority to make determinations with respect to security indexes that do not meet the specific statutory criteria.

The Commissions believed, when issuing the 2004 Joint Order excluding certain volatility indexes from the definition of ''narrow-based security index,'' that certain volatility indexes were appropriately classified as broad-based because they measure the magnitude of changes in the level of an underlying index that is a broad-based security index. Further, the Commissions noted that they believed that futures contracts on volatility indexes that satisfied the conditions set forth in the 2004 Joint Order should not be readily susceptible to manipulation. The Commisions believed that those conditions reduce the ability to manipulate the price of the futures contracts through manipulation of the options comprising the volatility index.

Eurex[10] has requested that the Commissions exclude the VDAX–NEW® volatility index from the definition of ''narrow-based security index.''[11] According to Eurex, this volatility index

[1] *See* Section 1a(31) of the CEA and Section 3(a)(55)(A) of the Exchange Act, 7 U.S.C. 1a(31) and 15 U.S.C. 78c(a)(55)(A).

[2] *See* 17 CFR 41.1(c).

[3] 7 U.S.C. 1a(25)(A).

[4] 15 U.S.C. 78c(a)(55)(B).

[5] 7 U.S.C. 1a(25)(B)(vi).

[6] 15 U.S.C. 78c(a)(55)(C)(vi).

[7] *See* Securities Exchange Act Release No. 49469 (March 25, 2004), 69 FR 16900 (March 31, 2004) (''2004 Joint Order''). Following the issuance of the 2004 Joint Order, the CBOE Futures Exchange, LLC listed for trading futures contacts on the CBOE Volatility Index (''VIX'').

[8] 7 U.S.C. 1a(25)(B)(vi).

[9] 15 U.S.C. 78c(a)(55)(C)(vi).

[10] Eurex Deutschland is operated by Eurex Frankfurt AG (hereinafter ''Eurex Deutschland'' and ''Eurex Frankfurt AG'' together are referred to as ''Eurex'').

[11] *See* Letter from Paul M. Architzel, Alston & Bird, LLP, to Nancy Morris, Secretary, SEC, and Eileen Donovan, Acting Secretary, CFTC, dated December 18, 2006.

meets all the conditions set forth in the 2004 Joint Order, except the sixth condition, which requires that ''[o]ptions on the Underlying Broad-Based Security Index * * * [be] listed and traded on a national securities exchange registered under section 6(a) of the Exchange Act.'' [12] The Commissions note that a volatility index based on index options traded on a foreign exchange, such as the VDAX–NEW®, would be unable to satisfy this condition.

In the 2004 Joint Order the Commissions stated, with respect to the sixth condition, that:

> Given the novelty of volatility indexes, the Commissions believe at this time that it is appropriate to limit the component securities to those index options that are listed for trading on a national securities exchange where the Commissions know pricing information is current, accurate and publicly available.[13]

In response to Eurex's request, the Commissions believe that certain volatility indexes should be excluded from the definition of ''narrow-based security index'' if the index options used to calculate the magnitude of change in the level of the underlying broad-based security index are listed for trading on an exchange and pricing information for the underlying broad-based security index, and options on such index, is computed and disseminated in real-time though major market data vendors. For purposes of this Order, the Commissions would consider such pricing information to be current, accurate, and publicly available.

The Commissions believe that, when pricing information for the index underlying a volatility index and for the index options that compose the volatility index is current, accurate, and publicly available, it would minimize the ability to manipulate the index options used to calculate the volatility index. As a result, futures contracts on such a volatility index would not be readily susceptible to manipulation.

Therefore, the Commissions believe that an alternative to the sixth condition in the 2004 Joint Order, which requires that the component securities of a volatility index (*i.e.,* options on the underlying broad-based index) be listed for trading on a national securities exchange registered pursuant to Exchange Act Section 6(a), would be appropriate in certain circumstances. The Commissions believe that it is appropriate to permit the component securities of a volatility index to be listed for trading on any exchange, provided that pricing information for the underlying broad-based security index, and the options on such index that compose the volatility index, is current, accurate, and publicly available. Specifically, the new sixth condition would require such pricing information to be computed and disseminated in real-time through major market data vendors.

In addition to the alternative sixth condition discussed above, a volatility index would have to satisfy the other conditions in the 2004 Joint Order, which are set forth below.[14] The Commissions also reaffirm the rationale for those conditions stated in the 2004 Joint Order.

Accordingly,

It is ordered, pursuant to Section 1a(25)(B)(vi) of the CEA and Section 3(a)(55)(C)(vi) of the Exchange Act, that an index is not a narrow-based security index and is therefore a broad-based security index, if:

(1) The index measures the magnitude of changes in the level of an underlying broad-based security index that is not a narrow-based security index as that term is defined in Section 1a(25) of the CEA and Section 3(a)(55) of the Exchange Act over a defined period of time, which magnitude is calculated using the prices of options on the underlying broad-based security index and represents (a) an annualized standard deviation of percent changes in the level of the underlying broad-based security index, (b) an annualized variance of percent changes in the level of the underlying broad-based security index, or (c) on a non-annualized basis, either the standard deviation or the variance of percent changes in the level of the underlying broad-based security index;

(2) The volatility index has more than nine component securities, all of which are options on the underlying broad-based security index;

(3) No component security of the volatility index comprises more than 30% of the volatility index's weighting;

(4) The five highest weighted component securities of the volatility index in the aggregate do not comprise more than 60% of the volatility index's weighting;

(5) The average daily trading volume of the lowest weighted component securities in the underlying broad-based security index upon which the volatility index is calculated (those comprising, in the aggregate, 25% of the underlying broad-based security index's weighting) has a dollar value of more than $50,000,000 (or $30,000,000 in the case of an underlying broad-based security index with 15 or more component securities), except if there are two or more securities with equal weighting that could be included in the calculation of the lowest weighted component securities comprising, in the aggregate, 25% of the underlying broad-based security index's weighting, such securities shall be ranked from lowest to highest dollar value of average daily trading volume and shall be included in the calculation based on their ranking starting with the lowest ranked security;

(6) The index options used to calculate the magnitude of change in the level of the underlying broad-based security index are listed for trading on an exchange and pricing information for the underlying broad-based security index, and options on such index, is computed and disseminated in real-time through major market data vendors; and

(7) The aggregate average daily trading volume in options on the underlying broad-based security index is at least 10,000 contracts calculated as of the preceding 6 full calendar months.

By the Commodity Futures Trading Commission.

Dated: November 17, 2009.

David A. Stawick,

Secretary.

By the Securities and Exchange Commission.

Dated: November 17, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–28101 Filed 11–20–09; 8:45 am]

BILLING CODE 6351–01–P, 8011–01–P

[12] *See* 2004 Joint Order, *supra* note 7, 69 FR at 16901.

[13] *See id.*

[14] The Commissions note that nothing in this joint order should be construed as repealing or otherwise revoking the 2004 Joint Order.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44

U.S.C. Sec. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning a small-scale pilot for an online reporting system that grantees can use to calculate the return on investment (ROI) for their volunteer recruitment and management activities. About fifty organizations will participate in the pilot. During the last six months of the pilot, participating organizations will use the system twice to report data on their organization's activities, and will provide feedback to the system's developers.

Copies of the information collection requests can be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by January 22, 2010.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* Corporation for National and Community Service, Department of Research and Policy Development; Attention Nathan Dietz, Research Associate/Statistician, Room 10907; 1201 New York Avenue, NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) *By fax to:* (202) 565–2787, Attention Nathan Dietz, Research Associate/Statistician.

(4) *Electronically through the Corporation's e-mail address system: ndietz@cns.gov.*

FOR FURTHER INFORMATION CONTACT: Nathan Dietz, (202) 606–6633, or by e-mail at *ndietz@cns.gov.*

SUPPLEMENTARY INFORMATION: *The Corporation is particularly interested in comments that:*

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- 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 expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submissions of responses).

Background

The Corporation has entered into a cooperative agreement with the National Council on Aging (NCOA) to adapt its SMART (Strategic Metrics and Results Tracking) system for use by Corporation grantees and subgrantees. The goal is to develop a system that all Corporation projects can use to calculate the return on investment for the time and resources they devote to recruiting and managing volunteers.

Current Action

During the first year for this project, NCOA will:

- Build and test an online tool customized to calculate the return on investment for volunteer recruitment and management for CNCS projects;
- Orient and train subsequent pilot participants in the use of the reporting tool;
- Work with participating grantees on a six-month pilot of the tool; and
- Prepare the tool for a broad-based rollout that will facilitate collection of ROI data among a larger number of CNCS grantees.

Type of Review: New collection.

Agency: Corporation for National and Community Service.

Title: Pilot for Volunteer Management ROI Measurement System.

OMB Number: None.

Agency Number: None.

Affected Public: Selected recipients of CNCS program grants and subgrants.

Total Respondents: 50.

Frequency: Twice annually.

Average Time per Response: 4 hours.

Estimated Total Burden Hours: 400 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

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

Dated: November 17, 2009.

Robert T. Grimm, Jr.,

Director of Research and Policy Development.

[FR Doc. E9–28043 Filed 11–20–09; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 09–55, 09–56, 09–58, 09–62, and 09–64]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, DoD.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of five section 36(b)(1) arms sales notifications. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

SUPPLEMENTARY INFORMATION: The following are copies of letters to the Speaker of the House of Representatives, Transmittals 09–55, 09–56, 09–58, 09–62, and 09–64 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: November 18, 2009.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

Transmittal No. 09–55

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

NOV 10 2009

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 09-55, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Chile for defense articles and services estimated to cost $455 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Jeffrey A. Wieringa
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 09-55

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Chile

(ii) Total Estimated Value:

Major Defense Equipment*	$223 million
Other	$232 million
TOTAL	$455 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 36 AVENGER Fire Units, 378 STINGER-Reprogrammable Micro-Processor (RMP) Block 1 Anti-Aircraft missiles, 12 STINGER Block 1 Buy-to-Fly missiles, 42 Captive Flight Trainers, 36 AN/VRC-92E Single Channel Ground and Airborne Radio Systems (SINCGARS), 42 Captive Flight Trainers (CFTs), S250 Shelters on High Mobility Multi-Purpose Wheeled Vehicles (HMMWV), support equipment, tools and test equipment, spare and repair parts, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical support services, and other related elements of logistics support.

(iv) Military Department: Army (ULN)

(v) Prior Related Cases, if any: None

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached.

(viii) Date Report Delivered to Congress: 10NOV09

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Chile – AVENGER Fire Units/STINGER Missiles

The Government of Chile has requested a possible sale of 36 AVENGER Fire Units, 378 STINGER-Reprogrammable Micro-Processor (RMP) Block 1 Anti-Aircraft missiles, 12 STINGER Block 1 Buy-to-Fly missiles, 42 Captive Flight Trainers, 36 AN/VRC-92E Single Channel Ground and Airborne Radio Systems (SINCGARS), 42 Captive Flight Trainers (CFTs), S250 Shelters on High Mobility Multi-Purpose Wheeled Vehicles (HMMWV), support equipment, tools and test equipment, spare and repair parts, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical support services, and other related elements of logistics support. The estimated cost is $455 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in South America.

Chile intends to use these defense articles and services to modernize its armed forces. and expand its existing air defense architecture to counter threats posed by air attack. These systems will contribute to the Chilean military's goal of updating its capability while further enhancing greater interoperability between Chile and the U.S. and other allies.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors will be Boeing Aerospace Company of Huntsville, AL, Raytheon Missile Systems of Tucson, AZ, and Thales Raytheon Systems Company, LLC of Fullerton, CA. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require 10 U.S. Government or contractor representatives to travel to Chile for 8 weeks for equipment checkout and training.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 09-55

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The highest classification of the AVENGER hardware is Confidential and the data and information is Secret.

a. The AVENGER fire unit utilizes two Stinger Vehicle Universal Launchers to allow for the loading and firing of eight STINGER missiles. The primary critical technology associated with the AVENGER system is the STINGER missile utilized with the system. The Avenger control electronics unit integrates several inputs and outputs for the overall fire unit control. This could be used to develop evasive tactics. The AVENGER system utilizes a Confidential software Personal Computer Memory Card International Adapter card for upload of critical missile software orientation and kinematic range information to the platform. The laser range finder and Forward Looking Infra Red could compromise detailed design and fabrication information for these systems and their use with small missiles. The AVENGER/STINGER training equipment contains operational seeker hardware and firmware and must be protected by the same level of controls as tactical hardware.

b. The STINGER Block I International Missile System, hardware, software, and documentation contain sensitive technology and are classified Confidential. The guidance section of the missile and tracking head trainer contain highly sensitive technology and are classified Confidential. No man-portable grip stocks will be sold under these LOAs.

c. Missile System hardware and fire unit components contain sensitive/critical technologies. The STINGER critical technology is primarily in the area of design and production know-how and not end-items. This sensitive/critical technology is inherent in the hybrid microcircuit assemblies; microprocessors; magnetic and amorphous metals; purification; firmware; printed circuit boards; laser range finder; dual detector assembly; detector filters; missile software; optical coatings; ultraviolet sensors; semi-conductor detectors infrared band sensors; compounding and handling of electronic, electro-optic, and optical materials; equipment operating instructions; energetic materials formulation technology; energetic materials fabrication and loading technology; and warhead components seeker assembly. Information on vulnerability to electronic countermeasures and countermeasures, system performance capabilities and effectiveness, and test data are classified up to Secret.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

Transmittal No. 09–56

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

NOV 16 2009

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 09-56, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Singapore for defense articles and services estimated to cost $40 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Jeffrey A. Wieringa
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 09-56

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Singapore

(ii) Total Estimated Value:

Major Defense Equipment*	$ 33 million
Other	$ 7 million
TOTAL	$ 40 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 670 KMU-572B/B Joint Direct Attack Munitions (JDAM) Guidance Kits and, 670 DSU-38/B Precision Laser Guidance kits for GBU-54(V)1/B (MK-82), support equipment, repair and return, tools and test equipment, spare and repair parts, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services, and other related elements of logistical and program support.

(iv) Military Department: Air Force (YAG)

(v) Prior Related Cases, if any: FMS case YAB-$5M-19Feb09

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: NOV 16 2009

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Singapore – Laser Joint Direct Attack Munitions

The Government of Singapore has requested a possible sale of 670 KMU-572B/B Joint Direct Attack Munitions (JDAM) Guidance Kits and, 670 DSU-38/B Precision Laser Guidance kits for GBU-54(V)1/B (MK-82)670 KMU-572B/B Joint Direct Attack Munitions (JDAM) Guidance Kits for GBU-28B(V)1/B (MK-82), 670 DSU-38/B Precision Laser Guidance Kits for GBU-54(V)1/B, support equipment, repair and return, tools and test equipment, spare and repair parts, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services, and other related elements of logistical and program support. The estimated cost is $40 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been and continues to be an important force for economic progress in Southeast Asia.

Singapore needs the JDAM kits to help meet current and future threats of enemy air-to-ground weapons. Singapore will use the enhanced capability as a deterrent to regional threats and to strengthen its homeland defense. Singapore, which already has JDAM guidance kits in its inventory, will have no difficulty absorbing these additional enhanced kits.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be The Boeing Company of St. Louis, Missouri. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government and contractor representatives to Singapore.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 09-56

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The Joint Direct Attack Munitions (JDAM) is a guidance tail kit that converts unguided free-fall bombs into accurate, adverse weather "smart" munitions. With the addition of a new tail section that contains an inertial navigational system and a global positioning system guidance control unit, JDAM improves the accuracy of unguided, general-purpose bombs in any weather condition. JDAM can be launched from very low to very high altitudes in a dive, toss and loft, or in straight and level flight with an on-axis or off-axis delivery. JDAM enables multiple weapons to be directed against single or multiple targets on a single pass.

2. Sensitive and/ or classified (up to Secret) elements of the proposed acquisition include hardware, accessories, components, and associated software: GBU-54 Laser Joint Direct Attack Munition (LJDAM). Additional sensitive areas include operating manuals and maintenance technical orders containing performance information, operating and test procedures, and other information related to the support operations and repair. The hardware, software, and data identified are classified to protect vulnerabilities, design, and performance parameters and other similar critical information.

3. The GBU-54 Laser JDAM is a MK-82 JDAM variant with a DSU-38 Laser Sensor that uses - a Global Position System aided inertial navigation and/or Laser guidance to execute threat targets. The Laser sensor enhances the standard JDAM's reactive targeting capability by allowing rapid prosecution of fixed targets with large initial target location errors (TLE). The DSU-38 Laser sensor also provides the additional capability to engage mobile targets moving up to 70 mph. The DSU-38 Laser sensor is a strap down (non-gimbaled) sensor that attaches to the Mk-82 bomb body in the forward fuze well. The addition of the DSU-38 Laser sensor combined with additional cabling and mounting hardware turns a standard GBU-38 JDAM into a GBU-54 Laser JDAM.

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

Transmittal No. 09–58

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

NOV 16 2009

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 09-58, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Kuwait for defense articles and services estimated to cost $410 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Beth M. McCormick
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

Transmittal No. 09-58

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Kuwait

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$ 410 million
TOTAL	$ 410 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: four-year PATRIOT Air Defense System sustainment and repair/return program to include spare and repair parts, support equipment, repair/return, transportation support, modification kits, Contractor Engineering Technical Services/Contractor Maintenance Support Services, Liaison Office Support Services, U.S. Government and contractor technical and logistics personnel services and other related elements of program support.

(iv) Military Department: Army (VBZ and ZUM)

(v) Prior Related Cases, if any: numerous cases dating back to 1992

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Attached Annex

(viii) Date Report Delivered to Congress:

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Kuwait – PATRIOT Sustainment and Repair/Return Program

The Government of Kuwait has requested a possible sale of four-year PATRIOT Air Defense System sustainment and repair/return program to include spare and repair parts, support equipment, repair/return, transportation support, modification kits, Contractor Engineering Technical Services/Contractor Maintenance Support Services, Liaison Office Support Services, U.S. Government and contractor technical and logistics personnel services and other related elements of program support. The estimated cost is $410 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been, and continues to be, an important force for political stability and economic progress in the Middle East.

The Government of Kuwait needs the PATRIOT sustainment and repair/return program to enhance its capability to meet current and future enemy air-to-ground weapon threats. Kuwait will use the sustained capability to deter regional threats and to strengthen its homeland defense.

The proposed sale of this support will not alter the basic military balance in the region.

The principal contractor will be Raytheon Corporation in Tewksbury, MA. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any U.S. Government or contractor representatives to Kuwait.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 09-58

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The Kuwait PATRIOT Air Defense System Sustainment and Repair/Return Program includes the release of publications and technical documentation, drawings, and software that are classified up to Secret.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

Transmittal No. 09–62

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

NOV 10 2009

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 09-62, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Chile for defense articles and services estimated to cost $145 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Beth M. McCormick

Beth M. McCormick
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 09-62

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Chile

(ii) Total Estimated Value:

Major Defense Equipment*	$125 million
Other	$ 20 million
TOTAL	$145 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 100 AIM-120C-7 Advanced Medium-Range Air-to-Air Missiles (AMRAAM), containers, warranty, spare and repair parts, support equipment, publications and technical data, personnel training and training equipment, U.S. Government and contractor technical assistance, and other related elements of logistics support.

(iv) Military Department: Air Force (YAB)

(v) Prior Related Cases, if any: FMS case SAB (Amd #4)-$35M-04Aug09

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Attached Annex.

(viii) Date Report Delivered to Congress: NOV 10 2009

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Chile – AIM-120C-7 AMRAAM Missiles

The Government of Chile has requested a possible sale of 100 AIM-120C-7 Advanced Medium-Range Air-to-Air Missiles (AMRAAM), containers, warranty, spare and repair parts, support equipment, publications and technical data, personnel training and training equipment, U.S. Government and contractor technical assistance, and other related elements of logistics support. The estimated cost is $145 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in South America.

Chile intends to use these missiles to improve its capability to meet current and future threats of enemy air-to-air weapons. This will contribute to the Chilean military's goal to update its capability while further enhancing greater interoperability between Chile, the U.S., and other allies. Chile, which already has AMRAAM missiles in its inventory, will have no difficulty absorbing these additional missiles into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be the Raytheon Corporation in Tucson, Arizona. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require any additional U.S. Government or contractor representatives to Chile.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 09-62

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The AIM-120C-7 Advanced Medium-Range Air-to-Air Missile (AMRAAM) is a new generation air-to-air missiles. The AIM-120C-7 AMRAAM hardware, including the missile guidance section, is classified Confidential. State-of-the-art technology is used in the missile to provide it with unique beyond-visual-range capability. Significant AIM-120C-7 features include a target detection device with embedded electronic countermeasures, an electronics unit within the guidance section that performs all radar signal processing, mid-course and terminal guidance, flight control, target detection, and warhead burst point determination. Anti-tampering security measures have been incorporated into the AIM-120C-7 to prevent exploitation of the AMRAAM software.

2 If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures, which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

Transmittal No. 09–64

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

NOV 10 2009

The Honorable Nancy Pelosi
Speaker
U. S. House of Representatives
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 09-64, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Chile for defense articles and services estimated to cost $65 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Beth M. McCormick

Beth M. McCormick
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 09-64

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Chile

(ii) Total Estimated Value:

Major Defense Equipment*	$ 45 million
Other	$ 20 million
TOTAL	$ 65 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 6 AN/MPQ-64F1 SENTINEL radar systems, 6 AN/VRC-92E Vehicular Dual Long Range Single Channel Airborne and Ground Radio Systems (SINCGARS), spare and repair parts, tool and test equipment, repair and return, software support, support equipment, integration, publications and technical data, personnel training and training equipment, communications equipment, U.S. Government and contractor engineering, technical, and logistics personnel support, and other related elements of logistics support.

(iv) Military Department: Army (ULU)

(v) Prior Related Cases, if any: None

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Attached Annex

(viii) Date Report Delivered to Congress: 10NOV09

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Chile – AN/MPQ-64F1 SENTINEL Radar Systems

The Government of Chile has requested a possible sale of 6 AN/MPQ-64F1 SENTINEL radar systems, 6 AN/VRC-92E Vehicular Dual Long Range Single Channel Airborne and Ground Radio Systems (SINCGARS), spare and repair parts, tool and test equipment, repair and return, software support, support equipment, integration, publications and technical data, personnel training and training equipment, communications equipment, U.S. Government and contractor engineering, technical, and logistics personnel support, and other related elements of logistics support. The estimated cost is $65 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in South America.

Chile intends to use these radars to modernize its armed forces. The Government of Chile intends to expand its existing air defense architecture to counter threats posed by air attack. This will contribute to the Chilean military's goal to update its capability while further enhancing greater interoperability between Chile and the U.S., and among other allies.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors will be the Thales Raytheon Systems of Fullerton, California, International Telephone and Telegraph of Fort Wayne, Indiana, and American General of South Bend, Indiana. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require 10 U.S. Government or contractor representatives to travel to Chile for a period of 8 weeks for equipment checkout and training.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 09-64

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The AN/MPQ-64 SENTINEL Radar System is a fielded air defense radar system in the Army inventory. SENTINEL is a derivative of the AN/TPQ-36 Firefinder System used for artillery detection and the AN/TPQ-36A Norwegian-adapted Hawk system. The SENTINEL radar (AN/MPQ-64) is the sensor for the Short Range Air Defense (SHORAD) weapon systems, including the Avenger, any ground-launched Stinger platform, and Bradley-Linebacker. SENTINEL is a mobile phased-array radar that provides highly accurate three dimensional radar track data to operate systems via the Forward Area Air Defense (FAAD) Command, Control, and Intelligence (C2I) node. SENTINEL's detection range, mobility, and 360 degree azimuth coverage allow it to support SHORAD weapons located throughout the division area. SENTINEL acquires, tracks, and reports cruise missiles, unmanned aerial vehicles, fixed and rotary wing aircraft in clutter and electronic counter measures environments. The SENTINEL export configuration (AN/MPQ-64F1) will be a derivative of the U.S. Army's Improved SENTINEL Radar that will be classified Confidential at the system level, when the classified software is loaded into the hardware. The hardware with the software removed and purged is Unclassified.

a. The SENTINEL consists of a radar-based sensor system with the M1097A2 as the prime mover and the MEP-813A Tactical Quiet Generator as the power source. The sensor is an advanced battlefield radar capable of X-Band air defense phased-array with an instrumented range of 40 kilometers with a rotating antenna providing 360 degree azimuth coverage for acquisition and tracking.

b. Reports, test data, and all Sentinel related media that discloses operational parameters, performance, characteristics, ECCM techniques, vulnerabilities, limitations or performance weaknesses shall be classified at the highest level based on the information being conveyed. Distribution of technical performance and system capabilities reports and data shall only be released up to the Confidential level. It is not possible to obtain the Sentinel wartime reserved frequencies by reverse engineering, testing, or analyzing the unclassified Sentinel end item.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures, which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. E9–28027 Filed 11–20–09; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2009–HA–0174]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 22, 2010.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to TRICARE Management Activity, Office of the Chief Information Officer, Portfolio Management Division, 5205 Leesburg Pike, Suite 1100, ATTN: Tina Beletsky, Fairfax, VA 22401–3206 or call TMA, Portfolio Management Division, at 703.681.8448 x1212.

Title; Associated Form; and OMB Number: Military Health System Information Systems User Satisfaction Survey; OMB Control Number 0720–TBD.

Needs and Uses: The information collection requirement is part of the Military Health System (MHS) Office of the Chief Information Officer (OCIO) Annual Performance Planning and Reporting to gather and report user satisfaction across 20 deployed MHS Information Systems using a standardized approach in a repeatable process for continued monitoring of user satisfaction using established quantifiable outcome based performance measures.

Affected Public: Department of Defense, Military Health Systems Contractors.

Annual Burden Hours: 480.

Number Of Respondents: 1,920 (480 respondents surveyed each quarter).

Responses Per Respondent: 1.

Average Burden Per Response: 15 minutes.

Frequency: Quarterly Survey.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are Military Health System (MHS) contractors employed at Army, Navy, or Air Force Medical Treatment Facilities; Army, Navy or Air Force Command Headquarters; Army or Air Force Surgeon General Office; Navy Bureau of Medicine or TRICARE Management Activity Headquarters who use any one of the 20 deployed MHS information systems. As part of the Annual Performance Planning, the Office of the Chief Information Officer needs to gather user satisfaction data across 20 MHS information systems using standardized metrics for comparisons between the different systems/applications and for longitudinal comparison of each system/application over time. The user satisfaction data are reported on a quarterly basis. Although, the survey will be conducted quarterly, individual users are selected annually or less.

Dated: November 18, 2009.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–28028 Filed 11–20–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Intent To Grant an Exclusive License; Axester, Limited Liability Company

AGENCY: National Security Agency, DoD.

ACTION: Notice.

SUMMARY: The National Security Agency hereby gives notice of its intent to grant Axester, Limited Liability Company, a revocable, non-assignable, exclusive, license to practice the following Government-Owned invention as described in U.S. Patent No. 5,396,641 entitled: ''Reconfigurable Memory Processor,'' issued by the U.S. Patent & Trademark Office on March 7, 1995, in the field of memory processors. The above-mentioned invention is assigned to the United States Government as represented by the National Security Agency.

DATES: Anyone wishing to object to the grant of this license has fifteen (15) days from the date of this notice to file written objections along with any supporting evidence, if any.

ADDRESSES: Written objections are to be filed with the National Security Agency Technology Transfer Program, 9800 Savage Road, Suite 6541, Fort George G. Meade, MD 20755–6541.

FOR FURTHER INFORMATION CONTACT: Marian T. Roche, Director, Technology Transfer Program, 9800 Savage Road, Suite 6541, Fort George G. Meade, MD 20755–6541, telephone (443) 479–9569.

Dated: November 18, 2009.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–28061 Filed 11–20–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability for Donation of the Aircraft Carrier ex-JOHN F. KENNEDY (CV 67)

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy (DoN) hereby gives notice of the availability for donation, under the authority of 10 U.S.C. 7306, of the aircraft carrier ex-JOHN F. KENNEDY (CV 67), located at the NAVSEA Inactive Ships On-site Maintenance Office, Philadelphia, PA.

DATES: The deadline for submission of a Letter of Intent and Executive Summary is sixty (60) days from the date of this notice.

SUPPLEMENTARY INFORMATION: Under the authority of 10 U.S.C. 7306, eligible recipients for the transfer of a vessel for donation include: (1) Any State, Commonwealth, or possession of the United States or any municipal corporation or political subdivision thereof; (2) the District of Columbia; or (3) any not-for-profit or nonprofit entity.

The transfer of a vessel for donation under 10 U.S.C. 7306 shall be at no cost to the United States Government.

The donee will be required to maintain ex-JOHN F. KENNEDY as a stationary display in a condition that is satisfactory to the Secretary of the Navy.

The Navy has revised its ship donation application process, which applies to ex-JOHN F. KENNEDY. Phase I documentation consists of a Letter of Intent and an Executive Summary which must be submitted within sixty (60) days of this **Federal Register** notice. The Navy will provide written notification to those whose Phase I documentation is acceptable to submit Phase II documentation consisting of Business/Financial and Environmental plans, within twelve (12) months of such notice. The Navy will provide written notification to those whose Phase II documentation is acceptable to submit Phase III documentation consisting of Towing, Mooring, Maintenance, and Curatorial/Museum plans, within six (6) months of such notice. Applicants who fail to meet the minimum requirements at any phase may be disqualified from participating in the next phase of these ship donation opportunities.

Actions Required: Within sixty (60) days of this **Federal Register** notice, applicants must complete and submit Phase I documentation for ex-JOHN F. KENNEDY consisting of a Letter of Intent and Executive Summary. The minimum requirements are identified herein. Applicants are advised to take special notice of page length limitations for Phase I documentation.

Phase I of the ship donation application process must include the following documentation addressing the following areas:

a. *Letter of Intent:* The Letter of Intent must include the following:

(1) Identify the specific vessel sought for donation (ex-JOHN F. KENNEDY (CV 67));

(2) Include a statement that the vessel will be used as a stationary public display as a museum or memorial without activating any system aboard the vessel for the purpose of navigation or movement of the vessel;

(3) Identify the proposed permanent berthing location for the vessel to be used as a stationary public display, identify the current property owner of the proposed permanent berthing location, and provide evidence from the current property owner of its intent to make the proposed permanent berthing location available to the applicant;

(4) Include a statement that the applicant understands and agrees that it will be solely responsible to obtain, repair, and maintain the vessel used as a stationary public display at its own expense, in a condition satisfactory to the Secretary of the Navy, in compliance with all Federal, State, and local laws, that no expense shall be incurred by the United States Government, and that the applicant will not seek financing from the United States Government;

(5) Include a statement that the applicant understands and agrees to take delivery of the vessel in an ''as is/where is'' condition, and assume all costs associated with the vessel's removal from Navy custody, including, but not limited to, towing, insurance, berthing, restoration, maintenance and repair, periodic dry-docking, and, ultimately, ship dismantling in the United States;

(6) Include a statement that the applicant will not use the vessel as a stationary public display other than as stated, or destroy, transfer, or otherwise dispose of such vessel or any artifacts without the written approval of the Secretary of the Navy or his designee;

(7) Include a statement that the applicant will agree to indemnify, hold harmless, and defend the Government from and against all claims, demands, actions, liabilities, judgment costs, and attorney's fees, arising out of, claimed on account of, or in any manner predicated upon personal injury, death, or property damage caused by or resulting from possession and/or use of the donated property;

(8) If the applicant is not a State, Commonwealth, or possession of the United States, or a political subdivision or municipal corporation thereof, or the District of Columbia, the applicant must provide a copy of a determination letter by the Internal Revenue Service that the applicant is exempt from tax under the Internal Revenue Code, Section 501(c)(3), or submit evidence that the applicant has filed the appropriate documentation in order to obtain tax exempt status;

(9) If the applicant asserts that it is a corporation or an association whose charter or articles of agreement deny it the right to operate for profit, the applicant must provide a properly notarized copy of its charter, a certificate of incorporation, and a copy of the organization's by-laws;

(10) Provide a notarized copy of the resolution or other action of the applicant's governing board authorizing the person signing the Letter of Intent to represent the organization and to sign on its behalf for the purpose of obtaining the vessel;

(11) Provide a signed copy of the Assurance of Compliance Form in compliance with Title VI of the Civil Rights Act of 1964. See the Ship Donation Web page for the Civil Rights Compliance (Assurance of Compliance) Form located as Appendix D to Ship Donation Program Manual (NAVSEA Instruction 4520.1B), at this link: *http://teamships.crane.navy.mil/Inactiveships/Donation/applicationinfo.htm*;

b. *Executive Summary:* The applicant shall limit the Executive Summary submission to eleven (11) pages total. The Executive Summary must address the following:

(1) *Organizational Description:* Provide an overview of the applicant's organizational structure, functional components, and names of current key leadership and staff positions;

(2) *Market Analysis:* Summarize the local and regional market demand for additional museum/memorial attractions. Succinctly define the target market. Discuss the available demographic information, the existing competition in the local and regional area for visitor museum/memorial attractions, visitor attendance numbers for existing area museum/memorial attractions, and projected visitor attendance for the applicant's proposal;

(3) *Marketing and Sales Outreach:* Outline the overarching marketing strategy for integrating the proposed ship museum/memorial into the local and regional community, and how the applicant plans to penetrate that market. Provide an overview of customer and market analysis, marketing communications, and sales strategies;

(4) *Museum/Memorial Services Assessment:* Discuss the benefits the proposed ship museum/memorial will offer to visitors/customers and the community. Identify challenges anticipated in establishing a new ship museum/memorial. Cite available data/evidence regarding the willingness of a defined customer base to pay for the services being offered;

(5) *Funding:* Provide a Rough Order of Magnitude (ROM) cost estimate that the applicant anticipates will be required to cover all costs associated with the acquisition/start-up costs of the

proposed ship donation transfer, including mooring, towing, environmental surveys and cleanup, dredging, museum development, maintenance, refurbishment of the vessel to be used as a stationary public display, pier, insurance, legal services, etc. Separately provide a ROM cost estimate of the annual operational and support costs of the proposed ship museum/memorial. In addition, provide a ROM cost estimate of the applicant's cost of dismantling the vessel in the United States upon completion of its use as a museum/memorial or in the event of bankruptcy or inability to properly maintain the vessel to be used as a stationary public display;

(6) *Financial:* Provide a summary of projected sources of income to support both the acquisition/start-up costs and the annual operational and support costs for the vessel used as a stationary public display;

(7) *Environmental:* Discuss the challenges anticipated in meeting the environmental requirements regarding hazardous materials, maintenance of polychlorinated biphenyls (PCB) containing materials, endangered species, dredging disposal, and required environmental permits from all cognizant authorities;

(8) *Mooring:* Discuss the approach to be proposed for the mooring plan for the vessel used as a stationary public display, including location, design, and mooring system in accordance with U.S. Coast Guard (USCG) requirements;

(9) *Towing:* Discuss the approach to be proposed for relocating the vessel from its current location to the proposed permanent berth location in conformance with the Navy Tow Manual and USCG requirements;

(10) *Maintenance:* Discuss the challenges in restoring and preserving for an indefinite period the steel-hulled vessel proposed as a ship museum/memorial; and

(11) *Curatorial/Museum:* Discuss the approach to be proposed for display and interpretation of the vessel used as a stationary public display, including collection management procedures.

The Phase I documentation (Letter of Intent and Executive Summary) must be submitted to the Navy Inactive Ships Program in hard copy and electronically on a CD–ROM in either an MS Word document or word searchable PDF format. The Phase I documentation must be mailed to: The Columbia Group, 1201 M Street, SE., Suite 020, Washington, DC 20003; marked for the Ship Donation Project Manager (PMS 333). Applicants are discouraged from photocopying, cutting and pasting, and generally providing information which is easily accessible via the Internet and/or is already in the public domain. Original content which is specific to the vessel being donated is of greatest importance to the evaluators.

If the DoN does not receive satisfactory Phase I documentation (Letter of Intent and Executive Summary) from any applicant, the DoN reserves the right to enter into discussions with all applicants in an effort to achieve at least one acceptable submission; or remove the vessel from donation consideration and proceed with disposal of the vessel.

Note that any future changes to guidelines, policy, and law will be reflected in the guidance published on the DoN Ship Donation web page located at: *http://teamships.crane.navy.mil/Inactiveships/Donation*. Guidance and requirements posted on the Ship Donation Web page shall take precedence over the contents of the **Federal Register** notice. Applicants are advised to read and follow the Web page guidance for the most current set of ship donation requirements.

FOR FURTHER INFORMATION CONTACT: For Further Information and Submission of Ship Donation Applications, contact: Ms. Elizabeth Freese of the Naval Sea Systems Command, Navy Inactive Ships Program (PMS 333), telephone number 202–781–4423. Mailed correspondence should be addressed to: The Columbia Group, 1201 M Street, SE., Suite 020, Washington, DC 20003; marked for Ship Donation Project Manager (PMS 333).

Dated: November 16, 2009.

A.M. Vallandingham,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E9–28045 Filed 11–20–09; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of the Record of Decision for the West Coast Basing of the MV–22 Aircraft

AGENCY: Department of the Navy, DOD.

ACTION: Notice of Record of Decision.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, 42 United States Code (U.S.C.) Section 4332(2)(c), the regulations of the Council on Environmental Quality (CEQ) for Implementing the Procedural Provisions of NEPA (40 Code of Federal Regulations [CFR] parts 1500–1508), the Department of the Navy NEPA regulations (32 CFR part 775), and the Marine Corps Environmental Compliance and Protection Manual, which is Marine Corps Order P5090.2A w/change 2 (MCO P5090.2A), the Department of the Navy (DON) announces its decision to introduce up to ten MV–22 squadrons (120 aircraft) on the West Coast and replace nine helicopter squadrons (114 aircraft) currently authorized for basing on the West Coast as part of a U.S. Marine Corps (USMC)-wide process of replacing its aging fleet of medium-lift helicopters with more advanced, operationally-capable aircraft.

More specifically, this action will include: (1) Basing up to eight MV–22 squadrons at Marine Corps Air Station (MCAS) Miramar, in San Diego, California, and up to two MV–22 squadrons at MCAS Camp Pendleton, north of San Diego. The total of 10 squadrons will consist of eight squadrons for employment by the Third Marine Aircraft Wing (3D MAW) to provide medium-lift capability to I Marine Expeditionary Force (I MEF) and two squadrons to provide a West Coast reserve component medium-lift capability; (2) constructing and/or renovating airfield facilities at MCAS Miramar and MCAS Camp Pendleton to accommodate and maintain the MV–22 squadrons; and (3) conducting MV–22 readiness and training operations and special exercise operations to attain and maintain proficiency in the operational employment of the MV–22. Implementation of this action will be accomplished as set out in the Preferred Alternative and described in the Final Environmental Impact Statement (Final EIS) of October 2009.

SUPPLEMENTARY INFORMATION: The complete text of the Record of Decision is available for public viewing on the project Web site at *http://www.mv22eiswest.net/along* with copies of the Final EIS and supporting documents. For further information, contact Homebasing EIS Project Manager, 1220 Pacific Highway, San Diego, California 92132–5190. Telephone: 619–532–4742.

Dated: November 18, 2009.

A.M. Vallandingham,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E9–28042 Filed 11–20–09; 8:45 am]

BILLING CODE 3810–FF–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: U.S. Election Assistance Commission.

ACTION: Notice of public meeting agenda.

DATE & TIME: Thursday, December 3, 2009.

10 a.m.–12 p.m. ET (Morning Session).

1 p.m.–3 p.m. ET (Afternoon Session).

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

AGENDA: The Commission will hold a public meeting to consider administrative matters. The Commission will elect officers for 2010. The Commission will receive an update on Maintenance of Effort. The Commission will receive an update on the 2010 Election Day Survey. The Commission will hold discussions regarding voting by military and overseas citizens. Commissioners will discuss the following: EAC's partnership with the Federal Voting Assistance Program (FVAP); the Military and Overseas Voters Empowerment (MOVE) Act and the roles of EAC and FVAP with regards to implementation; a Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) Working Group; and the roles of EAC, FVAP and National Institute of Standards and Technology (NIST) in conjunction with the objectives of the working group.

Members of the public may observe but not participate in EAC meetings unless this notice provides otherwise. Members of the public may use small electronic audio recording devices to record the proceedings. The use of other recording equipment and cameras requires advance notice to and coordination with the Commission's Communications Office.*

* View *EAC Regulations Implementing Government in the Sunshine Act.*

This meeting and hearing will be open to the public.

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

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. E9–28137 Filed 11–19–09; 4:15 pm]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13561–000]

Phoenix Management, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

November 16, 2009.

On July 30, 2009, Phoenix Management, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Adler Canyon Pumped Storage Hydroelectric Project, located in Maricopa County, in the state of Arizona. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following developments:

(1) A proposed upper and lower intake structure; (2) a proposed 1,900-foot deep, 24-foot diameter vertical shaft; (3) a power tunnel; (4) an upper reservoir having a surface area of 72 acres and a storage capacity of 4,100 acre-feet and maximum water surface elevation of 4,580 feet mean sea level; (5) a lower reservoir having a surface area of 75 acres and a storage capacity of 4,700 acre-feet and maximum water surface elevation of 2,640 feet mean sea level; (6) a proposed powerhouse containing nine new pump/turbine generating units having an installed capacity of 900-megawatts; (7) a proposed 200-foot by 200-foot switchyard; (8) a tailrace; (9) a well; (10) a proposed 300-feet-long, 345-kilovolt transmission line; and (11) appurtenant facilities. The proposed development would have an average annual generation of 2,300 gigawatt-hours.

Applicant Contact: Justin Rundle, President, Phoenix Management LLC, 6514 S. 41st Lane, Phoenix, AZ 85041; phone: (602) 819–8735.

FERC Contact: Mary Greene, 202–502–8865.

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 Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13561) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–28015 Filed 11–20–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13611–000]

Hydro Energy Technologies LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

November 16, 2009.

On October 30, 2009, Hydro Energy Technologies LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Grand Rapids Hydroelectric Project, located in Wood County, in the state of Ohio. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following developments:

(1) An existing 642-feet-long, 8-feet-high concrete gravity Grand Rapids

dam; (2) an existing 1,188-feet-long, 8.6-feet-high concrete Providence dam; (3) an existing reservoir having a surface area of 1,792 acres and a storage capacity of 8,925 acre-feet; (4) a proposed powerhouse containing one or more open flume turbine generating units having an installed capacity of 600-kilowatts; (5) a proposed 100-feet-long, 480–VAC transmission line and transformer; and (6) appurtenant facilities. The proposed development would have an average annual generation of 4,000 megawatt-hours.

Applicant Contact: Anthony J. Marra Jr., President, Hydro Energy Technologies LLC, 31300 Solon Rd., Suite 12, Solon, OH 44139; phone: (440) 498–1000.

FERC Contact: Mary Greene, 202–502–8865.

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 Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13611) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–28011 Filed 11–20–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13610–000]

Hydro Energy Technologies LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

November 16, 2009.

On October 30, 2009, Hydro Energy Technologies LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Independence Dam Hydroelectric Project, located in Defiance County, in the state of Ohio. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following developments:

(1) An existing 652-feet-long, 11.8-feet-high concrete gravity Independence dam;

(2) an existing reservoir having a surface area of 545 acres and a storage capacity of 3,270 acre-feet and normal water surface elevation of 600 feet mean sea level; (3) a proposed powerhouse containing one or more vertical open flume turbine generating units having a combined nominal capacity of 1-megawatt; (4) a proposed 150-feet-long, 480–VAC transmission line and transformer; and (5) appurtenant facilities. The proposed development would have an average annual generation of 6,000 megawatt-hours.

Applicant Contact: Anthony J. Marra Jr., President, Hydro Energy Technologies LLC, 31300 Solon Rd., Suite 12, Solon, OH 44139; phone: (440) 498–1000.

FERC Contact: Mary Greene, 202–502–8865.

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 Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13610) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–28016 Filed 11–20–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP10–14–000; PF09–07–000]

Kern River Gas Transmission Company; Notice of Application

November 16, 2009.

Take notice that on November 2, 2009, Kern River Gas Transmission Company (Kern River), 2755 East Cottonwood Parkway, Suite 300, Salt Lake City, Utah 84121, filed in the above referenced docket an application pursuant to section 7(c) of the Natural Gas Act seeking authority to expand its system comprised of new facilities and modifications to existing facilities as described more fully herein (Apex Expansion). Specifically, Kern River requests: (1) Authorization to construct, own and operate the facilities needed to expand its year-round, firm transportation capacity from the receipt points in Lincoln County, Wyoming, to the Pecos delivery point in Clark County, Nevada, by approximately 266,000 dekatherms per day (Dth/d); (2) approval of regulatory asset/liability accounting for differences between book and regulatory depreciation resulting from use of Kern River's levelized rate design; (3) approval of incremental transportation rates and fuel factors; and (4) acceptance of the pro forma tariff sheets included in Exhibit P to the application, 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.

The Apex Expansion proposed facilities include: (1) Approximately 28 miles of 36-inch-diameter pipeline to be constructed in an unlooped portion of Kern River's existing mainline system across the Wasatch Mountains in northern Utah, in Morgan, Davis and Salt Lake counties, (2) three additional 16,000 ISO-rated horsepower (hp) compressor units to be installed at existing compressor stations: Coyote Creek in Uinta County, Wyoming; Elberta in Utah County, Utah; and Dry Lake in Clark County, Nevada; (3) restaging of three existing boost compressors, one at each of three existing compressor stations: Coyote Creek, Elberta and Dry Lake; (4) replacement of a boost compressor at Kern River's existing Fillmore compressor station in Millard County, Utah; and (5) the new Milford Compressor Station with a single unit 30,000 ISO-rated hp compressor to be constructed in Beaver County, Utah. The proposed facilities will add a net 78,000 ISO-rated hp to the Kern River system.

The estimated total cost of the proposed 2010 Expansion is $373 million, which will be financed with a combination of internally generated funds and new debt. Kern River proposes to charge incremental transportation rates and fuel reimbursement charges to Apex Expansion shippers.

Any questions regarding this application should be directed to Michael Loeffler, Senior Director, Certificates and External Affairs, Apex Expansion Project, Kern River Gas Transmission Company, MidAmerican Energy Pipeline Group, 1111 South 103rd Street, Omaha, Nebraska 68124, or (402) 398–7103.

On March 13, 2009, the Commission staff granted Kern River's request to utilize the National Environmental Policy Act (NEPA) Pre-Filling Process and assigned Docket Number PF09–7–000 to staff activities involving the Apex Expansion. Now, as of the filing Kern River's application on November 2, 2009, the NEPA Pre-Filling Process for this project has ended. From this time forward, Kern River's proceeding will be conducted in Docket No. CP10–14–000, 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.

Comment Date: December 7, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–28017 Filed 11–20–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[EG09–76–000; EG09–80–000; EG09–81–000; EG09–82–000; EG09–83–000; EG09–84–000; EG09–85–000; EG09–86–000; EG09–87–000; EG09–88–000; EG09–89–000]

Sollunar Energy, Inc.; Fowler Ridge II Wind Farm LLC; St. Clair Power, L.P.; North Hurlburt Wind, LLC; South Hurlburt Wind, LLC; Horseshoe Bend Wind, LLC; Ashtabula Wind II, LLC; Elk City Wind, LLC; FPL Energy Stateline II, Inc.; FPL Energy Illinois Wind, LLC; Silver Sage Windpower, LLC; Notice of Effectiveness of Exempt Wholesale Generator Status

November 16, 2009.

Take notice that during the month of October 2009, the status of the above-captioned entities as Exempt Wholesale Generators became effective by

operation of the Commission's regulations at 18 CFR 366.7(a).

Kimberly D. Bose,

Secretary.

[FR Doc. E9–28013 Filed 11–20–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–2–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Elk City Storage Expansion Project and Request for Comments on Environmental Issues

November 16, 2009.

The Federal Energy Regulatory Commission (FERC or Commission) is in the process of preparing an environmental assessment (EA) on the environmental impacts of the Elk City Storage Expansion Project (Project) proposed by Southern Star Central Gas Pipeline, Inc. (Southern Star). Southern Star has proposed to construct and operate a new natural gas compressor station in Montgomery County, Kansas, and amend the current operational plan for the existing natural gas storage field.

The Notice of Intent (NOI) explains the scoping process that will be used to gather input from the public and interested agencies on the Project. Your input will help determine which issues will be evaluated in the EA. Please note that the scoping period for this Project will close on December 14, 2009.

Comments on the Project may be submitted in written form or electronically, as described below. This NOI is being sent to Federal, State, and local government agencies; elected officials; affected landowners; environmental and public interest groups; Indian tribes and regional Native American organizations; commentors and other interested parties; and local libraries and newspapers. We [1] encourage government representatives to notify their constituents of this proposed Project and encourage them to comment on their areas of concern.

Summary of the Proposed Project

Southern Star proposes to construct a compressor station adjacent to an existing Southern Star dehydration plant and install two 450-foot, 30-inch diameter pipelines connecting the proposed compressor station with the existing dehydration plant. The compressor station will be approximately 5.5 acres and the pipeline construction corridor will be 100-foot-wide. A new pond will be constructed south of the compressor station to replace the existing pond that will be filled during construction of the compressor station.

A location map depicting the proposed facilities is attached to this NOI as Appendix 1 .[2]

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we will discuss impacts that could occur as results of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources.
- Aquatic resources Vegetation and wildlife.
- Threatened and endangered species.
- Land use, recreation, and visual resources.
- Cultural resources.
- Socioeconomics.
- Air quality and noise.
- Reliability and safety.
- Cumulative impacts.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the Public Participation section.

Currently Identified Environmental Issues

We have already identified issues that we think deserve attention based on our previous experience with similar projects in the region. This preliminary list of issues, which is presented below, may be revised based on your comments and our continuing analyses specific to the Project.

- Potential noise and vibration impacts from compressor station.
- Air quality impacts from the compressor station.
- Wetland and waterbody impacts.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the Project. 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 written comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC on or before December 14, 2009.

Comments on the proposed Project can be submitted to the FERC in written form. For your convenience, there are three methods which you can use to submit your written comments to the Commission. In all instances please reference the Project docket number (CP10–2–000) with your submission. The three methods are:

(1) You may file your comments electronically by using the Quick Comment feature, which is located at *http://www.ferc.gov* under the link called ''*Documents and Filings*''. A Quick Comment is an easy method for

[1] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

[2] The appendices referenced in this notice are not printed in the **Federal Register**, but they are being provided to all those who receive this notice in the mail. Copies of the NOI can be obtained from the Commission's Web site at the ''eLibrary'' link, Commission's Public Reference Room, or by calling (202) 502–8371. For instructions on connecting to eLibrary, refer to the end of this notice.

interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the ''eFiling'' feature that is listed under the ''*Documents and Filings*'' link. 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 to your submission. New eFiling users must first create an account by clicking on the links called ''*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 with the Commission via mail by sending an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Label one copy of the comments for the attention of Gas Branch 3, PJ–11.3.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners whose property may be used temporarily for project purposes, who have existing easements from the pipeline, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities. By this notice we are also asking governmental agencies, especially those in Appendix 2, to express their interest in becoming cooperating agencies for the preparation of the EA.

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (Appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the Internet at *http://www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits, in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–28012 Filed 11–20–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER10–253–000; EL10–14–000]

Primary Power, LLC; Notice of Filing

November 16, 2009.

Take notice that on November 10, 2009, Primary Power, LLC, pursuant to sections 205 and 209 of the Federal Power Act and Order No. 679, filed a Petition for Declaratory Order requesting Incentive Rate Treatment, Acceptance of Rate of Return and Certain Related Determinations for the Grid Plus Transmission System.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 1, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–28014 Filed 11–20–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2009–0401; FRL–8983–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Miscellaneous Organic Chemical Manufacturing (Renewal), EPA ICR Number 1969.04, OMB Control Number 2060–0533

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before *December 23, 2009.*

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2009–0401, to (1) EPA online using *www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information

Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 8, 2009 (74 FR 32580), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2009–0401, which is available for public viewing online at *http://www.regulations.gov* and in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper will be made available for public viewing at *http://www.regulations.gov*, as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: NESHAP for Miscellaneous Organic Chemical Manufacturing (Renewal).

ICR Numbers: EPA ICR Number 1969.04, OMB Control Number 2060–0533.

ICR Status: This ICR is schedule to expire on December 31, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for the regulations published at 40 CFR part 63, subpart FFFF were proposed on April 4, 2002, and promulgated on November 10, 2003. These regulations apply to new and existing facilities that manufacture a miscellaneous organic chemical and are located at, or are part of, major sources of hazardous air pollutant (HAP) emissions. New facilities include those that commenced construction or reconstruction after the date of proposal. This information is being collected to assure compliance with 40 CFR part 63, subpart FFFF.

In general, all NESHAP standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NESHAP. Semiannual reports are also required.

Any owner or operator subject to the provisions of this subpart must maintain a file of these measurements, and retain the file for at least five years following the collection of such measurements, maintenance reports, and records.

All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 63, subpart FFFF, as authorized in sections 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that has been determined to be private.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information estimated to average 254 hour per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose and provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information. All existing ways will have to adjust to comply with any previously applicable instructions and requirements that have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Miscellaneous organic chemical manufacturing.

Estimated Number of Respondents: 257.

Frequency of Response: Initially, occasionally and semiannually.

Estimated Total Annual Hour Burden: 416,830.

Estimated Total Annual Cost: $41,436,793, which includes $35,303,884 in labor costs, $670,256 capital/startup costs and $5,462,653 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is no change in the labor hours in this ICR as compared to the previous one. This is due to two considerations: (1) The regulations have not changed over the past three years and are not anticipated to change over the next three years; (2) the growth rate for the industry is very low, negative or nonexistent, so there is no significant change in the overall burden. Some insignificant reporting errors were corrected in this ICR.

Dated: November 16, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9–28055 Filed 11–20–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Reviewed by the Federal Communications Commission, Comments Requested

November 13, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comments on this information collection should submit comments on January 22, 2010. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to Judith B. Herman, Federal Communications Commission (FCC). To submit your PRA comments by e–mail send them to: PRA@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, OMD, 202–418–0214. For additional information about the information collection(s) send an e–mail to PRA@fcc.gov or contact Judith B. Herman, 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No: 3060–0719.

Title: Quarterly Report of IntraLATA Carriers Listing Payphone Automatic Number Identifications (ANIs).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit.

Number of Respondents: 400 respondents; 1,600 responses.

Estimated Time Per Response: 3.5 hours.

Frequency of Response: Quarterly reporting requirement, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Mandatory. Statutory authority for this collection of information is contained in 47 U.S.C. sections 151, 154, 201–205, 215, 218, 219, 220, 226 and 276.

Total Annual Burden: 5,600 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may, however, request confidential treatment for the information they believe is confidential under 47 CFR 0.459 of the Commission's rules.

Need and Uses: The Commission is submitting this collection as an extension to the Office of Management and Budget (OMB) after this 60 day comment period in order to obtain the full three year clearance from them.

Pursuant to the mandate in Section 276(b)(1)(A) to ''establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call,'' intraLATA carriers are required to provide to interexchange carriers (IXCs) a quarterly report listing payphone Automatic Number Identification (ANIs). Without provision of this report, resolution of disputed ANIs would be rendered very difficult. Interexchange carriers would not be able to discern which ANIs pertain to payphones and therefore would not be able to ascertain which dial–around calls were originated by payphones for compensation purposes. There would be no way to guard against possible fraud. Without this reporting requirement, lengthy investigations would be necessary to verify claims. The quarterly report allows IXCs to determine which dial–around calls are made from payphones. The data which must be maintained for at least 18 months after the close of a compensation period, will facilitate verification of disputed ANIs.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. E9–28005 Filed 11–20–09; 8:45 am]

BILLING CODE: 6712–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 8, 2009.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Cullen Thompson, Houston, Texas, and Betsy Lehman, Fort Morgan, Colorado, 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 acquire voting shares of Faith Bank Holding Company, and thereby indirectly acquire voting shares of Farmers State Bank, both of Faith, South Dakota.

B. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. Donald B. Marron; BOTC Holdings LLC; Lightyear Fund II, L.P.; Lightyear Co–Invest Partnership II, L.P.; Lightyear Fund II GP, L.P.; Lightyear Fund II GP Holdings, LLC; Marron & Associates, LLC; Chestnut Venture Holdings, LLC; Lightyear Capital LLC; and Lightyear Capital II, LLC, all of New York, New York; to acquire voting shares of Cascade Bancorp, and thereby indirectly

acquire voting shares of The Bank of the Cascades, both of Bend, Oregon.

Board of Governors of the Federal Reserve System, November 18, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–28033 Filed 11–20–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 18, 2009.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. First Waterloo Bancshares, Inc., Waterloo, Illinois; to acquire 100 percent of the voting shares of Red Bud Bancorp, Inc., and thereby indirectly acquire voting shares of First State Bank of Red Bud, both of Red Bud, Illinois.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Diamond Bancorp, Inc., Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of DG Bancorp, Inc., and thereby indirectly acquire Downers Grove Natonal Bank, both of Downers Grove, Illinois.

In connection with this application, Applicant also has applied to acquire Diamond Bank FSB, Schaumburg, Illinois, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, November 18, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–28032 Filed 11–20–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 17, 2009.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Rbancshares, Inc., Westerville, Ohio; to become a bank holding company by acquiring 80.10 percent of the voting shares of Ohio State Bancshares, Inc. and Ohio State Bank, both of Marion, Ohio.

B. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. Community Bank Partners, Inc., Denver, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of The Palisades National Bank, Palisade, Colorado.

Board of Governors of the Federal Reserve System, November 17, 2009.

Margaret McCloskey Shanks,

Associate Secretary of the Board.

[FR Doc. E9–27955 Filed 11–20–09; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Delegation of Authority

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice.

Notice is hereby given that I have delegated to the Assistant Secretary for Preparedness and Response, the authority under Section 231 of the PHS Act (42 U.S.C. 238), as amended, to accept gifts, excluding gifts of real property, insofar as it applies to the functions assigned to the Office of the Assistant Secretary for Preparedness and Response. This authority was delegated to the Assistant Secretary for Health by the Secretary on December 9, 1982.

This authority is to be executed in accordance with the requirements of Section 231, PHS Act (42 U.S.C. 239), as amended, and any other applicable statutes and regulations of the Department and PHS. This authority may be redelegated.

Exercise of these authorities is concurrent to and does not supplant existing delegations of authority from the Assistant Secretary of Health or the Secretary. Redelegations previously made that are not inconsistent with this delegation may remain in effect until revised.

This delegation is effective upon date of signature.

Dated: November 12, 2009.

Howard K. Koh,

Assistant Secretary for Health.

[FR Doc. E9–28080 Filed 11–20–09; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0281]

Niaja Kane: Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) (the agency) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) permanently debarring Niaja Kane from providing services in any capacity to a person that has an approved or pending drug product application. We base this order on a finding that Ms. Kane was convicted of felonies under Federal law for conduct relating to the regulation of a drug product under the act. Ms. Kane was given notice of the proposed permanent debarment and an opportunity to request a hearing within the timeframe prescribed by regulation. As of September 20, 2009, Ms. Kane failed to respond. Ms. Kane's failure to respond constitutes a waiver of her right to a hearing concerning this action.

DATES: This order is effective November 23, 2009.

ADDRESSES: Submit applications for special termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kenny Shade, Office of Regulatory Affairs (HFC–230), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–632–6844.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(a)(2)(B) of the act (21 U.S.C. 335a(a)(2)(B)) requires debarment of an individual if FDA finds that the individual has been convicted of a felony under Federal law for conduct otherwise relating to the regulation of any drug product under the act.

On January 22, 2007, the U.S. District Court for the Eastern District of Pennsylvania accepted Niaja Kane's guilty plea and entered judgment against her for trafficking in counterfeit goods in violation of 18 U.S.C. 2320(a), holding counterfeit drugs for sale with intent to defraud in violation of 21 U.S.C. 331(i)(3) and 333(a)(2), and attempted possession with intent to distribute a counterfeit controlled substance in violation of 21 U.S.C. 846. The actions underlying these convictions were associated with Ms. Kane's order of counterfeit Percocet®, Viagra®, and Cialis® on or about February 28, 2006. These drugs included approximately 2,040 tablets purporting to be Viagra®, 1,200 tablets purporting to be Cialis®, 2,333 tablets purporting to be Percocet® 7.5 milligrams (mg), and 6,573 tablets purporting to be Percocet® 10 mg. All of these drugs, without authorization, bore the trademark, trade name and identifying marks, imprints and other characteristics of the products they purported to be, thereby falsely purporting to be manufactured, processed, packed, or distributed by the legitimate holders of such trademarks. Ms. Kane intentionally trafficked and attempted to traffic in goods, all of which were counterfeit. She knowingly used on and in connection with such goods counterfeit marks, that is spurious marks identical to and substantially indistinguishable from shape and imprints found on the genuine products whose marks were in use and were registered for those products by those companies on the principal register of the United States Patent and Trademark Office. Ms. Kane also, with intent to defraud and mislead, willfully caused a drug to be a counterfeit drug and held for sale or dispensing the drugs referenced previously. With respect to the tablets purporting to be Percocet®, Ms. Kane knowingly and intentionally attempted to possess with intent to distribute or dispense a mixture and substance containing oxycodone, a Schedule II controlled substance contained in Percocet®, all of which without authorization bore the identifying marks of the manufacturer and distributor of the controlled substance, which did not manufacture or distribute such substances.

As a result of these convictions, FDA sent Ms. Kane by certified mail on August 13, 2009, a notice proposing to permanently debar her from providing services in any capacity to a person that has an approved or pending drug product application. The proposal was based on a finding, under section 306(a)(2)(B) of the act that Niaja Kane was convicted of felonies under Federal law for conduct relating to the regulation of a drug product under the act. The proposal also offered Ms. Kane an opportunity to request a hearing, providing her 30 days from the date of receipt of the letter in which to file the request, and advised her that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Ms. Kane failed to respond within the timeframe prescribed by regulation and has, therefore, waived her opportunity for a hearing and waived any contentions concerning her debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Acting Director, Office of Enforcement, Office of Regulatory Affairs, under section 306(a)(2)(B) of the act, under authority delegated to the Acting Director (Staff Manual Guide 1410.35), finds that Niaja Kane has been convicted of felonies under Federal law for conduct relating to the regulation of a drug product under the act.

As a result of the foregoing finding, Ms. Kane is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 512, or 802 of the act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective (see **DATES**) (see section 306(c)(1)(B) and (c)(2)(A)(ii), and section 201(dd) of the act (21 U.S.C. 321(dd)). Any person with an approved or pending drug product application who knowingly employs or retains as a consultant or contractor, or otherwise uses the services of Niaja Kane, in any capacity, during Ms. Kane's debarment, will be subject to civil money penalties (section 307(a)(6) of the act (21 U.S.C. 335b(a)(6))). If Ms. Kane, during her period of debarment, provides services in any capacity to a person with an approved or pending drug product application, she will be subject to civil money penalties (section 307(a)(7) of the act). In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Ms. Kane during her period of debarment (section 306(c)(1)(B) of the act).

Any application by Ms. Kane for special termination of debarment under section 306(d)(4) of the act should be identified with Docket No. 2009–N–0281 and sent to the Division of Dockets Management (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 9, 2009.

Brenda Holman,

Acting Director, Office of Enforcement, Office of Regulatory Affairs.

[FR Doc. E9–28083 Filed 11–20–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0288]

Anthony W. Albanese: Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) (the agency) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) permanently debarring Anthony W. Albanese from providing services in any capacity to a person that has an approved or pending drug product application. We base this order on a finding that Mr. Albanese was convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the act. Mr. Albanese was given notice of the proposed permanent debarment and an opportunity to request a hearing within the time frame prescribed by regulation. As of October 30, 2009, Mr. Albanese has failed to respond. Mr. Albanese's failure to respond constitutes a waiver of his right to a hearing concerning this action.

DATES: This order is effective November 23, 2009.

ADDRESSES: Submit applications for special termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kenny Shade, Office of Regulatory Affairs (HFC–230), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–632–6844.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(a)(2)(B) of the act (21 U.S.C. 335a(a)(2)(B)) requires debarment of an individual if FDA finds that the individual has been convicted of a felony under Federal law for conduct relating to the regulation of any drug product under the act.

On November 5, 2004, the U.S. District Court for the District of Rhode Island entered judgment against Mr. Albanese for one count of conspiracy to sell drug samples in violation of 18 U.S.C. 371; one count of unlawful sale of drug samples in violation of 21 U.S.C. 331(t), 333(b)(1), and 353(c)(1); one count of health care fraud in violation of 18 U.S.C.1347(a) and 2; and one count of money laundering in violation of 18 U.S.C.1956(a)(1)(A)(i) and 2.

FDA's finding that debarment is appropriate is based on the felony conviction related to the sale of drug samples. The factual basis for this conviction is as follows: From July 3, 2000, and continuing until on or about August 16, 2002, Mr. Albanese knowingly sold and offered to sell prescription drug samples that had been provided by pharmaceutical companies to Dr. Wallace E. Gonsalves, Jr. Mr. Albanese paid cash and goods in kind to Dr. Gonsalves for drug samples, removed the sample drugs from their packaging, and placed them for sale at his pharmacy as prescription drugs.

As a result of his conviction, FDA sent Mr. Albanese by certified mail on September 1, 2009, a notice proposing to permanently debar him from providing services in any capacity to a person that has an approved or pending drug product application. The proposal was based on a finding, under section 306(a)(2)(B) of the act that Mr. Albanese was convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the act. The proposal also offered Mr. Albanese an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Mr. Albanese failed to respond within the time frame prescribed by regulation and has therefore waived his opportunity for a hearing and waived any contentions concerning his debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Acting Director, Office of Enforcement, Office of Regulatory Affairs, under section 306(a)(2)(B) of the act, and under authority delegated to the Acting Director (Staff Manual Guide 1410.35), finds that Mr. Albanese has been convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the act.

As a result of the foregoing finding, Mr. Albanese is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under section 505, 512, or 802 of the act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective (see **DATES**) (see section 306(c)(1)(B) and (c)(2)(A)(ii), and section 201(dd) of the act (21 U.S.C. 321(dd)). Any person with an approved or pending drug product application who knowingly employs or retains as a consultant or contractor, or otherwise uses the services of Mr. Albanese, in any capacity, during Mr. Albanese's debarment, will be subject to civil money penalties (section 307(a)(6) of the act (21 U.S.C. 335b(a)(6)). If Mr. Albanese, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties (section 307(a)(7) of the act). In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Mr. Albanese during his debarment (section 306(c)(1)(B) of the act).

Any application by Mr. Albanese for special termination of debarment under section 306(d)(4) of the act should be identified with Docket No. FDA–2009–N–0288 and sent to the Division of Dockets Management (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 10, 2009.

Brenda Holman,

Acting Director, Office of Enforcement, Office of Regulatory Affairs.

[FR Doc. E9–28084 Filed 11–20–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Diseases Transmitted through the Food Supply

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

ACTION: Notice of annual update of list of infectious and communicable diseases that are transmitted through handling the food supply and the methods by which such diseases are transmitted.

SUMMARY: Section 103 (d) of the Americans with Disabilities Act of 1990,

Public Law 101–336, requires the Secretary to publish a list of infectious and communicable diseases that are transmitted through handling the food supply and to review and update the list annually. The Centers for Disease Control and Prevention (CDC) published a final list on August 16, 1991 (56 FR 40897) and updates on September 8, 1992 (57 FR 40917); January 13, 1994 (59 FR 1949); August 15, 1996 (61 FR 42426); September 22, 1997 (62 FR 49518–9); September 15, 1998 (63 FR 49359), September 21, 1999 (64 FR 51127); September 27, 2000 (65 FR 58088), September 10, 2001 (66 FR 47030), and September 27, 2002 (67 FR 61109), September 26, 2006 (71 FR 56152), and November 17, 2008 (73 FR 67871). The final list has been reviewed in light of new information and has been revised as set forth below.

DATES: *Effective Date: November 23, 2009.*

FOR FURTHER INFORMATION CONTACT: Dr. Art Liang, National Center for Zoonotic, Vector-Borne, and Enteric Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop G–24, Atlanta, Georgia 30333.

Telephone: (404) 639–2213.

SUPPLEMENTARY INFORMATION: Section 103 (d) of the Americans with Disabilities Act of 1990, 42 U.S.C. 12113 (d), requires the Secretary of Health and Human Services to:

1. Review all infectious and communicable diseases which may be transmitted through handling the food supply;
2. Publish a list of infectious and communicable diseases which are transmitted through handling the food supply;
3. Publish the methods by which such diseases are transmitted; and,
4. Widely disseminate such information regarding the list of diseases and their modes of transmissibility to the general public.

Additionally, the list is to be updated annually.

Since the last publication of the list on September 26, 2006 (67 FR 61109), no information has been added.

I. Pathogens Often Transmitted by Food Contaminated by Infected Persons Who Handle Food, and Modes of Transmission of Such Pathogens

Some pathogens are frequently transmitted by food contaminated by infected persons. The presence of any one of the following signs or symptoms in persons who handle food may indicate infection by a pathogen that could be transmitted to others through handling the food supply: diarrhea, vomiting, open skin sores, boils, fever, dark urine, or jaundice. The failure of food-handlers to wash hands (in situations such as after using the toilet, handling raw meat, cleaning spills, or carrying garbage, for example), wear clean gloves, or use clean utensils is responsible for the foodborne transmission of these pathogens. Non-foodborne routes of transmission, such as from one person to another, are also major contributors in the spread of these pathogens. Pathogens that can cause diseases after an infected person handles food are the following:

Noroviruses, Hepatitis A virus, *Salmonella Typhi,** *Sapoviruses, Shigella* species, *Staphylococcus aureus, Streptococcus pyogenes.*

II. Pathogens Occasionally Transmitted by Food Contaminated by Infected Persons Who Handle Food, but Usually Transmitted by Contamination at the Source or in Food Processing or by Non-Foodborne Routes

Other pathogens are occasionally transmitted by infected persons who handle food, but usually cause disease when food is intrinsically contaminated or cross-contaminated during processing or preparation. Bacterial pathogens in this category often require a period of temperature abuse to permit their multiplication to an infectious dose before they will cause disease in consumers. Preventing food contact by persons who have an acute diarrheal illness will decrease the risk of transmitting the following pathogens:

Campylobacter jejuni, Cryptosporidium species, *Entamoeba histolytica,* Enterohemorrhagic *Escherichia coli,* Enterotoxigenic *Escherichia coli, Giardia intestinalis,* Nontyphoidal *Salmonella, Taenia solium, Vibrio cholerae, Yersinia enterocolitica.*

References

1. *World Health Organization.* Health surveillance and management procedures for food-handling personnel: report of a WHO consultation. World Health Organization technical report series; 785. Geneva: World Health Organization, 1989.
2. *Frank JF, Barnhart HM.* Food and dairy sanitation. In: Last JM, ed. Maxcy-Rosenau public health and preventive medicine, 12th edition. New York Appleton-Century-Crofts, 1986:765–806.
3. *Bennett JV, Holmberg SD, Rogers MF, Solomon SL.* Infectious and parasitic diseases. In: Amler RW, Dull HB, eds. Closing the gap: the burden of unnecessary illness. New York: Oxford University Press, 1987:102–114.
4. *Centers for Disease Control and Prevention.* Locally acquired neurocysticercosis—North Carolina, Massachusetts, and South Carolina, 1989–1991. MMWR 1992; 41:1–4.
5. *Centers for Disease Control and Prevention.* Foodborne Outbreak of Cryptosporidiosis—Spokane, Washington, 1997. MMWR 1998; 47:27.
6. *Noel JS, Humphrey CD, Rodriguez EM, et. al., Parkville virus:* A novel genetic variant of human calicivirus in the sapporo virus clade, associated with an outbreak of gastroenteritis in adults. J. Med. Virol. 52:173–178, 1997.
7. *Centers for Disease Control and Prevention.* Surveillance for foodborne disease outbreaks—United States, 2006. *MMWR Morbidity and Mortality Weekly Report* 2009; 58:609–615.
8. *Widdowson MA, Sulka A, Bulens SN, Beard RS, Chaves SS, Hammond R, Salehi EDP, Swanson E, Totaro J, Woron R, Mead PS, Bresee JS, Monroe SS, Glass RI.* Norovirus and Foodborne Disease, United States, 1991–2000. *Emerging Infectious Diseases* 2005; 11:95–102.

Dated: November 16, 2009.

Tanja Popovic,

Chief Science Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. E9–28093 Filed 11–20–09; 8:45 am]

BILLING CODE 4163–18–P

* 1. Kauffmann-White scheme for designation of *Salmonella* serotypes

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

FY 2010 Special Diabetes Program for Indians Community-Directed Grant Program

Announcement Type: New/Competing Continuation.

Funding Opportunity Number: HHS–2010–IHS–SDPI–0002.

Catalog of Federal Domestic Assistance Number: 93.237.

Key Dates

Application Deadline: December 13, 2009.

Review Date: January 6–8, 2010.

Earliest Anticipated Start Date: January 18, 2010.

Other information: This announcement will be open throughout Fiscal Year (FY) 2010 based on existing budget cycles. Refer to application instructions for additional details. This current announcement targets grantees that currently operate under a budget cycle that begins on January 1.

I. Funding Opportunity Description

Statutory Authority

The Indian Health Service (IHS) is accepting grant applications for the FY 2010 Special Diabetes Program for

Indians (SDPI) Community-Directed grant program. This competitive grant announcement is open to all existing SDPI grantees that have an active grant in place and are in compliance with the previous terms and conditions of the grant. This program is authorized under H.R. 6331 ''Medicare Improvement for Patients and Providers Act of 2008'' (Section 303 of Pub. L. 110–275) and the Snyder Act, 25 U.S.C. 13. The program is described in the Catalog of Federal Domestic Assistance (CDFA) under 93.437.

Overview

The SDPI seeks to support diabetes treatment and prevention activities for American Indian/Alaska Native (AI/AN) communities. Grantees will implement programs based on identified diabetes-related community needs. Activities will be targeted to reduce the risk of diabetes in at-risk individuals, provide services that target those with new onset diabetes, provide high quality care to those with diagnosed diabetes, and/or reduce the complications of diabetes.

The purpose of the FY 2010 SDPI Community-Directed grant program is to support diabetes treatment and prevention programs that have a program plan which integrates at least one IHS Diabetes Best Practice and that have a program evaluation plan in place which includes tracking outcome measures.

This is not an application for continued funding as was previously available for Community-Directed grant programs.

Background

Diabetes Among American Indian/ Alaska Native Communities

During the past 50 years, type 2 diabetes has become a major public health issue in many AI/AN communities, and it is increasingly recognized that AI/AN populations have a disproportionate burden of diabetes (Ghodes, 1995). In 2006, 16.1% of AI/ANs aged 20 years or older had diagnosed diabetes (unpublished IHS Diabetes Program Statistics, 2006) compared to 7.8% for the non-Hispanic white population (CDC, 2007). In addition, AI/AN people have higher rates of diabetes-related morbidity and mortality than in the general U.S. population (Carter, 1996; Harris, 1995; Gilliland, 1997). Strategies to address the prevention and treatment of diabetes in AI/AN communities are urgently needed.

Under the Balanced Budget Act of 1997, Congress authorized the IHS to administer the SDPI grant program. SDPI grants are programmatically directed by the IHS Division of Diabetes Treatment and Prevention (DDTP).

Special Diabetes Program for Indians

The SDPI is a $150 million per year grant program. Over 330 programs have received SDPI Community-Directed grants annually since 1998. In addition, 66 demonstration projects have been funded annually since 2004 to address prevention of type 2 diabetes or cardiovascular disease risk reduction. A Congressional re-authorization in 2008 extended the SDPI through FY 2011.

II. Award Information

Type of Awards

Grants.

Estimated Funds Available

The total amount of funding identified for FY 2010 SDPI Community-Directed grant program is $104.8 million. Funds available to each IHS Area and to urban Indian health programs have been determined through Tribal consultation. Within each Area, local Tribal consultation guided IHS decision-making on how much funding is available per eligible applicant. FY 2010 SDPI funding remains unchanged from FY 2009, per Tribal consultation. All awards issued under this announcement are subject to the availability of funds. In the absence of funding, the agency is under no obligation to make awards funded under this announcement.

Anticipated Number of Awards

Approximately 70 awards will be issued for Budget Cycle II. Applications will be accepted from grantees whose current SDPI FY 2009 grants end on December 30, 2009. Additionally, Budget Cycle I grantees that were deemed ineligible due to incomplete applications or that possessed delinquent OMB A–133 financial audits can resubmit applications under the timelines for Budget Cycle II.

Project Period

The project period for grants made under this announcement is 24 months, subject to the availability of funds.

III. Eligibility Information

1. Eligible Applicants

Eligible applicants include the following:

- *Federally-recognized Tribes operating an Indian health program* operated pursuant to a contract, grant, cooperative agreement, or compact with the IHS pursuant to the Indian Self-Determination and Education Assistance Act (ISDEAA), (Pub. L. 93–638).
- *Tribal organizations operating an Indian health program* operated pursuant to a contract, grant, cooperative agreement, or compact with the IHS pursuant to the ISDEAA, (Pub. L. 93–638).
- *Urban Indian health programs* that operate a Title V Urban Indian Health Program: This includes programs currently under a grant or contract with the IHS under Title V of the Indian Health Care Improvement Act, (Pub. L. 93–437).
- *Indian Health Service facilities* (refer to paragraph 3 below in this Section).

Current SDPI grantees are eligible to apply for competing continuation funding under this announcement and must demonstrate that they have complied with previous terms and conditions of the SDPI grant in order to receive funding under this announcement. Non-profit Tribal organizations and national or regional health boards are not eligible, consistent with past Tribal consultation. Applicants that do not meet these eligibility requirements will have their applications returned without further consideration.

Under this announcement, only one SDPI Community-Directed diabetes grant will be awarded per entity. If a Tribe submits an application, their local IHS facility cannot apply; if the Tribe does not submit an application, the IHS facility can apply. Tribes that are awarded grant funds may sub-contract with local IHS facilities to provide specific clinical services. In this case, the Tribe would be the primary SDPI grantee and the Federal entity would have a sub-contract within the Tribe's SDPI grant.

Collaborative Arrangements

Tribes are encouraged to collaborate with any appropriate local entities including IHS facilities. If a Tribe seeks to provide specific clinical or support services, it may implement a sub-contract with these entities in order to transfer funds. The amount of SDPI funding that the Tribe receives remains the same. The Tribe, as the primary grantee, arranges with the entity to provide specified services that support the program's plan. The entity may request direct costs only.

When a Tribe sub-contracts with the local IHS facility, application requirements for collaborative arrangements include:

- A signed Memorandum of Agreement (MOA) must be submitted with the SDPI application. The MOA

must include the scope of work assigned to the sub-contracting IHS facility.

- The IHS Area Director and the Tribal Chairperson must give signed approval of the MOA.
- The Tribe's application must include additional SF–424 and SF–424A forms that are completed by the IHS facility which includes a budget narrative and a face page that is signed by the Chief Executive Officer (CEO).

Applications With Sub-Grants

Programs that submit one application on behalf of multiple organizations (sub-grantees) must submit copies of selected application forms and documents for each of their sub-grantees. (See Section IV, Subsection 2 for specifics). All sub-grantees must meet the eligibility requirements noted in Subsection 1 above.

2. Cost Sharing or Matching

The FY 2010 Special Diabetes Program for Indians (SDPI) Community-Directed grant program does not require matching funds or cost sharing.

3. Other Requirements

A. Program Coordinator

Provide information about the SDPI Program Coordinator on the ''Key Contacts Form'' which is included in the application package. The Program Coordinator must meet the following requirements:

- Have relevant health care education and/or experience.
- Have experience with program management and grants program management, including skills in program coordination, budgeting, reporting and supervision of staff.
- Have a working knowledge of diabetes.

B. Documentation of Support

Tribal Organizations

Existing SDPI grantees must submit a current, signed and dated Tribal resolution or Tribal letter of support from all Indian Tribe(s) served by the project. Applications from each Tribal organization must include specific resolutions or letters of support from all Tribes affected by the proposed project activities.

If the Tribal resolution or Tribal letter of support is not submitted with the application, it must be received in the Division of Grants Operations (DGO) prior to the objective review date, January 6, 2010.

Title V Urban Indian Health Programs

Urban Indian health programs must submit a letter of support from the organization's board of directors. Urban Indian health programs are non-profit organizations and must also submit a copy of the 501(c)(3) Certificate. All letters of support must be included in the application or submitted to the DGO prior to the objective review date, January 6, 2010.

IHS Hospitals or Clinics

IHS facilities must submit a letter of support from the CEO. The documentation must be received in the DGO prior to the objective review date, January 6, 2010.

IV. Application and Submission Information

1. Obtaining Application Materials

The application package and instructions may be found at *http://www.Grants.gov.*

2. Content and Form of Application Submission

Mandatory documents for all applicants include:

- Application forms:
  - SF–424.
  - SF–424A.
  - SF–424B.
  - Key Contacts Form.
- Budget Narrative.
- Project Narrative.
- Tribal Resolution or Tribal Letter of Support (Tribal Organizations only).
- Letter of Support from Organization's Board of Directors (Title V Urban Indian Health Programs only).
- 501(c)(3) Certificate (Title V Urban Indian Health Programs only).
- CEO Letters of Support (IHS facilities only).
- 2008 and 2009 IHS Diabetes Care and Outcomes Audit Report.
- Biographical sketches for all Key Personnel.
- Disclosure of Lobbying Activities (SF–LLL) (if applicable).
- Documentation of OMB A–133 required Financial Audit for FY 2007 and FY 2008. Acceptable forms of documentation include:
  - E-mail confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or
  - Face sheets from audit reports. These can be found on the FAC Web site: *http://harvester.census.gov/fac/dissem/accessoptions.html?submit=Retrieve+Records.*

Mandatory Documents for Programs That Proposed Sub-Grantees

The primary grantee for applications that propose sub-grantees must submit all of the mandatory documents listed above. In addition, they must submit the following documents for each sub-grantee:

- SF–424, SF–424A, SF–424B and Key Contacts Form.
- Project Narrative.
- Budget Narrative.
- 2008 and 2009 IHS Diabetes Care and Outcomes Audit Reports.

A separate budget is required for each sub-grantee, but the primary grantee's application must reflect the total budget for the entire cost of the project.

Mandatory Documents for Programs That Propose Sub-Contracts With Local IHS Facilities

Programs that propose sub-contracts with IHS facilities to provide clinical services must submit the documents noted below for the sub-contractor:

- MOA that is signed by the primary grantee, the sub-contractor, the IHS Area Director and the Tribal Chairperson.
- SF–424 and SF–424A forms completed by the IHS facility (in addition to the primary applicant's SF–424 forms).

A separate budget is required for the sub-contract, but the primary grantee's application must reflect the total budget for the entire cost of the project.

Public Policy Requirements: All Federal-wide public policies apply to IHS grants with the exception of the Discrimination Policy.

Requirements for Project and Budget Narratives

A. *Project Narrative:* This narrative should be a separate Word document that is no longer than 13–17 pages (see page limitations for each Part noted below) with consecutively numbered pages. Be sure to place all responses and required information in the correct section or they will not be considered or scored. If the narrative exceeds the page limit, only the first 13–17 pages will be reviewed. There are three parts to the narrative: Part A—Program Information; Part B—Program Planning and Evaluation; and Part C—Program Report. A sample project narrative and template are available in the application instructions. See below for additional details about what must be included in the narrative.

Part A: Program Information (No More Than 4 Pages)

Section 1: Community Needs Assessment

A1.1 Describe the burden of diabetes in your community. Include estimates of the number of people diagnosed with diabetes and the total number of people. Describe how you calculated these estimates.

A1.2 Briefly describe the top diabetes-related health issues in your community.

A1.3 Briefly describe the unique challenges your program experiences related to prevention and treatment of diabetes.

Section 2: Leadership Support

A2.1 Question: Has at least one organization administrator or Tribal leader agreed to be actively involved in your program's work? (Yes or No).

A2.2 Provide the name and role or position that this leader holds.

A2.3 Describe how this leader will be involved with your program.

Section 3: Personnel

Using the table format that is in the application instructions, provide the following information for each person who will be paid with SDPI funds:

A3.1 Name.

A3.2 Title.

A3.3 Brief description of tasks/activities.

A3.4 Is this person already on staff with your SDPI or diabetes program?

A3.5 What percent FTE of this person's salary will be paid using SDPI funds?

Section 4: Diabetes Audit Review

Obtain copies of your local IHS Diabetes Care and Outcomes Audit Reports for 2008 and 2009. Review and compare the results for these two years. Work with your local audit coordinator or Area Diabetes Consultant (ADC) if you need help.

A4.1 Provide a list of results for three to five items/elements (e.g., A1c, eye exam, education, etc.) that improved from 2008 to 2009.

A4.2 Provide a list of three to five items/elements that need to be improved.

A4.3 Describe how your program will address these three to five items/elements that need to be improved or describe how your program will work with your local health care facility to address these areas.

Section 5: Collaboration

A5.1 Describe existing partnerships and collaborations that your program has in place.

A5.2 Describe new partnerships and collaborations that your program is planning to implement.

Part B: Program Planning and Evaluation (No More Than 3 Pages, With 2 Pages for Each Additional Best Practice)

Section 1: Overview

Each 2009 IHS Diabetes Best Practice includes two specific measures that are called ''key measures.'' Programs may track additional measures based on local priorities. A list of all Best Practices is located in the application instructions. This list provides a short description of the contents and key measures for each Best Practice.

B1.1 List which IHS Diabetes Best Practice(s) your program will implement in order to address the needs that were identified in your community assessment.

Section 2: Program Planning

Provide the information requested below separately for each Best Practice that will be implemented:

B2.1 Target Population: What population will you target?

B2.2 Goal: Describe the goal that your program wants to achieve as a result of implementing the selected Best Practice.

B2.3 Objectives/Measures: List the objective(s) your program will work to accomplish, with at least one measure identified for each objective. Be sure to include the two key measures for your selected Best Practice and use the SMART format (see application instructions for additional information). Also, indicate how frequently your program will review data for each measure. (Choose from the following options: weekly, twice a month, monthly, every other month, or quarterly).

B2.4 Activities: List the activities that your program will do to meet the selected Best Practice objectives. These could be events you will organize, services you will offer, materials you will develop and implement, or other activities.

Section 3: Evaluation

B3.1 Describe how your program will track activities for the selected Best Practice(s).

B3.2 Describe how your program will collect and track data on all measures (listed in Section 2 above) for the selected Best Practice(s).

B3.3 Describe how your program will collect stories about individual participants, community events, program staff, and other aspects of your program.

Part C: Program Report (No More Than 4 Pages)

Section 1: Major Accomplishments and Activities

C1.1 Describe three major accomplishments that your SDPI program achieved in the past 12 months.

C1.2 Describe three to five major accomplishments that your SDPI program has achieved since it began.

C1.3 Describe one story that exemplifies a major program accomplishment from the past year.

C1.4 Describe your SDPI program's primary activities during the past 12 months.

C1.5 Describe your SDPI program's primary activities since it began.

Section 2: Challenges

C2.1 Describe the two or three biggest challenges that your SDPI program encountered in the past 12 months.

C2.2 Describe how your SDPI program addressed these challenges.

C2.3 Indicate if you successfully addressed these challenges. (If so, why; if not, why not.)

Section 3: Dissemination

C3.1 Describe three to five major lessons that your SDPI program has learned since it began.

C3.2 Describe how your SDPI program has shared the lessons that you have learned with other diabetes programs.

C3.3 Describe materials or products your SDPI program has developed.

Section 4: Other Information

C4.1 Provide any additional information about your SDPI program.

B. Budget Narrative (No More Than 4 Pages)

The budget narrative should explain why each budget item on the SF–424A is necessary and relevant to the proposed project.

3. Submission Dates and Times

Applications are to be submitted electronically through Grants.gov by December 10, 2009 at 12 midnight Eastern Standard Time (EST). Any application received after the application deadline will not be accepted for processing, and it will be returned to the applicant(s) without further consideration for funding.

If technical challenges arise and the applicants need help with the electronic application process, contact Grants.gov Customer Support via e-mail to support@grants.gov or at (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays). If problems persist, contact Tammy Bagley, Senior Grants Policy Analyst, IHS Division of Grants Policy (DGP) (*tammy.bagley@ihs.gov*) at (301) 443–5204 to describe the difficulties being experienced. Be sure to contact Ms.

Bagley at least *ten days prior* to the application deadline. *Please do not contact the DGP until you have received a Grants.gov tracking number.* In the event you are not able to obtain a tracking number, call the DGP as soon as possible.

If an applicant needs to submit a paper application instead of submitting electronically via Grants.gov, prior approval must be requested and obtained (*see* page 16 for additional information). The waiver must be documented in writing (e-mails are acceptable), *before* submitting a paper application. After a waiver is received, the application package must be downloaded by the applicant from Grants.gov. Once completed and printed, the original application and two copies must be sent to Denise E. Clark, Division of Grants Operations (DGO) (*denise.clark@ihs.gov*), 801 Thompson Avenue, TMP, Suite 360, Rockville, MD 20852. Paper applications that are submitted without a waiver will be returned to the applicant without review or further consideration.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

A. Pre-award costs are allowable pending prior approval from the awarding agency. However, in accordance with 45 CFR part 74 and 92, pre-award costs are incurred at the applicant's risk. The awarding office is under no obligation to reimburse such costs if for any reason the applicant does not receive an award or if the award is less than anticipated.

B. The available funds are inclusive of direct and appropriate indirect costs (*see* Section VI, Subsection 3).

C. Only one grant will be awarded per applicant.

6. Electronic Submission Requirements

Use the *http://www.Grants.gov* Web site to submit an application electronically; select the ''Apply for Grants'' link on the homepage. Download a copy of the application package, complete it offline, and then upload and submit the application via the Grants.gov Web site. Electronic copies of the application may not be submitted as attachments to e-mail messages addressed to IHS employees or offices.

Applicants that receive a waiver to submit paper application documents must follow the rules and timelines that are noted below. The applicant must seek assistance at least ten days prior to the application deadline.

Applicants that do not adhere to the timelines for Central Contractor Registry (CCR) and/or Grants.gov registration and/or request timely assistance with technical issues will not be considered for a waiver to submit a paper application.

Please be aware of the following:

- Paper applications are not the preferred method for submitting applications.
- If you have problems electronically submitting your application on-line, contact Grants.gov Customer Support via e-mail to *support@grants.gov* or at (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays). If problems persist, contact Tammy Bagley, Senior Grants Policy Analyst, DGP, at (301) 443–5204.
- Upon contacting Grants.gov, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver to submit a paper application must be obtained.
- If it is determined that a waiver is needed, the applicant must submit a request in writing (e-mails are acceptable) to *michelle.bulls@ihs.gov* that includes a justification for the need to deviate from the standard electronic submission process. If the waiver is approved, the application package must be downloaded by the applicant from Grants.gov. Once completed and printed, it should be sent directly to the DGO by the deadline date of December 13, 2009 (*see* Section IV, Subsection 3 for details).
- Upon entering the Grants.gov site, there is information that outlines the requirements to the applicant regarding electronic submission of an application through Grants.gov, as well as the hours of operation.
- Applicants are strongly encouraged not to wait until the deadline date to begin the application process through Grants.gov as the registration process for CCR and Grants.gov could take up to fifteen working days.
- In order to use Grants.gov, the applicant must have a Dun and Bradstreet (DUNS) Number and register in the Central Contractor Registration (CCR). A minimum of ten working days should be allowed to complete CCR registration. *See* Subsection 8 below for more information.
- All documents must be submitted electronically, including all information typically included on the SF–424 and all necessary assurances and certifications.
- Please use the optional attachment feature in Grants.gov to attach additional documentation that may be requested by IHS.
- The application must comply with any page limitation requirements described in the Funding Announcement.
- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The DGO will download your application from Grants.gov and provide necessary copies to the DDTP. Neither the DGO nor the DDTP will notify applicants that the application has been received.
- You may access the electronic application package and instructions for this Funding Opportunity Announcement on *http://www.Grants.gov*.
- You may search for the application package on Grants.gov either with the CFDA number or the Funding Opportunity Number. Both numbers are identified in the heading of this announcement.
- The applicant must provide the Funding Opportunity Number: HHS–2010–IHS–SDPI–0002.

DUNS Number

Applicants are required to have a DUNS number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Many organizations may already have a DUNS number. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number or to find out if your organization already has a DUNS number, access *http://fedgov.dnb.com/webform*.

Applicants must also be registered with the CCR. A DUNS number is required before an applicant can complete their CCR registration. Registration with the CCR is free of charge. Applicants may register online at *http://www.ccr.gov*. More detailed information regarding the DUNS, CCR, and Grants.gov processes can be found at: *http://www.Grants.gov*.

V. Application Review Information

1. Criteria

Criteria that will be used to evaluate the application are divided into three categories. They include:

- Project Narrative

The project narrative is divided into three parts: Part A—Program Information; Part B—Program Planning/Evaluation; and Part C—Project Report.

Required information includes topics such as: community needs assessment, leadership support, use of Diabetes Audit results, selected Best Practice(s), overall evaluation plan and project accomplishments. For each Best Practice that will be implemented, address: target population, goal, objectives/measures, review of key measures, and activities (*see* Section IV, Part B, Section 2).

- Budget Narrative

The budget narrative provides additional explanation to support the information provided on the SF–424A form. Budget categories to address include: personnel, fringe benefits, travel, equipment and supplies, contractual/consultant and constructions/alterations/renovations. In addition to a line item budget, provide a brief justification of each budget item and how they support project objectives.

- Key Contacts Form

This form seeks to obtain contact information about only one person: the project's SDPI Program Coordinator.

Scoring of Applications

Points will be assigned in each category adding up to a total of 100. A minimum score of 60 points is required for funding. Points will be assigned as follows:

- *Project Narrative:* A total of 90 possible points are available for this information. It is divided into three parts: Program Information (20 possible points); Program Planning/Evaluation (60 possible points); and Program Report (10 possible points).
- *Budget Narrative:* A total of 10 possible points are available for this information.

2. Review and Selection Process

Each application will be prescreened by DGO staff for eligibility and completeness as outlined in this Funding Opportunity Announcement. Applications from entities that do not meet eligibility criteria or that are incomplete will not be reviewed. Applicants will be notified by the DGO that their application did not meet minimum requirements.

After being prescreened by the DGO, applications will be reviewed by an Objective Review Committee (ORC) and assigned a score. The ORC is an objective review group that will be convened by the DDTP in consultation with the DGP as required by Department of Health and Human Services (HHS) Grants Policy.

To obtain a minimum score for funding, applicants must address all program requirements and provide all required documentation. Applicants that receive less than a minimum score will be informed via e-mail of their application's deficiencies. (*see* Section 6 below for application revision guidance). A summary statement outlining the weaknesses of the application will be provided to these applicants. The summary statement will be sent to the Authorized Organizational Representative (AOR) that is identified on the face page of the application.

Review of Applications With Sub-Grants

When an application is submitted on behalf of multiple organizations (sub-grantees), the review score will be a combined score that is based on information provided by all of these organizations.

Programmatic Requirements

Funded applicants (grantees) must meet the following programmatic requirements:

A. Implement an IHS Diabetes Best Practice

Grantees must implement recommended services and activities from at least one 2009 IHS Diabetes Best Practice. They should implement recommendations based on program need, strengths, and resources. Program activities, services and key measures from the selected Best Practice(s) must be documented in the project narrative (*see* Section IV, Part B, Section 2).

B. Implement Program and Evaluation Plans

Grantees must follow the plans submitted with their application when implementing each selected Best Practice and their evaluation processes. A minimum evaluation requirement is to monitor the key measures over time. Programs may track additional measures based on local priorities.

C. Participate in Training and Peer-to-Peer Learning Sessions

Grantees must participate in SDPI training sessions and peer-to-peer learning activities. Training sessions will be primarily conference calls or combined WebEx/conference calls. Grantees will be expected to:

- Participate in interactive discussion during conference calls.
- Share activities, tools and results.
- Share problems encountered and how barriers are broken down.
- Share materials presented at conferences and meetings.
- Participate and share in other relevant activities.

Sessions, which will be led by DDTP, DGO, or their agents, will address clinical and other topics. Topics will include: Program planning and evaluation, enhancing accountability through data management, and improvement of principles and processes. Grantees will integrate information and ideas in order to enhance effectiveness. Anticipated outcomes from participating in the learning sessions are improved communication and sharing among grantees, increased use of data for improvement, and enhanced accountability.

Application Revisions

If an application does not receive a minimum score for funding from the ORC, the applicant will be informed via a summary statement that will be sent to the AOR via e-mail. The applicant then has two opportunities to submit revisions to their application. Before application revisions can be submitted, the AOR must have received a summary statement from the previous review that outlines the weaknesses of the initial application.

A. Revision to Initial Application

Applicants will have five business days from the date that the summary statement is sent via e-mail to submit hard copies of their application revisions. Along with the revised application documents, applicants must prepare and submit an Introduction of not more than three pages that summarizes the substantial additions, deletions, and changes. The Introduction must also include responses to the criticism and issues raised in the summary statement.

The Introduction and revised application documents must be mailed directly to the DGO to the attention of Denise Clark, Lead Grants Management Specialist (*denise.clark@ihs.gov*) at: Division of Grants Operations, 801 Thompson Avenue, TMP, Suite 360, Rockville, MD 20852.

Technical assistance will be available to applicants as they prepare resubmission documentation.

An Ad Hoc Review Committee will be convened specifically to review the initial application revisions. If the revised application receives the minimum score for funding or above, the applicant will be informed via a Notice of Award (NoA). If the Review Committee determines that the application with revisions still does not receive a fundable score, the applicant will be informed of their application's deficiencies via a second summary statement that will be e-mailed to the AOR.

B. Second Application Revision

Applicants will have five business days from the date that the second summary statement is sent via e-mail to submit hard copies of their application revisions. Along with the revised application documents, applicants must prepare and submit an Introduction of not more than three pages that summarizes the substantial additions, deletions, and changes. The Introduction must also include responses to the criticism and issues raised in the summary statement.

The Introduction and revised application documents must, again, be mailed directly to the DGO to the attention of Denise Clark, Lead Grants Management Specialist (denise.clark@ihs.gov) at: Division of Grants Operations, 801 Thompson Avenue, TMP, Suite 360, Rockville, MD 20852.

A second Ad Hoc Review Committee will be convened to review the second application revisions. If the application with revisions receives the minimum score for funding or above, the applicant will be informed via a Notice of Award (NoA).

If the Review Committee determines that the application with revisions still does not receive a fundable score, applicants will be informed in writing of their application's deficiencies. No further resubmissions will be allowed.

7. Anticipated Announcement and Award Dates

Grantees that receive a fundable score will be notified of their approval for funding via the NoA. (*See* application instructions for key dates for other budget cycles.)

VI. Award Administration Information

1. Award Notices

The NoA will be prepared by DGO and sent via postal mail to each applicant that is approved for funding under this announcement. This document will be sent to the person who is listed on the SF–424 as the AOR. The NoA will be signed by the Grants Management Officer. The NoA is the authorizing document for which funds are disbursed to the approved entities. The NoA serves as the official notification of the grant award and reflects the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period. The NoA is the legally binding document. Applicants who are disapproved based on the ORC score will receive a copy of the summary statement which identifies the weaknesses and strengths of the application submitted. The AOR serves as the business point of contact for all business aspects of the award.

The anticipated NoA date for all applicants that score well in the ORC review for Cycle II is January 18, 2010.

2. Administrative Requirements

Grants are administered in accordance with the following regulations, policies, and Office of Management and Budget (OMB) cost principles:

A. The criteria as outlined in this Funding Opportunity Announcement.

B. Administrative Regulations for Grants:

- 45 CFR part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Tribal Governments.
- 45 CFR part 74—Uniform Administrative Requirements for Awards and Subawards to Institutions of Higher Education, Hospitals, Other Non-Profit Organizations, and Commercial Organizations.

C. Grants Policy:

- HHS Grants Policy Statement, Revised 01/2007.

D. Cost Principles:

- OMB Circular A–87—State, Local, and Indian Tribal Governments (Title 2 Part 225).
- OMB Circular A–122—Non-Profit Organizations (Title 2 Part 230).

E. Audit Requirements:

- OMB Circular A–133—Audits of States, Local Governments, and Non-Profit Organizations.

3. Indirect Costs

This section applies to all grant recipients that request reimbursement of indirect costs in their grant application. In accordance with HHS Grants Policy Statement, Part II–27, IHS requires applicants to obtain a current indirect cost rate agreement prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable grant activities under the current award's budget period. If the current rate is not on file with the DGO at the time of award, the indirect cost portion of the budget will be restricted. The restrictions remain in place until the current rate is provided to the DGO.

Generally, indirect costs rates for IHS grantees are negotiated with the HHS Division of Cost Allocation *http://rates.psc.gov/* and the Department of the Interior (National Business Center) at *http://www.aqd.nbc.gov/indirect/indirect.asp*. If your organization has questions regarding the indirect cost policy, please contact the DGO at (301) 443–5204.

4. Reporting Requirements

The DDTP and the DGO have requirements for progress reports and financial reports based on the terms and conditions of this grant as noted below.

A. Progress Reports

Program progress reports are required semi-annually. These reports must include at a minimum: reporting of Best Practice measures; and a brief comparison of actual accomplishments to the goals established for the budget period or provide sound justification for the lack of progress.

B. Financial Status Reports

Annual financial status reports are required until the end of the project period. Reports must be submitted annually no later than 30 days after the end of each specified reporting period. The final financial status report is due within 90 days after the end of the 24 month project period. Standard Form 269 (long form for those reporting program income; short form for all others) will be used for financial reporting.

Grantees are responsible and accountable for accurate reporting of the Progress Reports and Financial Status Reports (FSR). According to SF–269 instructions, the final SF–269 must be verified from the grantee records to support the information outlined in the FSR.

Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports.

C. FY 2007 and FY 2008 Single Audit Reports (OMB A–133)

Applicants who have an active SDPI grant are required to be up-to-date in the submission of required audit reports. These are the annual financial audit reports required by OMB A–133, audits of State, local governments, and non-profit organizations that are submitted. Documentation of (or proof of

submission) of current FY 2007 and FY 2008 Financial Audit Reports is mandatory. Acceptable forms of documentation include: e-mail confirmation from FAC that audits were submitted; or face sheets from audit reports. Face sheets can be found on the FAC Web site: *http://harvester.census.gov/fac/dissem/accessoptions.html?submit=Retrieve+Records*.

Telecommunication for the hearing impaired is available at: TTY (301) 443–6394.

VII. Agency Contacts

- For Grants Budget Management, contact:
- Denise Clark, Lead Grants Management Specialist, DGO (*denise.clark@ihs.gov*), Division of Grants Operations, 801 Thompson Avenue, TMP, Suite 360, Rockville, MD 20852. (301) 443–5204.
- For Grants.gov electronic application process, contact:
- Tammy Bagley, Grants Policy, DGP (*tammy.bagley@ihs.gov*), (301) 443–5204. Grants Policy Web site: *http://www.ihs.gov/NonMedicalPrograms/gogp/index.cfm?module=gogp_funding*.
- For programmatic questions, contact:
- Merle Mike, Program Assistant, DDTP (*merle.mike@ihs.gov*), (505) 248–4182.
- Lorraine Valdez, Deputy Director, DDTP (*s.lorraine.valdez@ihs.gov*), (505) 248–4182.
- Area Diabetes Consultants Web site: *http://www.ihs.gov/MedicalPrograms/diabetes/index.cfm?module=peopleADCDirectory*.

Dated: November 12, 2009.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. E9–28052 Filed 11–20–09; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): National Center for Construction Safety and Health, Request for Application (RFA) OH 09–001, 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 meeting:

Times and Dates: 1 p.m.–3 p.m., January 13, 2010 (Closed).

Place: National Institute for Occupational Safety and Health, 1095 Willowdale Road, Morgantown, West Virginia 26506.

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 ''National Center for Construction Safety and Health, RFA OH 09–001.''

Contact Person for More Information: M. Chris Langub, PhD., Scientific Review Officer, Office of Extramural Programs, National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road, NE., Mailstop E75, Atlanta, Georgia 30333; Telephone: (404) 498–2543.

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: November 13, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–28126 Filed 11–20–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Environmental Health/Agency for Toxic Substances and Disease Registry (NCEH/ATSDR); Notice of National Conversation on Public Health and Chemical Exposures Leadership Council Meeting

Time and Date: 9:30 a.m.–4 p.m., Friday, December 11, 2009.

Location: Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008.

Status: Open to the public, on a first come, first served basis, limited by the space available. An opportunity for the public to listen to the meeting by phone may be provided; *see* ''Contact for Additional Information'' below.

Purpose: This is the first meeting of the National Conversation on Public Health and Chemical Exposures Leadership Council. The National Conversation on Public Health and Chemical Exposures is a collaborative initiative through which many organizations and individuals are helping develop an action agenda for strengthening the nation's approach to protecting the public's health from harmful chemical exposures. The Leadership Council provides overall guidance to the National Conversation project and will be responsible for issuing the final action agenda. For additional information on the National Conversation on Public Health and Chemical Exposures, visit this Web site: *http://www.atsdr.cdc.gov/nationalconversation/*.

Meeting Agenda: The meeting will provide an overview of the National Conversation on Public Health and Chemical Exposures, the status of project activities to date, and the project timeline. The meeting then will focus on discussions of the National Conversation Operating Procedures and the charges for the six National Conversation Work Groups.

Contact for Additional Information: If you would like to receive additional information on attending the meeting or the potential opportunity to listen to the meeting by phone, please contact: *nationalconversation@cdc.gov* or Ben Gerhardstein at 770–488–3646.

Tanja Popovic,

Associate Director of Science, Centers for Disease Control and Prevention.

[FR Doc. E9–28035 Filed 11–20–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Partnerships to Advance the National Occupational Research Agenda (NORA)

AGENCY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of public meeting.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following public meeting: ''Partnerships to Advance the National Occupational Research Agenda (NORA)''.

Public Meeting Time and Date: 10 a.m.–4 p.m. EST, January 20, 2010.

Place: Patriots Plaza, 395 E Street, SW., Conference Room 9000, Washington, DC 20201.

Purpose of the Meeting: The National Occupational Research Agenda (NORA) has been structured to engage partners with each other and/or with NIOSH to advance NORA priorities. The NORA Liaison Committee continues to be an opportunity for representatives from organizations with national scope to learn about NORA progress and to suggest possible partnerships based on their organization's mission and contacts. This opportunity is now structured as a public meeting via the internet to attract participation by a larger number of organizations and to further enhance the success of NORA. Some of the types of organizations of national scope that are especially encouraged to participate are employers, unions, trade associations, labor associations, professional associations, and foundations. Others are welcome.

This meeting will include updates from NIOSH leadership on NORA as well as updates from approximately half of the Sector Councils on their progress, priorities, and implementation plans to date, including the Agriculture, Forestry, and Fishing Sector; Healthcare and Social Assistance Sector; Mining Sector; Oil and Gas Extraction Sub-Sector; and Transportation, Warehousing, and Utilities Sector. Updates will also be given on cross-council coordination activities in the areas of safety culture and occupational health disparities. After each update, there will be time to discuss partnership opportunities.

Status: The meeting is open to the public, limited only by the capacities of the conference call and conference room facilities. There is limited space available in the meeting room (capacity 34). Therefore, information to allow participation in the meeting through the internet (to see the slides) and a teleconference call (capacity 50) will be provided to registered participants. Participants are encouraged to consider attending by this method. Each participant is requested to register for the free meeting by sending an e-mail to *noracoordinator@cdc.gov* containing the participant's name, organization name, contact telephone number on the day of the meeting, and preference for participation by Web meeting (requirements include: computer, internet connection, and telephone, preferably with 'mute' capability) or in person. An e-mail confirming registration will include the details needed to participate in the Web meeting. Non-US citizens are encouraged to participate in the web meeting. Non-US citizens who do not register to attend in person on or before January 6, 2010, will not be granted access to the meeting site and will not be able to attend the meeting in-person due to mandatory security clearance procedures at the Patriots Plaza facility.

Background: NORA is a partnership program to stimulate innovative research in occupational safety and health leading to improved workplace practices. Unveiled in 1996, NORA has become a research framework for the nation. Diverse parties collaborate to identify the most critical issues in workplace safety and health. Partners then work together to develop goals and objectives for addressing those needs and to move the research results into practice. The NIOSH role is facilitator of the process. For more information about NORA, see *http://www.cdc.gov/niosh/nora/about.html*.

Since 2006, NORA has been structured according to industrial sectors. Eight sector groups have been defined using the North American Industrial Classification System (NAICS). After receiving public input through the web and town hall meetings, NORA Sector Councils have been working to define sector-specific strategic plans for conducting research and moving the results into widespread practice. During 2008–09, most of these Councils have posted draft strategic plans for public comment. Six have posted finalized National Sector Agendas after considering comments on the drafts. For more information, see the link above and choose ''Sector-based Approach,'' ''NORA Sector Councils,'' ''Sector Agendas'' and ''Comment on Draft Sector Agendas'' from the right-side menu.

FOR FURTHER INFORMATION CONTACT: Sidney C. Soderholm, PhD, NORA Coordinator, E-mail *noracoordinator@cdc.gov*, telephone (202) 245–0665.

Dated: November 13, 2009.

James Stephens,

Associate Director of Science, Centers for Disease Control and Prevention.

[FR Doc. E9–28029 Filed 11–20–09; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health (ABRWH or Advisory Board), 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), CDC announces the following meeting of the aforementioned committee:

Time and Date: 11 a.m.–2 p.m., Tuesday, December 8, 2009.

Place: Audio Conference Call via FTS Conferencing. The USA toll free number is 1 (866) 659–0537 with a pass code of 9933701.

Status: Open to the public, but without a public comment period.

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 new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines which 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 the CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, most recently, August 3, 2009, and will expire on August 3, 2011.

Purpose: This 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, advising 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.

Matters To Be Discussed: The agenda for the conference call includes: University of Rochester Atomic Energy Project SEC Petition; Board Subcommittee and Work Group Updates; Office of Compensation Analysis and Support SEC Petition Evaluations Update for February Board Meeting.

The agenda is subject to change as priorities dictate.

Because there is not a public comment period, written comments may be submitted. Any written comments received will be included in the official record of the meeting and should be submitted to the contact person below in advance of the meeting.

For Further Information Contact: Theodore M. Katz, M.P.A., Executive Secretary, NIOSH,

CDC, 1600 Clifton Rd., NE., 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: November 13, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–28075 Filed 11–20–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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: Center for Scientific Review Special Emphasis Panel, PAR08–261: Emergency Medical Services for Children.

Date: December 10, 2009.

Time: 1 p.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: Jacinta Bronte-Tinkew, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3164, MSC 7770, Bethesda, MD 20892, (301) 435–1503, *brontetinkewjm@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: November 17, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–28068 Filed 11–20–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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: Center for Scientific Review Special Emphasis Panel; Resource for X–Ray Tomography of Whole Cells.

Date: December 2–3, 2009.

Time: 4 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Amy L. Rubinstein, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152 MSC 7844, Bethesda, MD 20892, 301–435–1159, *rubinsteinal@csr.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. 93.306, 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: November 17, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–28067 Filed 11–20–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Privacy Act of 1974; Retirement of a Department of Homeland Security Office of the Chief Human Capital Officer System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice to retire one Privacy Act system of records notice.

SUMMARY: In accordance with the Privacy Act of 1974 the Department of Homeland Security is giving notice that it proposes to retire Department of Homeland Security Office of the Chief Human Capital Officer—001 MAXHR ePerformance Management System of Records because the system is no longer collecting or maintaining records. Records associated with the information technology system have been transferred to the Office of Personnel Management using the Electronic Official Personnel Folder system. Employee performance file records are maintained by the Department and covered by Office of Personnel Management/Government—2 Employee Performance File System of Records.

DATES: These changes will take effect on December 23, 2009.

FOR FURTHER INFORMATION CONTACT: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, and as part of its ongoing Privacy Act system of records notice management efforts, the Department of Homeland Security (DHS) is retiring DHS/Office of the Chief Human Capital Officer (OCHCO)—001 MAXHR ePerformance Management System of Records (71 FR 63329, October 30, 2006).

DHS is no longer collecting or maintaining records regarding the MAXHR e-performance management information technology system. Records associated with the information technology system have been transferred to the Office of Personnel Management using the Electronic Official Personnel Folder (eOPF) system. Employee performance file records are maintained by the Department and covered by Office of Personnel Management/Government—2 Employee Performance File System of Records (June 19, 2006, 71 FR 35347).

Eliminating this notice will have no adverse impacts on individuals, but will

promote the overall streamlining and management of DHS Privacy Act record systems.

Dated: November 13, 2009.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E9–28004 Filed 11–20–09; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Privacy Act of 1974; Transfer and Retirement of Department of Homeland Security Federal Emergency Management Agency System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of transfer of a Privacy Act system of records notice.

SUMMARY: In accordance with the Privacy Act of 1974 the Department of Homeland Security is giving notice that it proposes to transfer Department of Homeland Security Federal Emergency Management Agency National Disaster Medical System Medical Professional Credentials System of Records, October 13, 2007, into an existing Department of Health and Human Services System of Records, Department of Heath and Human Services—09–90–0040 National Disaster Medical System Patient Treatment and Tracking System of Records, June 26, 2007. The Department of Homeland Security Federal Emergency Management Agency National Disaster Medical Reserve System was part of the National Disaster Medical System. The National Disaster Medical System was transferred to the Department of Health and Human Services in December 2006, pursuant to the Pandemic and All Hazards Preparedness Act Public Law, 109–417.

DATES: *Effective Date:* December 23, 2009.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Delia Davis (202–646–3808), Privacy Officer, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC 20472. For privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) Federal Emergency Management Agency (FEMA) is giving notice that it proposes to transfer DHS/FEMA/NDMS—1 National Disaster Medical System Medical Professional Credentials System of Records (71 FR 60554, October 13, 2006) into an existing Department of Health and Human Services (HHS) System of Records, HHS–09–90–0040 National Disaster Medical System Patient Treatment and Tracking System of Records (72 FR 35052, June 26, 2007).

DHS is transferring the records from DHS/FEMA/NDMS—1 National Disaster Medical System Medical Professional Credentials System of Records (71 FR 60554, October 13, 2006) to HHS. DHS will then retire the system and no longer collect or maintain records. This system was originally established to collect potential and current National Disaster Medical Reserve System medical providers and Urban Search and Rescue medical providers for three primary purposes: hiring decisions; certification/recertification; and privileging.

The DHS/FEMA National Disaster Medical Reserve System was part of the National Disaster Medical System. The National Disaster Medical System was transferred to HHS in December 2006, pursuant to the Pandemic and All Hazards Preparedness Act Public Law 109–417.

Transferring and retiring this system of records notice will have no adverse impacts on individuals, but will promote the overall streamlining and management of DHS Privacy Act systems of records.

Dated: November 13, 2009.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E9–28006 Filed 11–20–09; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2009–0846]

Collection of Information Under Review by Office of Management and Budget: OMB Control Number: 1625–0100

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) requesting an extension of its approval for the following collection of information: 1625–0100, Advance Notice of Vessel Arrival. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before December 23, 2009.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2009–0846] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT) or to OIRA. To avoid duplication, please submit your comments by only one of the following means:

(1) *Electronic submission.* (a) To Coast Guard docket at *http://www.regulation.gov.* (b) To OIRA by e-mail via: *oira_submission@omb.eop.gov.*

(2) *Mail or Hand delivery.* (a) DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Hand deliver between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. (b) To OIRA, 725 17th Street, NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) *Fax.* (a) To DMF, 202–493–2251. (b) To OIRA at 202–395–5806. To ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–611), ATTN Paperwork Reduction Act Manager, U.S. Coast Guard, 2100 2nd St., SW., Stop 7101, Washington, DC 20593–7101.

FOR FURTHER INFORMATION: Contact Mr. Arthur Requina, Office of Information Management, telephone 202–475–3523

or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

The Coast Guard invites comments on whether this ICR should be granted based on it being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of information subject to the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG 2009–0846]. For your comments to OIRA to be considered, it is best if they are received on or before the December 23, 2009.

Public participation and request for comments: We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to *http://www.regulations.gov*. They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting comments: If you submit a comment, please include the docket number [USCG–2009–0846], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission. You may submit comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. In response to your comments, we may revise the ICR or decide not to seek an extension of approval for this collection. The Coast Guard and OIRA will consider all comments and material received during the comment period.

Viewing comments and documents: Go to *http://www.regulations.gov* to view documents mentioned in this Notice as being available in the docket. Click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2009–0846'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (74 FR 47949, September 18, 2009) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments.

Information Collection Request

Title: Advance Notice of Vessel Arrival.

OMB Control Number: 1625–0100.

Type of Request: Revision of a currently approved collection.

Respondents: Vessel owners and operators.

Abstract: This information is required to control vessel traffic, develop contingency plans and enforce regulations.

Forms: None.

Burden Estimate: The estimated burden remains 200,039 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: November 18, 2009.

M.B. Lytle,

Captain, U.S. Coast Guard, Acting Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E9–28082 Filed 11–20–09; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Declaration for Free Entry of Unaccompanied Articles

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Revision of an existing information collection: 1651–0014.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Declaration for Free Entry of Unaccompanied Articles (Form 3299). This is a proposed extension and revision of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 48092) on September 21, 2009, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before December 23, 2009.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Declaration for Free Entry of Unaccompanied Articles.

OMB Number: 1651–0014.

Form Number: Form 3299.

Abstract: The Declaration for Free Entry of Unaccompanied Articles, Form 3299, is prepared by individuals or a broker acting as an agent for the individual, or in some cases, the CBP officer. This Form allows individuals to claim duty-free entry of personal and household effects that do not accompany the individual upon his or her arrival in the United States.

Current Actions: CBP is proposing to increase the burden hours associated with this collection of information as a result of increasing the estimated time per response from 10 minutes to 45 minutes for Form 3299.

Type of Review: Extension (with change).

Affected Public: Individuals, businesses.

Estimated Number of Respondents: 150,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Total Annual Responses: 150,000.

Estimated Time per Response: 45 minutes.

Estimated Total Annual Burden Hours: 112,500.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177, at 202–325–0265.

Dated: November 18, 2009.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. E9–28077 Filed 11–20–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Application for Foreign Trade Zone and/or Status Designation, and Application for Foreign Trade Zone Activity Permit

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Revision of an existing information collection: 1651–0029.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Application for Foreign Trade Zone Admission and/or Status Designation (Form 214), and Application for Foreign Trade Zone Activity Permit (Form 216). This is a proposed extension and revision of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 47014) on September 14, 2009, allowing for a 60-day comment period. One comment was received. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before December 23, 2009.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Application for Foreign Trade Zone Admission and/or Status Designation, and Application for Foreign Trade Zone Activity Permit.

OMB Number: 1651–0029.

Form Number: CBP Forms 214, 214A, 214B, 214C, and 216.

Abstract: CBP Forms 214, Application for Foreign-Trade Zone Admission and/or Status Designation; 214A (Statistical Copy); 214B (Continuation Sheet); and 214C (Continuation Sheet/Statistical Copy), are used by companies that bring merchandise into a foreign trade zone to register the admission of such merchandise into zones, and to apply for the appropriate zone status. Form CBP–216, Foreign-Trade Zone Activity Permit, is used by companies to request approval to manipulate, manufacture, exhibit or destroy merchandise in a foreign trade zone.

Current Actions: CBP is proposing to decrease the burden hours associated with this collection of information as a result of better estimates of the total number of annual responses for Form 214.

Type of Review: Extension (with change).

Affected Public: Businesses.

Form 214, Application for Foreign-Trade Zone Admission and/or Status Designation

Estimated Number of Respondents: 6,749.

Estimated Number of Annual Responses per Respondent: 25.

Estimated Total Annual Responses: 168,725.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 42,182.

Form 216, Application for Foreign-Trade Zone Activity Permit

Estimated Number of Respondents: 2,500.

Estimated Number of Annual Responses per Respondent: 10.

Estimated Total Annual Responses: 25,000.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 4,167.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177, at 202–325–0265.

Dated: November 17, 2009.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. E9–28079 Filed 11–20–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2007–0008]

National Advisory Council Teleconference Meeting

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of teleconference meeting.

SUMMARY: The National Advisory Council (NAC) will be holding a teleconference meeting for the purpose of discussing operational guidance for recovery organizations. The teleconference meeting will be open to the public.

DATES: *Meeting Date:* Monday, December 14, 2009, from approximately 10:45 a.m. to 1 p.m.

Comment Date: Written comments must be received by Thursday, December 3, 2009.

ADDRESSES: The meeting will be held via teleconference only. Members of the public who wish to obtain the listen-only call-in number, access code, and other information for the public teleconference may contact Alyson Price as listed in the **FOR FURTHER INFORMATION CONTACT** section by Thursday, December 3, 2009. All written comments must be received by Thursday, December 3, 2009. All submission received must include the Docket number FEMA–2007–0008 and may be submitted by any one of the following methods:

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

E-mail: FEMA-RULES@dhs.gov. Include Docket number FEMA–2007–0008 in the subject line of the message.

Facsimile: (703) 483–2999.

Mail: FEMA, Office of Chief Counsel, 500 C Street, SW., Room 840, Washington, DC 20472–3100.

Hand Delivery/Courier: FEMA, Office of Chief Counsel, 500 C Street, SW., Room 840, Washington, DC 20472–3100.

Instructions: All submissions received must include the docket number: FEMA–2007–0008. Comments received will also be posted without alteration at *http://www.regulations.gov*, including any personal information provided. You may want to read the Privacy Act Notice located on the Privacy and Use Notice link on the Administration Navigation Bar of the Web site *http://www.regulations.gov*.

Docket: For access to the docket to read documents or comments received by the National Advisory Council, go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Alyson Price, Designated Federal Officer, FEMA, 500 C Street, SW., Room 832, Washington, DC 20472–3100, telephone 202–646–3746, fax 202–646–4176, and e-mail *FEMA–NAC@dhs.gov*. The NAC Web site is located at: *http://www.fema.gov/about/nac/*.

SUPPLEMENTARY INFORMATION: Notice of this meeting is required under the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C. App. 1 *et seq.*).

The Department of Homeland Security/Federal Emergency Management Agency (DHS/FEMA) and the Department of Housing and Urban Development (HUD) have recently begun work on an initiative to Strengthen Disaster Recovery for the Nation. At the President's request, the Secretaries of Homeland Security and Housing and Urban Development are co-chairing a Long Term Recovery Working Group composed of the Secretaries and Administrators of more than 20 departments, agencies, and offices. This high-level, strategic initiative will provide operational guidance for recovery organizations as well as make suggestions for future improvement. An intensive stakeholder outreach began in November 2009, involving State, local, and Tribal government representatives, as well as a wide array of private organizations and private non-profit organizations, to inform these efforts. As a continuation of the stakeholder engagement effort, FEMA will be conducting a public teleconference with the National Advisory Council to brief them on the discussions that took place with stakeholders in November and to obtain the council's input on disaster recovery management issues and opportunities.

The meeting is open to the public. Although members of the public will not be allowed to comment orally during the meeting, they may file a written statement with the NAC before the date of the meeting. For those wishing to submit written comments, please follow the procedure noted above.

Dated: November 17, 2009.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–28086 Filed 11–20–09; 8:45 am]

BILLING CODE 9111–48–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Park Service Benefits-Sharing Final Environmental Impact Statement

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of the Servicewide Benefits-Sharing Final Environmental Impact Statement.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service announces the availability of the Benefits-Sharing Final Environmental Impact Statement (FEIS) covering all units of the National Park System. The NPS requested and considered comments from sources including the public and other agencies in completing the FEIS. Three alternatives were evaluated in the FEIS, each of which would clarify the rights and responsibilities of researchers and National Park Service (NPS) management in connection with the use of valuable discoveries, inventions, and other developments that result from research involving specimens lawfully collected from units of the National Park System. The No Action Alternative allows scientists to conduct research that may lead to commercial products but without any obligation to share the benefits with NPS. Another alternative prohibits scientific research in national parks that is in any way associated with the development of commercial products. A third alternative, the

Environmentally Preferred Alternative, requires researchers who study material obtained under a Scientific Research and Collecting Permit to enter into benefits-sharing agreements with the NPS before using their research results for any commercial purpose. This Environmentally Preferred Alternative has three potential variations regarding the disclosure of royalty rate or related information: Always disclose, never disclose, or comply with confidentiality laws regarding disclosure. The Preferred Alternative implements the benefits-sharing agreement requirement, while complying with confidentiality laws regarding disclosure of royalty rate or related information.

DATES: The National Park Service will execute a Record of Decision (ROD) no sooner than 30 days following publication by the Environmental Protection Agency of the Notice of Availability of the Final Environmental Impact Statement.

ADDRESSES: Information will be available for public inspection online at *http://parkplanning.nps.gov* (select ''Washington Office'' from the park menu and then follow the link for benefits-sharing), in the office of the National Park Service Associate Director for Natural Resource Stewardship and Science, 1849 C Street, NW., Washington, DC, and in the office of the Superintendent, Yellowstone National Park, Wyoming.

FOR FURTHER INFORMATION CONTACT: Susan Mills, Benefits-Sharing EIS, Center for Resources, P.O. Box 168, Yellowstone National Park, Wyoming 82190, (307) 344–2203, *benefitseis@nps.gov.*

Dated: October 5, 2009.

Daniel N. Wenk,

Deputy Director, National Park Service.

[FR Doc. E9–28039 Filed 11–20–09; 8:45 am]

BILLING CODE 4312–CT–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement; Marin Headlands—Fort Baker Transportation Infrastructure and Management Plan; Golden Gate National Recreation Area; Marin County, CA; Notice of Approval of Record of Decision

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended) and the regulations promulgated by the Council on Environmental Quality (40 CFR 1505.2), the Department of the Interior, National Park Service has prepared and approved a Record of Decision (and Wetlands Statement of Findings) for the *Final Environmental Impact Statement* (Final EIS) for Transportation Infrastructure and Management Plan for Marin Headlands and Fort Baker areas of Golden Gate National Recreation Area. The requisite no-action ''wait period'' was initiated March 20, 2009, with the Environmental Protection Agency's **Federal Register** notification of the filing of the Final EIS.

Decision: As soon as practical Golden Gate National Recreation Area will begin to (1) rehabilitate or reconstruct roadway infrastructure and improve parking facilities; (2) provide for enhanced transit options; (3) protect or enhance wetlands and sensitive species habitat; (4) improve hiking trails and bicycle access; and (5) implement other resource stewardship strategies and area improvements identified and analyzed as the Preferred Alternative (Alternative 3) presented in the Final EIS. The full range of foreseeable environmental consequences was assessed, and appropriate mitigation measures identified. Both a No Action alternative and two additional ''action'' alternatives were also identified and analyzed. The selected alternative was deemed to be the ''environmentally preferred'' course of action.

Copies: Interested parties desiring to review the Record of Decision may obtain a copy by contacting the Superintendent, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, CA 94123 or via telephone request at (415) 561–2841.

Dated: November 11, 2009.

Jonathan B. Jarvis,

Regional Director, Pacific West Region.

[FR Doc. E9–28053 Filed 11–20–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CACA49575, LLCAD0000, L14300000, DS0000]

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Daggett Ridge Wind Farm, San Bernardino County, CA, and Possible Land Use Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act (NEPA) of 1969, the California Environmental Quality Act (CEQA), and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) California Desert District (CDD), Moreno Valley, California, together with the County of San Bernardino (County) intend to prepare an Environmental Impact Statement (EIS)/Environmental Impact Report (EIR), which may include an amendment to the California Desert Conservation Area (CDCA) Plan of 1980, as amended, and by this notice are announcing the beginning of the scoping process to solicit public comments and identify issues. The BLM will be the lead agency for NEPA compliance and the County will be the lead agency for CEQA compliance.

DATES: This notice initiates the public scoping process for the EIS/EIR and possible plan amendment. Comments on issues may be submitted in writing until December 23, 2009. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local media, newspapers, and the BLM Web site at: *http://www.blm.gov/ca/st/en/fo/cdd.html.* In order to be considered in the Draft EIS/EIR, all comments must be received prior to the close of the scoping period or 15 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation upon publication of the Draft EIS/EIR.

ADDRESSES: You may submit comments on issues and planning criteria related to the Daggett Ridge Wind Farm by any of the following methods:

- *Web site: http://www.blm.gov/ca/st/en/fo/cdd.html.*
- *E-mail: cadaggettridge@blm.gov.*
- *Fax:* (951) 697–5299.
- *Mail or hand delivery:* ATTN: Lynnette Elser, BLM California Desert District Office, 22835 Calle San Juan de Los Lagos, Moreno Valley, California 92553–9046.

The administrative record of this proposal may be examined at the California Desert District Office or the BLM's California State Office, 2800 Cottage Way, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: For further information or to have your name added to our mailing list, contact Lynnette Elser, telephone (951) 697–5233; address BLM California Desert District Office, 22835 Calle San Juan de Los Lagos, Moreno Valley, California 92553–9046; e-mail *cadaggettridge@blm.gov.*

SUPPLEMENTARY INFORMATION: The applicant, AES Wind Generation, has

requested a right-of-way (ROW) authorization to construct, operate, maintain, and decommission the Daggett Ridge Wind Farm. The proposed energy facility would generate 82.5 megawatts (MW) of renewable power using wind resources. The project would include approximately 10 miles of new roads. It would also include one substation on private land. The project would require the BLM to approve an amendment to Southern California Edison's current Slash X ROW to allow telecommunication use. It would also require the BLM to approve two amendments to the Boulder Canyon Project permit to allow: (1) The construction and installation of additional poles within the existing ROW for telecommunication use; and (2) a new 500-foot line from the proposed Seaggett Substation, which would include the replacement of one pole on BLM-managed land. The proposed project would involve new or expanded utility corridors.The proposed project would use 1,577 acres of BLM-managed land and 380 acres of private property, all of which is located in unincorporated San Bernardino County, southeast of Barstow and southwest of Daggett, California. It will have a total of 33 wind turbines—28 on BLM-managed land and five on private land.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the EIS/EIR. At present, the BLM and the County have identified the following preliminary issues: Special status species, vegetation communities, special area designations, cultural resources, social impacts, visual resources, cumulative effectsand areas of high potential for renewable energy development.

Authorization of this proposal may require amendment of the CDCA Plan (1980, as amended). By this notice, the BLM is complying with requirements in 43 CFR 1610.2(c) to notify the public of potential amendments to land use plans, predicated on the findings of the EIS. If a land use plan amendment is necessary, the BLM will integrate the land use planning process with the NEPA process for this project.

The BLM will use the NEPA commenting process to satisfy the public involvement process for Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) as provided for in 36 CFR 800.2(d)(3). Native American Tribal consultations will be conducted in accordance with BLM policy, and Tribal concerns will be given due consideration, including impacts on Indian trust assets. Federal, State, and local agencies, tribes, and other stakeholders that may be interested or affected by the BLM's or the County's decision on this project, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM or the County to participate as a cooperating agency.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1501.7 and 43 CFR 1610.2.

Thomas Pogacnik,

Deputy State Director, Natural Resources, California State Office.

[FR Doc. E9–27989 Filed 11–20–09; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CACA 048880, LLCAD06000, L51010000, ER0000, LVRWB09B2510]

Notice of Intent To Prepare an Environmental Impact Statement/Staff Assessment for the NextEra Ford Dry Lake Solar Power Plant, Riverside County, CA and Possible Land Use Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969 (NEPA), as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Palm Springs-South Coast Field Office, together with the California Energy Commission (CEC), intend to prepare an Environmental Impact Statement (EIS) and Staff Assessment (SA), which may also include an amendment to the California Desert Conservation Area (CDCA) Plan (1980, as amended), and by this notice are announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: This notice initiates the public scoping process for the EIS/SA and possible plan amendment. Comments on issues may be submitted in writing until December 23, 2009. The date(s) and location(s) of any scoping meetings, information hearings, and site visits will be announced at least 15 days in advance through local media, newspapers and the BLM Web site at: *http://www.blm.gov/ca/st/en/fo/palmsprings.html* and the CEC's Web site at: *http://energy.ca.gov/sitingcases/genesis_solar/index.html.* In order to be considered in the Draft EIS/SA, all comments must be received prior to the close of the scoping period or 15 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation upon publication of the Draft EIS/SA.

ADDRESSES: You may submit comments on issues and planning criteria related to the NextEra Ford Dry Lake Solar Power Plant Draft EIS/SA by any of the following methods:

- *Web site: http://www.blm.gov/ca/st/en/fo/palmsprings.html* or *http://energy.ca.gov/sitingcases/genesis_solar/index.html.*
- *E-mail: CAPSSolarNextEraFPL@blm.gov* or mmonasmi@energy.state.ca.us.
- *Fax:* (760) 251–4899.
- *Mail or hand delivery:* Mike Monasmith, Project Manager Siting, Transmission and Environmental Protection Division, CEC, 1516 Ninth Street, MS–15, Sacramento, California 95814 or Allison Shaffer, Project Manager, Palm Springs-South Coast Field Office, BLM, 1201 Bird Center Drive, Palm Springs, California 92262.

FOR FURTHER INFORMATION CONTACT: For further information or to have your name added to our mailing list, contact Allison Shaffer, BLM Project Manager, telephone (760) 833–7100; address 1201 Bird Center Drive, Palm Springs, CA 92262; e-mail *CAPSSolarNextEraFPL@blm.gov* or Mike Monasmith, CEC Project Manager, telephone (916) 653–8236; address 1516 9th Street, MS–15, Sacramento, CA 95814; e-mail *mmonasmi@energy.state.ca.us.*

SUPPLEMENTARY INFORMATION: The applicant, NextEra, LLC has requested a right-of-way authorization to develop an 1,800-acre, 250-megawatt (MW) solar generation facility, including a substation, administration facilities, operations and maintenance facilities, evaporation ponds, surface storm water control facilities, and temporary construction lay-down areas.

The project is located approximately 25 miles west of the city of Blythe, California, on BLM-managed lands. The project area is south of the Palen/McCoy Wilderness Area and north of Ford Dry

Lake and Interstate 10. The project consists of two independent solar electric generating facilities with a combined electrical output of 250 MW. Electrical power would be produced using steam turbine generators fed from solar steam generators. The solar steam generators receive heated transfer fluid from arrays of parabolic mirrors that collect energy from the sun. The project would use a wet cooling tower for power plant cooling. Water for cooling tower makeup, process water makeup, and other industrial uses such as mirror washing would be supplied from on-site groundwater wells. Project cooling waste water would be piped to lined, on-site evaporation ponds. If approved, project construction would begin in late 2010.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the EIS/SA. The BLM has identified the following preliminary issues: special area designations, air quality, biological resources, recreation, cultural resources, special status species, water resources, geological resources, land use, noise, paleontological resources, public health, socioeconomics, soils, traffic and transportation, visual resources, and other issues.

Authorization of this proposal may require amendment of the CDCA Plan. By this notice, the BLM is complying with 43 CFR 1610.2(c) to notify the public of potential amendments to land use plans, predicated on the findings of the EIS. If a land use plan amendment is necessary, the BLM will integrate the land use planning process with the NEPA process for this project. The BLM will use the NEPA commenting process to satisfy the public involvement process for Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) as provided for in 36 CFR 800.2(d)(3). Native American Tribal consultations will be conducted in accordance with BLM policy, and Tribal concerns will be given due consideration, including impacts on Indian trust assets. Federal, State, and local agencies, along with tribes and other stakeholders that may be interested or affected by the BLM's decision on this project, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate as a cooperating agency.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1501.7 and 43 CFR 1610.2.

Tom Pogacnik,

Deputy State Director, Natural Resources, BLM California State Office.

[FR Doc. E9–27982 Filed 11–20–09; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CACA–049016, LLCAD05000, L51010000, ER0000, LVRWB09B2990]

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Solar Millennium Ridgecrest Solar Power Project, Kern County, CA and Possible Land Use Plan Amendment and Staff Assessment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969 (NEPA), as amended, the Federal Land Policy and Management Act of 1976, as amended, and the California Environmental Quality Act, the Bureau of Land Management (BLM) Ridgecrest Field Office, together with the California Energy Commission (CEC), intend to prepare an Environmental Impact Statement (EIS)/Staff Assessment (SA), which may include an amendment to the California Desert Conservation Area (CDCA) Plan of 1980, as amended, and by this notice are announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: This notice initiates the public scoping process for the Draft EIS/SA and possible plan amendment. Comments on issues may be submitted in writing until December 23, 2009. The dates and locations of scoping meetings, information hearings, and site visits will be announced at least 15 days in advance through local media, the BLM Web site at *http://www.blm.gov/ca/st/en/fo/ridgecrest.html*, and the CEC's Web site at *http://www.energy.ca.gov/sitingcases/solar_millennium_ridgecrest/index.html.* In order to be considered in the Draft EIS/SA, all comments must be received prior to the close of the scoping period or 15 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation upon publication of the Draft EIS and SA.

ADDRESSES: You may submit comments on issues and planning criteria related to the Solar Millennium Ridgecrest Draft EIS and SA by any of the following methods:

- *Web site: http://www.blm.gov/ca/st/en/fo/ridgecrest.html* or *http://www.energy.ca.gov/sitingcases/solar_millennium_ridgecrest/index.html.*
- *E-mail: CARSPP@blm.gov* or *esolorio@energy.state.ca.us.*
- *Fax:* BLM (951) 697–5299 or CEC (916) 654–3882.
- *Mail:* BLM California Desert District, 22835 Calle San Juan de los Lagos, Moreno Valley, California 92553, *Attn:* Janet Eubanks; or California Energy Commission, 1516 Ninth Street, MS–15, Sacramento, California, 95814, *Attn:* Eric Solorio.

Documents pertinent to this proposal may be examined at the Ridgecrest Field Office.

FOR FURTHER INFORMATION CONTACT: For further information or to have your name added to our mailing list, contact Janet Eubanks, Project Manager, at (951) 697–5376; or 22835 Calle San Juan de los Lagos, Moreno Valley, California 92553; or e-mail *Janet_Eubanks@ca.blm.gov.*

SUPPLEMENTARY INFORMATION: Solar Millennium, LLC, has applied for a right-of-way (ROW) authorization to construct and operate a parabolic trough, solar thermal, generating facility with a capacity of 250 megawatts. The project would connect to the existing Southern California Edison 230-kilovolt (kV) Inyokern/Kramer Junction transmission line. About a mile long portion of this 230 kV transmission line and about a mile long portion of a 115 kV line would be realigned to avoid the project area. The approximately 3,920-acre proposed ROW would contain two solar fields, a power block, construction areas, a dry-cooling tower, steel transmission towers with associated transmission lines, access roads, three covered water tanks, an underground water pipeline, a water treatment facility, an electrical switchyard, a land treatment unit for bioremediation of any soil that may be contaminated by heat transfer fluid, an office, a warehouse, a parking lot, and facility perimeter fencing. The project would be located approximately five miles southwest of

the city of Ridgecrest in Kern County, California.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the EIS. At present, the BLM has identified the following preliminary issues: special area designations; social and economic impacts, including impacts to the public from traffic; ground and surface water quantity and quality; special status species management; cultural resources; and visual resources.

Authorization of this proposal may require amendment of the CDCA Plan (1980, as amended). By this notice, the BLM is complying with requirements in 43 CFR 1610.2(c) to notify the public of potential amendments to land use plans, predicated on the findings of the EIS. If a land use plan amendment is necessary, the BLM will integrate the land use planning process with the NEPA process for this project.

The BLM will use the NEPA commenting process to satisfy the public involvement process for Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) as provided for in 36 CFR 800.2(d)(3). Native American Tribal consultations will be conducted in accordance with BLM policy, and Tribal concerns will be given due consideration, including impacts on Indian trust assets. Federal, State, and local agencies, tribes, and stakeholders that may be interested or affected by the BLM's decision on this project are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate as a cooperating agency.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1501.7 and 43 CFR 1610.2.

Thomas Pogacnik,

Deputy State Director, Natural Resources, California State Office.

[FR Doc. E9–27981 Filed 11–20–09; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES002000.L16100000.DO0000.L.X.SS.015M0000]

Notice of Availability of Record of Decision for the Alabama and Mississippi Resource Management Plan/Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD)/Approved Resource Management Plan (RMP) for the states of Alabama and Mississippi. The Eastern State Director signed the ROD on January 30, 2009, which constitutes the final decision of the BLM and makes the approved RMP effective immediately.

ADDRESSES: Copies of the ROD/approved RMP are available upon request from the Field Manager, Jackson Field Office, Bureau of Land Management, 411 Briarwood Drive Suite 404, Jackson, Mississippi 39206 or via the Internet at *http://wwwblm.gov/es/st/en/fo/Jackson_Home_Page.html,* e-mail *Gary_Taylor@blm.gov,* or telephone Gary Taylor at (601) 977–5400.

FOR FURTHER INFORMATION CONTACT: Gary Taylor.

- *E-mail: Gary_Taylor@blm.gov.*
- *Mail:* Jackson Field Office, BLM, *Attn:* Gary Taylor, 411 Briarwood Drive, Suite 404, Jackson, Mississippi 39206.

SUPPLEMENTARY INFORMATION: The planning area is located in the states of Alabama and Mississippi. This planning activity encompasses approximately 1.67 million acres of public lands and resources. The State of Mississippi participated in development of the plan as a cooperating agency. The RMP addresses the following major questions: (1) How will human activities and uses be managed? (2) What facilities, uses, and infrastructure are appropriate to provide resource exploration while managing the protection of the biological, historical, cultural, and visual values of Federal resources in Alabama and Mississippi? (3) How will the RMP be integrated with other Federal and state agency community plans? (4) How will transportation and access be managed? (5) How will the RMP affect economic and social conditions in the area?

The Approved RMP was prepared under the authorities of the Federal Land Policy and Management Act of 1976 (FLPMA) and the National Environmental Policy Act of 1969 (NEPA). Additionally, this plan is consistent with all local plans and policies. The approved RMP is identical to the proposed plan (Alternative 3) presented in the 2008 Proposed RMP/Final EIS. All decisions covered by the ROD are either land-use planning decisions that were protestable under BLM's planning regulations (43 CFR 1610), or are implementation decisions that are appealable under 43 CFR part 4, as more fully discussed below. The BLM will develop a plan evaluation methodology to ensure that the RMP is being followed. There was one protest that was denied.

The decisions regarding oil and gas leasing and disposal of Federal surface lands are implementation decisions and are appealable under 43 CFR part 4. Any party adversely affected by these decisions may appeal within 30 days of publication of this Notice of Availability pursuant to 43 CFR part 4, subpart E.

The appeal must be filed with the Jackson Field Manager at the above listed address. Please consult the appropriate regulations (43 CFR part 4, subpart E) for further appeal requirements.

Juan Palma,

Director.

[FR Doc. E9–27785 Filed 11–20–09; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CACA 048810 and CACA 048811, LLCAD06000 L5101 ER0000 LVRBW09B26000]

Notice of Intent To Prepare Two Environmental Impact Statements/Staff Assessments for the Proposed Chevron Energy Solutions/Solar Millennium Palen and Blythe Solar Power Plants, Riverside County, CA and Possible Land Use Plan Amendments

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act (NEPA) of 1969, as amended, the Federal Land Policy and Management Act of 1976, as amended, and the California Environmental Quality Act (CEQA), the Bureau of Land Management (BLM) Palm Springs South Coast Field Office, Palm Springs, California, together with the California Energy Commission (CEC), intend to prepare two Environmental Impact

Statements (EIS)/Staff Assessments (SAs), which may include an amendment to the California Desert Conservation Area (CDCA) Plan (1980, as amended) and by this notice are announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: This notice initiates the public scoping process for the Draft EIS/SAs and possible plan amendment. Comments on issues may be submitted in writing until December 23, 2009. The dates and locations of scoping meetings, information hearings, and site visits will be announced at least 15 days in advance through local media and the BLM Web site at: *http://www.blm.gov/ca/st/en/fo/palmsprings.html* and the CEC Web sites at *http://www.energy.ca.gov/sitingcases/solar_millennium_palen/index.html* and *http://www.energy.ca.gov/sitingcases/solar_millennium_blythe/index.html.* To be considered in the Draft EIS/SAs, all comments must be received prior to the close of the scoping period or 15 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation upon publication of the Draft EIS/SAs.

ADDRESSES: You may submit comments on issues and planning criteria related to the Proposed Chevron Energy Solutions/Solar Millennium Palen and Blythe Solar Power Plants EIS/SAs and CDCA Plan amendment by any of the following methods:

- *E-mail:* *asolomon@energy.state.ca.us*, *CAPSSolarPalen@blm.gov*, or *CAPSSolarBlythe@blm.gov*.
- *Fax:* (760) 833–7199.
- *Mail or hand delivery:* Alan Solomon, Project Manager, Siting, Transmission and Environmental Protection Division, CEC, 1516 Ninth Street, MS–15, Sacramento, California 95814 or Holly L. Roberts, Project Manager, Palm Springs-South Coast Field Office, BLM, 1201 Bird Center Drive, Palm Springs, California 92262.

The administrative record of this proposal may be examined at the Palm Springs South Coast Field Office during normal business hours.

FOR FURTHER INFORMATION CONTACT: For further information or to have your name added to our mailing list, contact Alan Solomon, CEC project manager at telephone (916) 653–8236, or address 1516 Ninth Street, MS–15, Sacramento, CA 95814, or e-mail *asolomon@energy.state.ca.us;* or Allison Shaffer, BLM project manager at telephone (760) 833–7100, or address Palm Springs-South Coast Field Office, BLM, 1201 Bird Center Drive, Palm Springs, California 92262, or e-mail *CAPSSolarPalen@blm.gov* or *CAPSSolarBlythe@blm.gov.* Information on participating in the CEC's review of the project may also be obtained through the CEC's Public Advisor's Office at (916) 654–8236 or toll free in California, (800) 822–6228, or by e-mail: *publicadviser@energy.state.ca.us.* News media inquiries should be directed to the CEC's media office at (916) 654–4989, or *mediaoffice@energy.state.ca.us.* You can also subscribe to an email notification list of all notices at: *http://www.energy.ca.gov/listservers.*

SUPPLEMENTARY INFORMATION: Chevron Energy Solutions/Solar Millennium (CESSM) has applied for two separate right-of-way (ROW) authorizations to construct and operate the Palen and Blythe solar thermal power plants in eastern Riverside County, California with an expected combined capacity of 1,452 megawatts (MW) using solar parabolic trough generating stations. Approximately 10,100 acres of BLM-administered public land are needed to develop the two projects.

Pursuant to the BLM's CDCA Plan, sites associated with power generation or transmission not identified in the CDCA Plan will be considered through the plan amendment process. Under Federal law, the BLM is responsible for processing requests for ROWs to authorize solar projects and associated transmission lines and other associated facilities on the land it manages. Under California law, the CEC is responsible for reviewing applications for certification (AFC) filed for thermal power plants over 50 MW. The CEC also serves as lead agency for the environmental review of such projects under CEQA. On August 24, 2009, CESSM submitted to the CEC AFCs for the Palen and Blythe projects.

The Palen site is 10 miles east of Desert Center, California and a half mile north of Interstate 10; the Blythe site is eight miles west of Blythe, California and three miles north of Interstate 10. The Palen facility will be constructed in two phases, while the Blythe facility will be constructed in four phases.

The proposed Palen Solar Power Project would consist of two parabolic trough solar thermal power plants, each of which would have a solar field comprised of rows of parabolic mirrors focusing solar energy on collector tubes. The tubes would carry heated oil to a boiler, which would then send steam to a turbine. The two phases would generate approximately 484 MW of electricity. The two power plants would share administrative buildings, parking areas, maintenance buildings, switch yards, bioremediation areas, wastewater treatment facilities, access and maintenance roads, and perimeter fencing. The project would also include a natural gas pipeline, communication lines, and a 230 kV transmission line. The total expected project footprint would be approximately 3,800 acres. During construction, the project would require approximately 1,100 acre-feet of water for dust control and soil compaction. During operation, the project would require approximately 300 acre-feet of water per year. CESSM proposes to use water from new wells.

The proposed Blythe Solar Power Project would consist of four parabolic trough solar thermal power plants similar to the Palen project. The four power plants would generate approximately 968 MW of electricity. All four plants would share administrative buildings, parking areas, maintenance buildings, switch yards, bioremediation areas, wastewater treatment facilities, access and maintenance roads, and perimeter fencing. The project would also include a natural gas pipeline, communication lines, and a 500 kV transmission line. The total expected project footprint would be approximately 6,300 acres. During construction, the project would require approximately 3, 100 acre feet of water for dust control and soil compaction. During operation, the project would require approximately 600 acre-feet of water per year. CESSM proposes to use water from new wells. If approved, both projects would begin construction in late 2010. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the EISs. The BLM has identified the following preliminary issues: special area designations, air quality, biological resources, hazardous materials, recreation, cultural resources, water resources, geological resources, land use, noise, paleontological resources, public health, socioeconomics, soils, traffic and transportation, and visual resources.

Authorization of these proposals may require amendment of the CDCA Plan. By this notice, the BLM is complying with requirements in 43 CFR 1610.2(c) to notify the public of potential amendments to land use plans, subject to the findings of the EISs. If a land use plan amendment is necessary, the BLM will integrate the land use planning process with the NEPA process for these projects.

The BLM will use the NEPA commenting process to satisfy the

public involvement process for Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) as provided for in 36 CFR 800.2(d)(3). Native American Tribal consultations will be conducted and Tribal concerns will be given due consideration, including impacts on Indian trust assets. Federal, State, and local agencies, along with Tribes and other stakeholders that may be interested or affected by the BLM's decision on this project, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate as a cooperating agency.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1501.7 and 43 CFR 1610.2.

Tom Pogacnik,

Deputy State Director for Natural Resources, BLM California State Office.

[FR Doc. E9–27961 Filed 11–20–09; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–FHC–2009–N248; 81331–1334–8TWG–W4]

Trinity Adaptive Management Working Group

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Trinity Adaptive Management Working Group (TAMWG) affords stakeholders the opportunity to give policy, management, and technical input concerning Trinity River (California) restoration efforts to the Trinity Management Council (TMC). The TMC interprets and recommends policy, coordinates and reviews management actions, and provides organizational budget oversight. This notice announces a TAMWG meeting, which is open to the public.

DATES: TAMWG will meet from 1 to 5 p.m. on Monday, December 14, 2009, and from 8:30 a.m. to 5 p.m. on Tuesday, December 15, 2009.

ADDRESSES: The meeting will be held at the Weaverville Victorian Inn, 1709 Main St., 299 West Weaverville, CA 96093.

FOR FURTHER INFORMATION CONTACT: *Meeting information:* Randy A. Brown, TAMWG Designated Federal Officer, U.S. Fish and Wildlife Service, 1655 Heindon Road, Arcata, CA 95521; telephone: (707) 822–7201. *Trinity River Restoration Program (TRRP) information:* Mike Hamman, Executive Director, Trinity River Restoration Program, P.O. Box 1300, 1313 South Main Street, Weaverville, CA 96093; telephone: (530) 623–1800; e-mail: *mhamman@mp.usbr.gov.*

SUPPLEMENTARY INFORMATION: Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), this notice announces a meeting of the TAMWG. The meeting will include discussion of the following topics:

- TAMWG role and effectiveness in Trinity River Restoration Program;
- TRRP staff organization;
- TRRP science program;
- TRRP budget process and budget update;
- Trinity River channel rehabilitation projects;
- Trinity reservoir operations;
- Proposed Klamath River dam removal; and
- Tribal harvest management and allocation.

Completion of the agenda is dependent on the amount of time each item takes. The meeting could end early if the agenda has been completed.

Dated: November 17, 2009.

Randy A. Brown,

Designated Federal Officer, Arcata Fish and Wildlife Office, Arcata, CA.

[FR Doc. E9–28070 Filed 11–20–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice on Outer Continental Shelf Oil and Gas Lease Sales

AGENCY: Minerals Management Service, Interior.

ACTION: List of Restricted Joint Bidders.

SUMMARY: Pursuant to the authority vested in the Director of the Minerals Management Service by the joint bidding provisions of 30 CFR 256.41, each entity within one of the following groups shall be restricted from bidding with any entity in any other of the following groups at Outer Continental Shelf oil and gas lease sales to be held during the bidding period November 1, 2009 through April 30, 2010. The List of Restricted Joint Bidders published in the **Federal Register** on April 20, 2009, covered the period May 1, 2009 through October 31, 2009.

Group I

Exxon Mobil Corporation
ExxonMobil Exploration Company

Group II

Shell Oil Company
Shell Offshore Inc.
SWEPI LP
Shell Frontier Oil & Gas Inc.
Shell Consolidated Energy Resources Inc.
Shell Land & Energy Company
Shell Onshore Ventures Inc.
Shell Offshore Properties and Capital II, Inc.
SOI Finance Inc.
Shell Rocky Mountain Production LLC
Shell Gulf of Mexico Inc.

Group III

BP America Production Company
BP Exploration & Production Inc.
BP Exploration (Alaska) Inc.

Group IV

TOTAL E&P USA, Inc.

Group V

Chevron Corporation
Chevron U.S.A. Inc.
Chevron Midcontinent, L.P.
Unocal Corporation
Union Oil Company of California
Pure Partners, L.P.

Group VI

ConocoPhillips Company
ConocoPhillips Alaska, Inc.
ConocoPhillips Petroleum Company
Phillips Pt. Arguello Production Company
Burlington Resources Oil & Gas Company LP
Burlington Resources Offshore Inc.
The Louisiana Land and Exploration Company
Inexeco Oil Company

Group VII

Eni Petroleum Co. Inc.
Eni Petroleum US LLC
Eni Oil US LLC
Eni Marketing Inc.
Eni BB Petroleum Inc.
Eni US Operating Co. Inc.
Eni BB Pipeline LLC

Group VIII

Petrobras America Inc.

Group IX

StatoilHydro ASA
Statoil Gulf of Mexico LLC

StatoilHydro USA E&P, Inc.
StatoilHydro Gulf Properties Inc.

Dated: October 30, 2009.

S. Elizabeth Birnbaum,

Director, Minerals Management Service.

[FR Doc. E9–28088 Filed 11–20–09; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1043–1045 (Review)]

Polyethylene Retail Carrier Bags From China, Malaysia, and Thailand

AGENCY: United States International Trade Commission.

ACTION: Scheduling of full five-year reviews concerning the antidumping duty orders on polyethylene retail carrier bags from China, Malaysia, and Thailand.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty orders on polyethylene retail carrier bags from China, Malaysia, and Thailand would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. 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).

DATES: *Effective Date:* November 17, 2009.

FOR FURTHER INFORMATION CONTACT: Nathanael Comly (202–205–3174), 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 October 5, 2009, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (74 FR 54069, October 21, 2009). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

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 these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. 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.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the reviews will be placed in the nonpublic record on April 7, 2010, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on April 27, 2010, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 20, 2010. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on April 22, 2010, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is April 16, 2010. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is May 6, 2010; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before May 6, 2010. On May 28, 2010, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before June 2, 2010, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic

Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: November 18, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–28040 Filed 11–20–09; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–473 and 731–TA–1173 (Preliminary)]

Certain Sodium and Potassium Phosphate Salts From China

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act), that there is a reasonable indication that an industry producing monopotassium phosphate (''MKP''), provided for in subheading 2835.24.00 of the Harmonized Tariff Schedule in the United States, is materially injured or threatened with material injury by reason of imports from China, that are alleged to be subsidized by the Government of China and sold in the United States at less than fair value (LTFV).[2] [3] In addition, the Commission determines that there is a reasonable indication that industries producing dipotassium phosphate (''DKP'') and tetrapotassium pyrophosphate (''TKPP''), provided for in subheadings 2835.24.00 and 2835.39.10 respectively, of the Harmonized Tariff Schedule of the United States, are threatened with material injury by reason of imports from China, that are alleged to be subsidized by the Government of China and sold in the United States at less than fair value (LTFV).[4] Finally, the Commission determines that there is no reasonable indication that an industry producing sodium tripolyphosphate (''STPP''), provided for in subheading 2835.31.00 of the Harmonized Tariff Schedule of the United States, is materially injured or threatened with material injury by reason of imports from China, that are alleged to be subsidized by the Government of China and sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On September 24, 2009, a petition was filed with the Commission and Commerce by ICL Performance Products LP, St. Louis, MO and Prayon, Inc., Augusta, GA alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV and subsidized imports of certain sodium and potassium phosphate salts from China. Accordingly, effective September 24, 2009, the Commission instituted countervailing duty investigation No. 701–TA–473 and antidumping duty investigation No. 731–TA–1173 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference 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** of October 1, 2009 (74 FR 50817). The conference was held in Washington, DC, on October 15, 2009, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on November 9, 2009. The views of the Commission are contained in USITC Publication 4110 (November 2009), entitled *Certain Sodium and Potassium Phosphate Salts From China (Preliminary).*

By order of the Commission.

Issued: November 17, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–28020 Filed 11–20–09; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioners Charlotte R. Lane, Irving A. Williamson, and Dean A. Pinkert determine that there is a reasonable indication that the domestic industry is materially injured by reason of subject imports.

[3] Chairman Shara L. Aranoff, Vice Chairman Daniel R. Pearson, and Commissioner Deanna Tanner Okun determine that there is a reasonable indication that the domestic industry is threatened with material injury by reason of subject imports.

[4] Commissioner Charlotte R. Lane determines that there is a reasonable indication that an industry producing TKPP is materially injured by reason of subject imports.

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–470–471 and 731–TA–1169–1170 (Preliminary)]

Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From China and Indonesia

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China and Indonesia of certain coated paper suitable for high-quality print graphics using sheet-fed presses (''certain coated paper''), provided for in subheadings 4810.14.11, 4810.14.19, 4810.14.20, 4810.14.50, 4810.14.60, 4810.14.70, 4810.19.11, 4810.19.19, 4810.19.20, 4810.22.10, 4810.22.50, 4810.22.60, 4810.22.70, 4810.29.10, 4810.29.50, 4810.29.60, and 4810.29.70 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV) and subsidized by the Governments of China and Indonesia.

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On September 23, 2009, a petition was filed with the Commission and Commerce by Appleton Coated, LLC, Kimberly, WI; NewPage Corp., Miamisburg, OH; Sappi Fine Paper North America, Boston, MA; and the United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied Industrial and Service Workers International Union (''USW''), alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV and subsidized imports of certain coated paper from China and Indonesia. Accordingly, effective September 23, 2009, the Commission instituted countervailing duty investigation Nos. 701–TA–470–471 and antidumping duty investigation Nos. 731–TA–1169–1170 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference 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** of September 30, 2009 (74 FR 50243). The conference was held in Washington, DC on October 14, 2009, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on November 9, 2009. The views of the Commission are contained in USITC Publication 4108 (November 2009), entitled *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from China and Indonesia: Investigation Nos. 701–TA–470–471 and 731–TA–1169–1170 (Preliminary).*

By order of the Commission.

Issued: November 17, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–28021 Filed 11–20–09; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Federal Water Pollution Control Act

Notice is hereby given that on November 13, 2009, a proposed Consent Decree was filed with the United States District Court for the District of Nebraska in *United States et al.* v. *City of West Point, et al.,* No. 08–00293 (D. Neb.). The proposed Consent Decree entered into by the United States, the State of Nebraska, and Wimmer's Meat Products, Inc., resolves the United States' and State of Nebraska's claims against Wimmer's under the pre-treatment requirements of the Federal Water Pollution Control Act (Clean Water Act), 40 CFR part 403 and 33 U.S.C. 1311, 1317, related to its discharges to the Publicly Owned Treatment Works in West Point, Nebraska. Under the terms of the Consent Decree, Wimmer's shall pay a civil penalty to the United States of $77,500 and a civil penalty to the State of $34,100. In addition, Wimmer's shall contribute $43,400 to the West Point Community Foundation to fund a state-supervised Supplemental Environmental Project.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States et al.* v. *City of West Point, et al.,* DJ Ref. No. 90–5–1–1–09326.

The proposed Agreement may be examined at the Office of the United States Attorney for the District of Nebraska, 487 Federal Building, 100 Centennial Mall North, Lincoln NE 68508, and at the Environmental Protection Agency, Region 7, 901 N. 5th St., Kansas City, KS 66101. During the public comment period, the proposed Agreement may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a

copy from the Consent Decree Library, please enclose a check in the amount of $4.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–27957 Filed 11–20–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs; Labor Advisory Committee for Trade Negotiations and Trade Policy

ACTION: Meeting notice.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given of a meeting of the Labor Advisory Committee for Trade Negotiation and Trade Policy.

Date, Time, Place: December 8, 2009; 10:30 a.m.–11:30 a.m.; U.S. Department of Labor, Secretary's Conference Room, 200 Constitution Ave., NW., Washington, DC.

Purpose: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Potential U.S. negotiating objectives and bargaining positions in current and anticipated trade negotiations will be discussed. Pursuant to 19 U.S.C. 2155(f) it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Accordingly, the meeting will be closed to the public.

FOR FURTHER INFORMATION CONTACT: Gregory Schoepfle, Director, Office of Trade and Labor Affairs; Phone: (202) 693–4887.

Signed at Washington, DC, the 17th day of November 2009.

Sandra Polaski,

Deputy Undersecretary, Bureau of International Labor Affairs.

[FR Doc. E9–27991 Filed 11–20–09; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2009–0028]

Personal Protective Equipment Standard for General Industry; Extension of the Office of Management and Budget's (OMB) Approval of the Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements contained in the Personal Protective Equipment (PPE) Standard for General Industry (29 CFR part 1910, subpart I).

DATES: Comments must be submitted (postmarked, sent, or received) by January 22, 2010.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2009–0028, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the ICR (OSHA–2009–0028). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov*. For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.*, copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may contact Theda Kenney at the address below to obtain a copy of the Information Collection Request (ICR).

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

Subpart I specifies several paperwork requirements. The following describes the information collection requirements in subpart I and addresses who will use the information.

Hazard Assessment and Verification (§ 1910.132(d))

Paragraph (d)(1) requires employers to perform a hazard assessment of the workplace to determine if hazards are present, or likely to be present, that make the use of PPE necessary. Where such hazards are present, employers must communicate PPE selection decisions to each affected worker (paragraph (d)(1)(ii)).

Paragraph (d)(2) requires employers to certify in writing that they have performed the hazard assessment. The certification must include the date and the person certifying that the hazard assessment was conducted, and the identification of the workplace evaluated (area or location).

The hazard assessment assures that potential workplace hazards necessitating PPE use have been identified and the PPE selected is appropriate for those hazards and the affected workers. The required certification of the hazard assessment verifies that the required hazard assessment was conducted.

Training and Verification (§ 1910.132(f))

Section 1910.132(f) requires that employers provide training for each worker who is required to wear PPE. Paragraph (f)(3) requires that employers also provide retraining when there is reason to believe that any previously trained worker does not have the understanding and skill to use PPE properly. Circumstances where such retraining is required include changes in the workplace that render prior training obsolete, changes in the types of PPE used, and inadequacies in the worker's knowledge or use of PPE that indicate the worker had not retained the requisite understanding and skill.

Paragraph (f)(4) requires that employers certify that workers have received and understood the PPE training required in § 1910.132(f). The training certification must include the name of the worker(s) trained, the date(s) of training, and the subject of the certification (i.e., a statement identifying the document as a certification of training in the use of PPE).

The training certification verifies that workers have received the necessary training and know how to properly use PPE. OSHA compliance officers may require employers to disclose the certification records during an Agency inspection.

The standards on PPE protection for the eyes and face (29 CFR 1910.133), head (29 CFR 1910.135, feet (29 CFR 1910.136)), and hands (29 CFR 1910.138) do not contain any separate information collection requirements.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Personal Protective Equipment Standard for General Industry (29 CFR part 1910, subpart I). OSHA is proposing to decrease the burden hours in the currently approved information collection request from 3,953,759 to 3,552,171 (a total decrease of 401,588 hours). This decrease is due to the reduction in the percentage of establishments with 20 or more workers affected by the Standard.

The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Personal Protective Equipment (PPE) for General Industry (29 CFR part 1910, subpart I).

OMB Number: 1218–0205.

Affected Public: Business or other for-profits; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 3,500,000.

Frequency of Response: On occasion.

Average Time per Response: Varies from one minute (.02 hour) to maintain a training certification record to 29 hours to perform a hazard assessment.

Estimated Total Burden Hours: 3,552,171.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2009–0028). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (*see* the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov*. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.*, copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

Jordan Barab, Acting Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2007 (72 FR 31160).

Signed at Washington, DC, this 18th day of November 2009.

Jordan Barab,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E9–28031 Filed 11–20–09; 8:45 am]

BILLING CODE 4510–26–P

LIBRARY OF CONGRESS

Copyright Royalty Board

Notice of Intent To Audit

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Public notice.

SUMMARY: The Copyright Royalty Judges are announcing receipt of a notice of intent to audit the 2006, 2007 and 2008 statements of account submitted by AOL LLC concerning the royalty payments made under two statutory licenses.

FOR FURTHER INFORMATION CONTACT: Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor, by telephone at (202) 707–7658 or e-mail at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: In 1995, Congress enacted the Digital Performance Right in Sound Recordings Act of 1995 (''DPRA''), Public Law 104–39, which created an exclusive right for copyright owners of sound recordings, subject to certain limitations, to perform publicly sound recordings by means of certain digital audio transmissions. Among the limitations on the performance right was the creation of a compulsory license for nonexempt noninteractive digital subscription transmissions. 17 U.S.C. 114(f).

Section 114 was later amended with the passage of the Digital Millennium Copyright Act of 1998 (''DMCA''), Public Law 105–304, to cover additional digital audio transmissions, including eligible nonsubscription transmissions.[1] In addition to expanding the section 114 license, the DMCA also created a statutory license to allow a service to make any necessary ephemeral reproductions to facilitate the digital transmission of the sound recording. 17 U.S.C. 112(e).

Licensees may operate under these licenses provided they pay the royalty fees and comply with the terms set by the Copyright Royalty Judges (''Judges''). On May 1, 2007, the Judges issued their final determination setting rates and terms for the section 112 and 114 licenses for the period 2006–2010. 72 FR 24084. As part of the terms set for these licenses, the Judges designated SoundExchange, Inc. as the organization charged with collecting the royalty payments and statements of account and distributing the royalties to the copyright owners and performers entitled to receive such royalties under the section 112 and 114 licenses. 37 CFR 380.4(b)(1). As the designated Collective, SoundExchange may conduct a single audit of a licensee for any calendar year for the purpose of verifying their royalty payments. SoundExchange must first file with the Judges a notice of intent to audit a licensee and serve the notice on the licensee to be audited. 37 CFR 380.6(b), (c).

On November 5, 2009, pursuant to 37 CFR 380.6(c), SoundExchange filed with the Judges a notice of intent to audit AOL LLC for the years 2006, 2007, and 2008. Section 380.6(c) requires the Judges to publish a notice in the **Federal Register** within 30 days of receipt of the notice announcing the Collective's intent to conduct an audit.

In accordance with 37 CFR 380.6(c), the Copyright Royalty Judges are publishing today's notice to fulfill this requirement with respect to SoundExchange's notice of intent to audit AOL LLC filed November 5, 2009.

Dated: November 17, 2009.

James Scott Sledge,

Chief, U.S. Copyright Royalty Judge.

[FR Doc. E9–27980 Filed 11–20–09; 8:45 am]

BILLING CODE 1410–72–P

[1] An ''eligible nonsubscription transmission'' is a noninteractive digital audio transmission which, as the name implies, does not require a subscription for receiving the transmission. The transmission must also be made as a part of a service that provides audio programming consisting in whole or in part of performances of sound recordings the primary purpose of which is to provide audio or entertainment programming, but not to sell, advertise, or promote particular goods or services other than sound recordings, live concerts, or other music-related events. 17 U.S.C. 114(j)(6).

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (09–100)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Mrs. Lori Parker, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mrs. Lori Parker, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., JE000, Washington, DC 20546, (202) 358–1351, *Lori.Parker-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The analysis of the Effective Messaging Research survey will position NASA to effectively communicate Agency messages.

II. Method of Collection

All survey responses will be collected by telephone and tabulated electronically.

III. Data

Title: Effective Messaging Research.
OMB Number: 2700–0113.
Type of review: Extension of currently approved collection.
Affected Public: Individuals and households, Business or other for-profit, not-for-profit institutions, Federal Government, and State, Local or Tribal Government.
Number of Respondents: 2,700.
Responses per Respondent: 1.
Annual Responses: 2,700.
Hours per Request: 0.33 hours.
Annual Burden Hours: 900.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

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

Lori Parker,

NASA PRA Clearance Officer.

[FR Doc. E9–27970 Filed 11–20–09; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–445 and 50–446; NRC–2009–0510]

Luminant Generation Company, LLC; Comanche Peak Steam Electric Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering

issuance of an amendment to Facility Operating License Nos. NPF–87 and NPF–89 in accordance with Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.90, issued to Luminant Generation Company LLC (the licensee), for operation of the Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, located in Somervell County, Texas. Therefore, as required by 10 CFR 51.21, the NRC performed an environmental assessment. Based on the results of the environmental assessment, the NRC is issuing a finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action:

The proposed action would change the legal name of the plant from ''Comanche Peak Steam Electric Station'' to ''Comanche Peak Nuclear Power Plant.''

The proposed action is in accordance with the licensee's application dated February 11, 2009.

The proposed change also removes the Table of Contents from the Technical Specifications (TSs) and places it under licensee control; deletes TS 3.2.1.1, TS 3.2.3.1, TS 5.5.9.1, TS 5.6.10, and several footnotes from Tables 3.3.1–1 and 3.3.2–1 and TS 3.4.10 since these TSs and footnotes are no longer applicable to CPSES, Unit 1 or Unit 2 operation; renumbers TS 3.2.1.2 to TS 3.2.1, TS 3.2.3.2 to TS 3.2.3, and TS 5.5.9.2 to TS 5.5.9; deletes several topical reports from the list of approved analytical methods used to determine core operating limits in TS 5.6.5; and corrects various minor editorial errors in the TSs. However, these amendments change a requirement with respect to installation or use of a facility component located within the restricted area as defined in 10 CFR part 20. The NRC staff has determined that these amendments involve no significant increase in the amounts, and no significant change in the types, of any effluents that may be released offsite, and that there is no significant increase in individual or cumulative occupational radiation exposure. The Commission has previously issued a proposed finding that these amendments involve no significant hazards consideration, and there has been no public comment on such finding published in the **Federal Register** on April 7, 2009 (74 FR 15772). Accordingly, these amendments meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the issuance of these amendments; therefore, this environmental assessment applies to only the plant name change.

The Need for the Proposed Action:

The proposed action is necessary to reflect the legal change of name of the plant from Comanche Peak Steam Electric Station to Comanche Peak Nuclear Power Plant.

Environmental Impacts of the Proposed Action:

The NRC has concluded in its evaluation of the proposed action that since this action is for a plant name change only that (1) there is a reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

The details of the staff's safety evaluation will be provided in the license amendment that will be issued as part of the letter to the licensee approving the license amendment.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released offsite. There is no significant increase in the amount of any effluent released offsite. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have any foreseeable impacts to land, air, or water resources, including impacts to biota. In addition, there are also no known socioeconomic or environmental justice impacts associated with such proposed action. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action:

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources:

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for the CPSES, Units 1 and 2, NUREG–0775, dated September 1981 and Supplement dated October 1989.

Agencies and Persons Consulted:

In accordance with its stated policy, on August 13, 2009, the staff consulted with the Texas State official, Alice Rogers, Inspection Unit Manager, Texas Department of State Health Services, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated February 11, 2009. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr.resource@nrc.gov*.

Dated at Rockville, Maryland, this 17th day of November 2009.

For the Nuclear Regulatory Commission.

Mohan C. Thadani,

Senior Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–28090 Filed 11–20–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–266 and 50–301; NRC–2009–0160]

FPL Energy Point Beach, LLC; Notice of Consideration of Issuance of Amendment to Renewed Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Renewed Facility Operating License Nos. DPR–24 and DPR–27 issued to FPL Energy Point Beach, LLC (the licensee) for operation of the Point Beach Nuclear Plant, Units 1 and 2 located in Town of Two Creeks, Manitowoc County, Wisconsin.

On April 14, 2009, the Nuclear Regulatory Commission published a Notice of Consideration of Issuance, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing in the **Federal Register** (74 FR 17230) for a proposed amendment that would revise the Point Beach Nuclear Plant (PBNP) Units 1 and 2 current licensing basis to implement the alternate source term (AST) through reanalysis of the radiological consequences of the Final Safety Analysis Report (FSAR) Chapter 14 accidents.

On April 17, 2009, the licensee submitted a supplement which expanded the original scope of work. The proposed revisions would add Technical Specification (TS) 3.7.14, ''Primary Auxiliary Building Ventilation (VNPAB),'' to the PBNP TS. The new TS is being proposed as a result of the AST assumptions crediting the VNPAB exhaust function. The proposed change also updates the Table of Contents of the TS to incorporate the new TS.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff's own analysis is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed TS change reflects the plant configuration that is required to implement the AST analyses. The operation of the VNPAB exhaust is mitigating in nature and relied upon only after an accident has been initiated to provide the AST LOCA ECCS equipment leakage activity release location for the control room dose calculation. The results of the LOCA radiological analysis demonstrate that while operating the VNPAB exhaust system, as supported by the proposed TS, the dose consequences of this limiting event are within the regulatory limits and guidance provided by the NRC in 10 CFR 50.67 and RG 1.183 (Reference 6.2). While the operation of this system does change with the implementation of an AST, the affected system in not an accident initiator.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed TS change reflects the plant configuration that is required to implement the AST analyses, and no new or different accidents result from utilizing the proposed changes. The LOCA control room dose analysis assumes that the ECCS equipment leakage activity release pathway X/Q to be at the location of the PAB vent stack. Operation of the VNPAB exhaust fans assures this release point. The VNPAB system operates during normal unit operation.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed TS reflects the plant configuration that is required to implement the AST analyses. The operation of the VNPAB exhaust is mitigating in nature and relied upon only after an accident has been initiated. The VNPAB assures the proper X/Q for airborne radiological protection for control room personnel, as demonstrated by the control room dose analyses for the LOCA. The proposed changes ensure that the dose consequences in the control room due to the DBA LOCA are within the acceptance criteria presented in 10 CFR 50.67.

Therefore, the proposed change does not involve a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking and Directives Branch (RDB), TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RDB at 301–492–3446. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in

accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in the August 28, 2007, **Federal Register** notice (72 FR 49139). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the petitioner/requestor should must contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory e-filing system may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC electronic filing Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays. The toll-free help line number is 1–866–

672–7640. A person filing electronically may also seek assistance by sending an e-mail to the NRC electronic filing Help Desk at *MSHD.Resource@nrc.gov.*

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the request and/or petition should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/ehd_proceeding/home.asp,* unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submissions.

For further details with respect to this license amendment application, see the application for amendment dated December 8, 2008, which is available for public inspection at the Commission's PDR, located at One White Flint North, Room O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Attorney for licensee: M. S. Ross, Vice President & Associate General Counsel, Florida Power & Light Company, PO Box 14000, Juno Beach, FL 33408–0420.

Dated at Rockville, Maryland, this 16th day of November 2009.

For the Nuclear Regulatory Commission.

Justin C. Poole,

Project Manager, Plant Licensing Branch III–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–28092 Filed 11–20–09; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11929]

Washington Disaster # WA–00024 Declaration of Economic Injury

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Washington, dated 11/13/2009.

Incident: Yakima County SR 410 Landslide.

Incident Period: 10/10/2009.

Effective Date: 11/13/2009.

EIDL Loan Application Deadline Date: 8/13/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Yakima.

Contiguous Counties:

Washington: Benton, Grant, King, Kittitas, Klickitat, Lewis, Pierce, Skamania.

The Interest Rate is: 4.000.

The number assigned to this disaster for economic injury is 119290.

The State which received an EIDL Declaration # is Washington.

(Catalog of Federal Domestic Assistance Number 59002)

Dated: November 13, 2009.

Karen G. Mills,

Administrator.

[FR Doc. E9–27983 Filed 11–20–09; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Monday, November 23, 2009 at 9 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c), (5), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(5), (7), (8), 9(ii) and (10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Walter, as duty officer, voted to consider the item listed for the Closed Meeting in a closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Monday, November 23, 2009 will be:

Institution and settlement of injunctive actions; and

Institution and settlement of administrative proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been

added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: November 18, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–28125 Filed 11–19–09; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61006; File No. SR–OCC–2009–15]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change To Revise the Minimum Eligibility Criteria for Common Stock Loaned Through Stock Loan Programs and Deposited as Margin Collateral

November 16, 2009.

I. Introduction

On August 28, 2009, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–OCC–2009–15 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] The proposed rule change was published for comment in the **Federal Register** on October 6, 2009.[2] No comment letters were received on the proposal. This order approves the proposal.

II. Description

The proposed rule change revises minimum eligibility criteria applicable to common stock loaned through OCC's Stock Loan Programs and deposited as margin collateral.

OCC's clearing services involve common stock [3] in several ways. Stocks are: (i) Underlying securities for exchange-traded equity option contracts; (ii) constituent securities of stock indexes that underlie stock index options or of indexes on which underlying ETFs are based; (iii) constituent securities of ETFs that although are not underlying securities are based on indexes that underlie index options (''Index Option Related ETFs''); (iv) the subject of stock loan or borrow transactions cleared pursuant to OCC's Stock Loan Programs; and (v) deposited with OCC as margin collateral. Rationalizing the interrelationship among the criteria applied to stocks for these various purposes will maximize the potential for offsets and reduce risk in the clearing system.

Under OCC's Stock Loan Programs, only loans of stocks that are either underlying securities for options or futures or ETFs based on a stock index underlying an index option contract are eligible for clearance through OCC (collectively, ''Options-Related Stocks''). OCC restricted stock loan activity to limit its risk to loans supporting short sales that might be serving as hedges for options transactions or helping to add liquidity to the options markets. At the time this criterion was implemented in 2002, OCC managed the risk of stock loan transactions for most clearing members on a credit basis—that is OCC did not collect margin on such transactions. As noted above, OCC now requires margin on all stock loan transactions thus reducing the risk associated with this activity. Accordingly, OCC believes that it is no longer necessary or appropriate to limit stock loan transactions to Options-Related Stocks.

In connection with the foregoing change, OCC is supplementing its existing criteria for stock eligible for the Stock Loan Programs by requiring that in order to qualify as an ''Eligible Stock'' for purposes of the Stock Loan Programs a stock must be a ''covered security'' as defined in Section 18(b)(1) of the Securities Act of 1933.[4] By agreement with the options exchanges, OCC already requires that all underlying stocks meet this criterion, and OCC believes that it is an appropriate minimum assurance of quality. In addition, OCC is imposing a $3 minimum share price requirement that is applicable only to stocks other than Options-Related Stocks.[5] OCC, however, retains the ability to waive the $3 minimum price where specified other factors suggest that the stock is nevertheless suitable for inclusion in the Stock Loan Programs.

Common Stock as Collateral

Under current OCC Rule 604(b)(4), clearing members can deposit common stocks that meet the following criteria: Minimum price of $3 per share and traded on a national securities exchange or traded in the Nasdaq Global Market or the Nasdaq Capital Market. The aggregate value of margin attributed to a single stock cannot exceed 10% of a clearing member's total margin requirement. Stocks are haircut by 30% for margin valuation purposes. Stocks that have been suspended from trading by or are subject to special margin requirements under the rules of a listing market because of volatility, lack of liquidity, or similar characteristics are not eligible for deposit as margin.

Under the approved but not yet implemented Collateral in Margins program, any common stock that meets the above criteria except the minimum price requirement and that is deliverable upon exercise or maturity of a cleared contract (*i.e.,* is an underlying security), as well as index option related ETFs, will be afforded collateral value as determined by STANS. Moreover, the margin concentration requirement will be inapplicable to such deposits. Thus, upon implementation of the Collateral in Margins proposal, the minimum price requirement and margin concentration requirement will be eliminated for common stocks that are underlying securities or index option related ETFs. The minimum price requirement is being eliminated for these securities in order to provide a greater opportunity for members to hedge their equity options positions with pledges of the underlying securities. This decision also reflects OCC's judgment that the minimum price requirement is less important in the current environment where OCC is able to closely monitor collateral in the form of common stock and to apply the sophisticated risk management technique incorporated in STANS in order to determine the appropriate value to assign to such collateral. The concentration test requirement is being eliminated because STANS contains its own built-in functionality that adequately handles concentrated options and collateral holdings.

In anticipation of the implementation of the Collateral in Margins program, and effective with such implementation, OCC further amends Rule 604(b)(4)(i) as follows:

(1) Replace the requirement of listing on a national securities exchange or specific Nasdaq markets with the requirement that all common stocks

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 60743 (September 29, 2009), 74 FR 51348.

[3] The term ''common stock'' or ''stock'' is broadly used in this rule change to refer to different types of equity securities including ETFs but not preferred stock.

[4] ''Covered securities'' are securities that are authorized for listing on the New York Stock Exchange, the American Stock Exchange (now known as NYSE Amex LLC), the National Market System of the Nasdaq Stock Market (collectively, ''Exchanges''), or any other national securities exchange, or tiers thereof, that the Commission determines are substantially similar to the listing standards applicable to securities on the Exchanges. 15 U.S.C. 77r(b)(1).

[5] This minimum price requirement corresponds to the minimum price standard contained in the criteria used by the options exchanges for initial selection of underlying securities that are also ''covered securities.''

deposited as margin must be ''covered securities'' as described above;

(2) Provide that the $3 minimum share price requirement will apply to deposits of common stocks that are not Options Related Stocks;

(3) Permit OCC to waive the $3 minimum share price if it determines that other factors, including trading volume, the number of shareholders, the number of outstanding shares, and current bid/ask spreads warrant such action; and

(4) Delete Interpretation and Policy .13, adopted in SR–OCC–2009–08, which made the 10% concentration test inapplicable to certain ETFs because the 10% test will be eliminated for all stocks (including ETFs) when Collateral in Margins is implemented.

In addition, OCC is amending Rule 1001 to provide that the determination of ''average aggregate daily margin requirement'' and ''daily margin requirement'' are performed without reference to any deposits of securities (*e.g.,* common stocks including fund shares) that were valued within STANS pursuant to Rule 601. This change ensures that contributions to the clearing fund will be determined without taking into account any reduction in margin requirements resulting from valuing deposits of such securities under STANS. Other proposed changes to Rule 1001 are conforming or clarifying in nature.

The changes proposed in this rule filing more closely align both the stock collateral and stock loan eligibility criteria with the criteria for selection of underlying equity securities. While some differences still exist, OCC believes that the discretionary authority provides OCC with sufficient flexibility to treat equity options, stock loan transactions, and stock collateral in a consistent manner when appropriate. For example, the $3 minimum price requirement is similar or identical to requirements contained in the equity options listing criteria of the options exchanges. In addition, the factors that OCC will consider in determining whether an exception to the $3 minimum may be granted are consistent with those reflected in such criteria. These factors are widely regarded as among the most relevant in determining whether a stock is liquid.

STANS's functionality permits OCC to propose these changes. STANS considers a security's historical price volatility in generating its simulated market moves resulting in coverage parameters that vary based on the overall risk of a particular underlying security. STANS also identifies and addresses concentrated positions. By incorporating equity options positions, stock loan positions, and upon implementation of the Collateral in Margins changes common stock deposits within a single concentration analysis, OCC can identify where hedged positions exist and can also identify areas of cumulative exposure where additional collateral may be appropriate (*e.g.,* where a clearing member has long options, stock loan positions, and margin deposits all relating to the same security).

OCC will implement the changes to stock loan eligibility criteria immediately. The changes in eligibility criteria for common stock deposited as margin will be implemented concurrently with implementation of the Collateral in Margins program, which is scheduled for implementation in the fourth quarter 2009.

III. Discussion

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 registered clearing agency. In particular, the Commission believes that by amending its rules to revise minimum eligibility criteria applicable to common stock loaned through OCC's Stock Loan Programs and deposited as margin collateral, the proposal is consistent with the requirements of Section 17A(b)(3)(F),[6] which requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[7] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–OCC–2009–15) be, and hereby is, approved.[9]

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78q–1.

[8] 15 U.S.C. 78s(b)(2).

[9] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–28023 Filed 11–20–09; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60999; File No. SR–FINRA–2009–077]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to the Restructuring of Quotation Collection and Dissemination for OTC Equity Securities

November 13, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 6, 2009, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing a rule change to restructure quotation collection and dissemination for OTC Equity Securities.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

FINRA is proposing to: (1) Create a Quotation Consolidation Facility (''QCF'') for OTC Equity Securities for regulatory and transparency purposes that would serve as a data consolidator for all quote data in the over-the-counter equity market; (2) delete the FINRA Rule 6500 Series, which governs the operation of the OTC Bulletin Board Service (''OTCBB''); [3] and (3) modify the position charge from $6.00/security/month to $4.00/security/month.

Background

The OTCBB and Pink OTC Markets Inc. (''Pink Sheets'') are the primary attributable quotation platforms for OTC Equity Securities.[4] The OTC Equity Security class generally is comprised of: (i) Securities quoted solely on the OTCBB (approximately 75 issues); [5] (ii) securities quoted solely on the Pink Sheets (approximately 5,877 issues); (iii) securities quoted on both the Pink Sheets and the OTCBB (approximately 3,372 issues); and (iv) ''Grey Market'' securities (*i.e.,* publicly traded, non-exchange listed securities that are not otherwise quoted on any inter-dealer quotation system (approximately 14,000 issues)).[6]

OTCBB quotation data, as well as OTC Equity Security trade report data, has historically been consolidated through FINRA into the Nasdaq Level 1 data feed.[7] The Commission specifically approved the incorporation of this commingled data into Level 1 to ensure that it is widely disseminated for a reasonable cost to investors and market participants.[8] FINRA believes that the creation of a consolidated OTC Equity Security national best bid or offer (''NBBO'') and last sale trade tape through the Level 1 data feed will continue to benefit market integrity, foster investor protection, and directly support the original intent of the Commission in approving the commingling of OTC Equity Security data with the Level 1 data feed.

FINRA notes that an increasing amount of quotation data is not made directly available through the Level 1 data feed for a variety of reasons. For example, some market makers are opting to utilize inter-dealer quotation systems other than the OTCBB Service for some or all of their quoting activity. In addition, certain classes of securities that are not currently eligible by rule for quotation on the OTCBB have experienced significant growth in the recent past (*e.g.,* unsponsored American Depository Receipts). In contrast to the market for OTC Equity Securities, the NMS consolidated data system ensures that investors, market participants, and regulators have ready access to consolidated real-time data for NMS stocks quoted and traded on an inter-market basis for a reasonable cost. Thus, FINRA believes a number of factors, including members' best execution obligations and the potential for future market fragmentation in the OTC Equity Security space, necessitate a widely available NBBO for over-the-counter quotations in OTC Equity Securities. Further to that point, a consolidated OTC Equity Security NBBO that is integrated in real time into FINRA regulatory systems will be beneficial for conducting surveillance for compliance with other FINRA rules. FINRA also notes that this proposal is consistent with the goals articulated in a separate filing proposing to extend selected Regulation NMS protections to the over-the-counter market.[9]

The Proposed Restructuring

As discussed above, data consolidation for OTC Equity Securities is currently in place for last sale trade reports through the FINRA ORF, but no readily available, complementary, consolidated system exists for quotations in OTC Equity Securities. Thus, FINRA is proposing to implement a new over-the-counter transparency structure by ceasing operation of the OTCBB and establishing an OTC Equity Security QCF.[10]

Under the proposal, FINRA would require: (1) Members to submit contemporaneously to the QCF any quotation in an OTC Equity Security that is displayed directly by a member on an inter-dealer quotation system that permits updates on a real-time basis,[11] and (2) a member that is an ATS (as defined by Rule 300(a) of Regulation ATS) to submit contemporaneously to the QCF its highest displayed buy price and size and lowest displayed sell price and size (*i.e.,* ''top-of-book''), irrespective of whether it chooses to display its quotations on an inter-dealer quotation system.[12] Quotation information reported to the QCF must reflect all changes in quotations or quotation size displayed and the time any such change was effected.

Specifically, members would be required to report, at a minimum, the following information for every

[3] FINRA intends to cease operation of the OTCBB upon implementation of this proposed rule change.

[4] ''OTC Equity Security'' means any non-exchange-listed security and certain exchange-listed securities that do not otherwise qualify for real-time trade reporting. *See* FINRA Rule 6420(d).

[5] To be eligible for quoting on the OTCBB, an issuer must generally not be listed on an exchange (or otherwise qualify for real-time trade reporting via the Consolidated Tape) and be a current, timely filer of periodic financial reports as set forth in FINRA Rule 6530.

[6] Notwithstanding that quotation activity in OTC Equity Securities occurs on both the Pink Sheets and on the OTCBB, trade reporting is centralized through the FINRA OTC Reporting Facility (''ORF''). Currently FINRA members are required to report substantially all trades in OTC Equity Securities to the ORF within 90 seconds of execution and FINRA disseminates this transaction information in real-time.

[7] The Level 1 feed is a consolidated best bid or offer (''BBO'') data feed for Nasdaq-listed securities and OTCBB-eligible securities. The Level 1 feed is carried by virtually all trading firms and market data distributors.

[8] *See* Securities Exchange Act Release No. 29616 (August 27, 1991), 56 FR 43826 (September 4, 1991) (Notice of Filing and Immediate Effectiveness of File No. SR–NASD–91–38); Securities Exchange Act Release No. 35054 (December 6, 1994), 59 FR 64225 (December 13, 1994) (Notice of Filing of File No. SR–NASD–94–70); and Securities Exchange Act Release No. 35217 (January 11, 1995), 60 FR 3890 (January 19, 1995) (Order Approving File No. SR–NASD–94–70). Pink Sheets quotation data is not currently included in this data feed but is sold as a proprietary product by Pink Sheets.

[9] *See* Securities Exchange Act Release No. 60515 (August 17, 2009), 74 FR 43207 (August 26, 2009) (Notice of Filing of File No. SR–FINRA–2009–054). The proposed rule change would: (1) Restrict sub-penny quoting; (2) restrict locked and crossed markets; (3) implement a cap on access fees; and (4) require the display of customer limit orders.

[10] To ensure a smooth transition in connection with the launch of the QCF and the sale of the OTCBB, FINRA is actively engaged in an outreach campaign to inform investors, issuers, market participants, and the market data community regarding the initiative.

[11] Rule 15c2–11(e)(2) under the Act defines ''inter-dealer quotation system'' as ''any system of general circulation to brokers or dealers which regularly disseminates quotations of identified brokers or dealers.''

[12] The QCF reporting obligations apply to quotations in ''OTC Equity Securities,'' which may include certain exchange-listed securities (*i.e.,* securities that are listed on a national securities exchange that do not meet the definition of ''NMS stock'' as that term is defined in Rule 600(b)(47) of Regulation NMS). However, FINRA is not proposing to require members to submit to FINRA quotations in OTC Equity Securities that are displayed on an exchange. Thus, the consolidated NBBO disseminated through the QCF will include quotations in certain exchange-listed, non-NMS stocks quoted over-the-counter on an inter-dealer quotation system (or ATS), but will not include quotations in those securities displayed on an exchange. This is consistent with current transaction dissemination whereby the Level 1 data feed includes all OTC transactions in OTC Equity Securities, but does not currently consolidate transactions in OTC Equity Securities reported on or through an exchange. With respect to quotations displayed by the QCF, FINRA will append a modifier to the symbol of each OTC Equity Security disseminated by the QCF that also is listed on an exchange in order to indicate that the QCF NBBO may not represent the complete best bid and offer for such security.

quotation displayed by the member during the trading day:

- Submitting firm;[13]
- Inter-dealer quotation system on which the quotation is displayed (if applicable);
- Quotation date;
- Time quotation displayed (expressed in hours, minutes and seconds);
- Security name and symbol;
- Bid and bid quotation size (if applicable) and offer and offer quotation size (if applicable);[14] and
- Highest displayed buy price and size and lowest displayed sell price and size of an ATS (if applicable).[15]

Members must use the QCF to report quotation information on a real-time basis and the QCF will collect, consolidate and then disseminate the NBBO on a real-time basis for all over-the-counter quotations in OTC Equity Securities.[16] Thus, the proposal will effectively ensure that all over-the-counter quotation data for OTC Equity Securities is submitted to FINRA for the purpose of creating a NBBO for dissemination through the Level 1 consolidated quote feed. Moreover, this centralized NBBO will be complemented with consolidated last sale trade report data through FINRA's operation of the existing ORF in concert with the QCF.[17] Members would have the option of using a vendor (including an inter-dealer quotation system) to transmit their quotation data to the QCF, but the member would remain ultimately responsible for the real-time submission of their quotation data to the QCF. FINRA currently intends to disseminate the NBBO of each OTC Equity Security displayed by an ATS or by a member on an inter-dealer quotation system, but does not intend to disseminate depth of book quotation data through the QCF. Instead, mirroring the approach taken by the Commission in the NMS market, quotation mediums operating in the OTC Equity Security space would be free to create and sell data products related to depth of book data.

FINRA also is proposing to create an additional level of transparency related to OTC Equity Securities directly within the primary consolidated Level 1 quote feed. Specifically, FINRA is proposing to append a modifier to each symbol for every OTC Equity Security to indicate its financial reporting status. These appendages would be disseminated on the Level 1 consolidated data stream indicating whether the issuer of the OTC Equity Security is a timely financial reporting company, a delinquent financial reporting company, or a non-financial reporting company. FINRA views this enhanced issuer transparency as carrying significant benefits, including that it will provide more granular information regarding the status of an issuer of each OTC Equity Security directly through the consolidated Level 1 data feed.[18]

To account for its broader role as the operator of the QCF and for growing fragmentation in the market for OTC Equity Securities, FINRA is proposing to implement a new, broader approach to the application of the existing FINRA OTCBB position fee (currently $6.00/security/month). FINRA is proposing that an OTC Equity Security-wide position fee should be established in place of the current OTCBB-specific position fee. The proposed fee would be a flat $4.00/security/month and would be assessed upon any FINRA member that submits or is required to submit its quotations to the QCF, either directly or indirectly through a service provider.

FINRA will cease operation of the OTCBB concurrent with the implementation of the QCF and intends to provide ample time for investors and market participants to prepare for the transition. The effective date of the proposed rule change will, therefore, be no sooner than 60 days and no later than 365 days from Commission approval; provided, however, that the proposed rule change will not take effect prior to the cessation of operation of the OTCBB.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act.[19] Section 15A(b)(6) requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change will prevent fraudulent and manipulative acts and practices by enhancing the transparency and accessibility of consolidated quotation information for over-the-counter quotations in OTC Equity Securities and will promote better compliance with FINRA rules applicable to quoting and trading in OTC Equity Securities including, among other things, members' best execution obligations.

FINRA also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(11) of the Act.[20] Section 15A(b)(11) requires that the rules of the association include provisions governing the form and content of quotations relating to securities sold otherwise than on a national securities exchange which may be distributed or published by any member or person associated with a member, and the persons to whom such quotations may be supplied.

Consistent with the requirements of Section 15A(b)(11), FINRA believes that the implementation of a consolidated quote stream (in addition to the existing FINRA trade report data stream) represents an orderly system for collecting, distributing and publishing quotation and trade data for over-the-counter quotations and transactions in OTC Equity Securities, thereby providing the investing public and market participants with ready access to informative, consolidated trade and quotation information.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not

[13] In the case that the submitting firm is an ATS, this field shall include the name of such ATS (rather than the identification of the member firm originating the trading interest).

[14] These fields are applicable only to a member that is not an ATS.

[15] This field is applicable only to a member that is an ATS.

[16] Under the current proposal, FINRA intends to build QCF functionality such that the QCF's disseminated NBBO field will extend to four decimal places. FINRA recognizes that certain quotation mediums currently accommodate quotations in increments of smaller than $0.0001; therefore, FINRA will work with members and vendors with regard to uniform and consistent normalization of quotation data for submission to the QCF. As with other FINRA rules, FINRA will oversee member conduct in its usual course with regard to compliance with its rules in the context of this quote normalization issue.

[17] As would be the case with the QCF, data for OTC Equity Securities reported on or through an exchange currently is not included in the FINRA ORF. *See supra* note 12.

[18] FINRA will track issuer reporting status in a substantially similar manner as is done with respect to securities for which quotations are posted on the OTCBB. *See supra* note 5. If a party believes that the modifier appended by FINRA reflects an error, such party may contact FINRA at no charge. Specific contact information will be provided by FINRA in the *Regulatory Notice* announcing the implementation date of these proposed rules. However, FINRA reserves the right to make the final determination as to the status of the issuer based on the sole reasonable discretion of the staff. In addition, consistent with current OTCBB procedures, because FINRA relies solely on publicly available data to track issuer reporting status (*i.e.,* FINRA does no independent verification of issuer filing status), issuer status changes will only be made in extraordinary cases and, generally, only if written notice of status change is received by FINRA directly from the Commission or other regulator, as applicable.

[19] 15 U.S.C. 78*o*–3(b)(6).

[20] 15 U.S.C. 78*o*–3(b)(11).

necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2009–077 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–2009–077. 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,[21] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2009–077 and should be submitted on or before December 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–27994 Filed 11–20–09; 8:45 am]

BILLING CODE 8011–01–P

[21] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov/.*

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61000; File No. SR–NASDAQ–2009–094]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Require That Companies Provide Nasdaq With at Least Ten Minutes Prior Notification When Releasing Material Information and Eliminate a Potential Inconsistency With Commission Guidance on the Use of Company Websites To Satisfy Public Disclosure Requirements

November 16, 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 November 5, 2009, The NASDAQ Stock Market LLC (''Nasdaq'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as effecting a change described under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to require, rather than recommend, that Nasdaq-listed companies provide Nasdaq with at least ten minutes prior notification when releasing material information. In addition, Nasdaq proposes to modify rule language that may be inconsistent with Commission guidance on the use of company websites to satisfy public disclosure requirements. The proposed rule change, which is immediately effective, shall become operative on December 7, 2009.

The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in brackets.[4]

* * * * *

5250. Obligations for Companies Listed on The Nasdaq Stock Market

(a) No change.

(b) Obligation to Make Public Disclosure.

(1) Except in unusual circumstances, a Nasdaq-listed Company shall make prompt disclosure to the public through any Regulation FD compliant method (or combination of methods) of disclosure of any material information that would reasonably be expected to affect the value of its securities or influence investors' decisions. The Company shall, prior to the release of the information, provide notice of such disclosure to Nasdaq's MarketWatch Department *at least ten minutes prior to public announcement* if the information involves any of the events set forth in IM–5250–1. As described in IM–5250–1, prior notice to the MarketWatch Department [should] *must* be made through the electronic disclosure submission system available at www.nasdaq.net, *except in emergency situations.*

(2)–(3) No change.

(c)–(f) No change.

[3] 17 CFR 240.19b–4(f)(6).

[4] Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at *http://nasdaqomx.cchwallstreet.com.*

IM–5250–1. Disclosure of Material Information

Rule 5250(b)(1) requires that, except in unusual circumstances, Nasdaq Companies disclose promptly to the public through any Regulation FD compliant method (or combination of methods) of disclosure any material information that would reasonably be expected to affect the value of their securities or influence investors' decisions. Nasdaq Companies must notify Nasdaq *at least ten minutes prior to* [in the manner described below of] the release *to the public* of [such] material information that involves any of the events set forth below [prior to its release to the public]. [Nasdaq recommends that Nasdaq Companies provide such notification at least ten minutes before such release.] Under unusual circumstances Companies may not be required to make public disclosure of material events; for example, where it is possible to maintain confidentiality of those events and immediate public disclosure would prejudice the ability of the Company to pursue its legitimate corporate objectives. However, Nasdaq Companies remain obligated to disclose this information to Nasdaq upon request pursuant to Rule 5250(a).

Paragraph 2. No change.

Notification to Nasdaq MarketWatch Department

Nasdaq Companies must notify Nasdaq's MarketWatch Department prior to the distribution of certain material news *at least ten minutes prior to public announcement of the news.* Except in emergency situations, this notification must be made through Nasdaq's electronic disclosure submission system available at www.nasdaq.net. In emergency situations, Companies [shall] *may* instead provide notification by telephone or facsimile. Examples of an emergency situation include: lack of computer or internet access; technical problems on either the Company or Nasdaq system or an incompatibility between those systems; and a material development such that no draft disclosure document exists, but immediate notification to MarketWatch is important based on the material event.

If a Nasdaq Company repeatedly fails to either notify Nasdaq *at least ten minutes* prior to the distribution of material news, or repeatedly [fail] *fails* to use the electronic disclosure submission system when Nasdaq finds no emergency situation existed, Nasdaq may issue a Public Reprimand Letter (as defined in Rule 5805(j)) or, in extreme cases, a Staff Delisting Determination (as defined in Rule 5805(h)). In determining whether to issue a Public Reprimand Letter, Nasdaq will consider whether the Company has demonstrated a pattern of failures, whether the Company has been contacted concerning previous violations, and whether the Company has taken steps to assure that future violations will not occur.

Trading Halts

Paragraphs 1–3. No change.

Companies are required to notify the MarketWatch Department of the release of material information included in the following list of events *at least ten minutes* prior to the release of such information to the public. It should also be noted that every development that might be reported to Nasdaq in these areas would not necessarily be deemed to warrant a trading halt. In addition to the following list of events, Nasdaq encourages Companies to avail themselves of the opportunity for advance notification to the MarketWatch Department in situations where they believe, based upon their knowledge of the significance of the information, that a temporary trading halt may be necessary or appropriate.

(a)–(h) No change.

Use of Regulation FD Compliant Methods in the Disclosure of Material Information

Regardless of the method of disclosure that a Company chooses to use, Companies are required to notify the MarketWatch Department of the release of material information that involves any of the events set forth above *at least ten minutes* prior to its release to the public. [Nasdaq recommends that Companies provide such notification at least ten minutes before such release.] When a Company chooses to utilize a Regulation FD compliant method for disclosure other than a press release or Form 8–K, the Company will be required to provide prior notice to the MarketWatch Department of: (1) The press release announcing the logistics of the future disclosure event; and (2) a descriptive summary of the material information to be announced during the disclosure event if the press release does not contain such a summary.

Depending on the materiality of the information and the anticipated effect of the information on the price of the Company's securities, the MarketWatch Department may advise the Company that a temporary trading halt is appropriate to allow for full dissemination of the information and to maintain an orderly market. The MarketWatch Department will assess with Companies using methods of disclosure other than a press release or Form 8–K the timing within the disclosure event when the Company will cover the material information so that the halt can be commenced accordingly. Companies will be responsible for promptly alerting the MarketWatch Department of any significant changes to the previously outlined disclosure timeline. Companies are reminded that the posting of information on [its own] *the company's* Web site [is] *may* not by itself *be* considered a sufficient method of public disclosure under Regulation FD *and SEC guidance and releases thereunder,* and as a result, under Nasdaq rules.

* * * * *

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

Pursuant to Rule 5250(b)(1) and IM–5250–1, a Nasdaq-listed company is required, except in unusual circumstances, to make prompt disclosure to the public through any Regulation FD compliant method (or combination of methods) of disclosure of any material information that would reasonably be expected to affect the value of its securities or influence investors' decisions. These rules also require the company to, prior to the release of the information; provide notice of such disclosure to Nasdaq's MarketWatch Department if the information involves any of the events set forth in IM–5250–1. This prior notice, which must be made through the electronic disclosure submission system available at *http://www.nasdaq.net*, except in emergency situations, allows the MarketWatch Department to assess whether it is appropriate to implement a trading halt to allow full

dissemination of the news by the public and to maintain an orderly trading market.[5] IM–5250–1 currently provides that Nasdaq recommends companies provide such notification at least ten minutes before release.

Nasdaq proposes to amend Rule 5250(b)(1) and IM–5250–1 to require notification to the Exchange of such announcements at least ten minutes prior to public release. Nasdaq believes that mandating pre-notification ten minutes before public release of news is appropriate to enable the Exchange to consider whether trading in the security should be temporarily halted.[6]

The proposed rule change also modifies language in IM–5250–1 that, as currently written, may be inconsistent with an interpretive release recently published by the Commission providing guidance on the use of company websites.[7] Under that guidance, the posting of information on a company website could be considered a sufficient method of public disclosure under Regulation FD. The language currently contained in IM–5250–1 indicates that a website posting alone does not by itself satisfy the public disclosure requirements of Regulation FD. Nasdaq proposes to modify this language to instead provide that a Web site posting alone may not by itself satisfy those requirements. Finally, the proposed rule change would make non-substantive changes to Rule 5250(b)(1) and IM–52501–1 to clarify the language of those rules and reinforce the existing requirement for electronic notification to Nasdaq.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general and with Section 6(b)(5) of the Act,[9] in particular. The proposed change would enhance Nasdaq's ability to conduct timely reviews of company disclosures and will eliminate an inconsistency between Nasdaq's rules and guidance set forth by the Commission, thereby facilitating the operation of a free and open market, and protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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; provided that the self-regulatory organization has given 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,[10] it has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12]

The proposed rule change to require ten minutes prior notification of material news is closely modeled after similar rules of another national securities exchange[13] and therefore Nasdaq believes that it does not significantly affect the protection of investors or the public interest or raise any novel or significant regulatory issues. The proposed rule change to modify text discussing the use of a company website as a Regulation FD method of disclosure is designed to eliminate an inconsistency with guidance published by the Commission[14] and therefore Nasdaq believes that it also does not significantly affect the protection of investors or the public interest or raise any novel or significant regulatory issues.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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–2009–094 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–2009–094. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make

[5] *See* Rule 4120 for the Exchange's procedures with respect to trading halts pending dissemination of material news.

[6] The proposed ten-minute pre-notification requirement is consistent with Section 202.06(B) of the NYSE Listed Company Manual, which requires that a company notify the NYSE ten minutes prior to announcing material information.

[7] *See* Securities Exchange Act Release No. 58288 (August 1, 2008), 73 FR 45862 (August 7, 2008) (Commission Guidance on the Use of Company Web Sites).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 240.19b–4(f)(6). The Exchange has satisfied this requirement.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] Section 202.06(B) of the NYSE Listed Company Manual, *supra,* note 6.

[14] Commission Guidance on the Use of Company Web Sites, *supra,* note 7.

available publicly. All submissions should refer to File Number SR–NASDAQ–2009–094 and should be submitted on or before December 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–27998 Filed 11–20–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61012; File No. SR–FINRA–2007–006]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment Nos. 1, 2, 3, and 4 and Order Granting Accelerated Approval to Proposed Rule Change, as Modified by Amendment Nos. 1, 2, 3, and 4, Relating to Historic TRACE Data

November 16, 2009.

I. Introduction

On August 9, 2007, the Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposal to provide for public access to historic Trade Reporting and Compliance Engine (''TRACE'') data (''Historic TRACE Data''). The proposal was published for comment in the **Federal Register** on September 10, 2007.[3] The Commission received one comment on the proposal.[4] FINRA responded to the comment letter on October 11, 2007.[5] On December 12, 2007, FINRA filed Amendment No. 1 to the proposed rule change. On December 30, 2008, FINRA filed Amendment No. 2 to the proposed rule change. On October 15, 2009, FINRA filed Amendment No. 3 to the proposed rule change. On November 12, 2009, FINRA filed Amendment No. 4 to the proposed rule change.[6] The Commission is publishing this notice to solicit comments on the proposed rule change as modified by Amendment Nos. 1, 2, 3, and 4, and is approving the proposed rule change, as modified by Amendment Nos. 1, 2, 3, and 4, on an accelerated basis.

II. Description of the Proposed Rule Change

FINRA has proposed to make Historic TRACE Data publicly available and to amend FINRA Rule 7730 to establish fees for such data. FINRA currently makes publicly available aggregated data regarding both disseminated and non-disseminated transactions, but in a manner that protects transaction-level non-disseminated data from being ascertained. FINRA stated that many people have expressed interest in reviewing historic transaction-level data and believes it is important to provide access to this data, particularly for research purposes.[7]

Under this proposal, data regarding transactions reported to TRACE since July 1, 2002 (except Rule 144A transactions) will be made publicly available. This data will generally consist of basic transaction information such as the price, the date and time of execution, and the yield. Certain information that will be made available—such as actual trade volumes, rather than capped volume amounts that are disseminated as part of the real-time TRACE data—has not previously been disclosed. Historic TRACE Data will be updated quarterly and provided using quarterly files or reports. FINRA currently intends to release only transaction data that have aged at least 18 months. FINRA may change the disclosed elements to respond to user needs, improve the usefulness of the data, and foster the extensive use of such data in research on the corporate bond markets. FINRA has represented that it would publish any changes to data elements provided in a FINRA Notice.

The proposed amendments to FINRA Rule 7730 would establish fees for obtaining Historic TRACE Data and create different pricing structures for different classes of users. A Professional[8] will be subject to the following fees under proposed FINRA Rule 7730(d)(1)(A): (1) An initial fee of $2,000, which includes development and set-up costs; (2) a fee of $2,000 per calendar year per Data Set[9] for Historic TRACE Data[10]; and (3) a ''bulk re-distribution fee'' of $1 per CUSIP per calendar year (or part thereof) within a single Data Set of Historic TRACE data per each recipient of re-distributed data, with a maximum fee per Data Set of $1,000 per calendar year (or part thereof) per each recipient of re-distributed data.[11]

A Tax-Exempt Organization[12] will be subject to the following fees under proposed FINRA Rule 7730(d)(1)(B): (1) A single, data set-up fee of $1,000, which includes development and set-up costs; and (2) a data and bulk re-distribution fee of $500 per calendar year per Data Set for receipt of Historic TRACE Data.[13] An organization

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 56327 (August 28, 2007), 72 FR 51689 (September 10, 2007) (''Notice'').

[4] *See* letter from Christopher Gilkerson and Gregory Babyak, Co-Chairs, Market Data Subcommittee, Technology and Regulation Committee, Securities Industry and Financial Markets Association (''SIFMA''), to Nancy M. Morris, Secretary, Commission, dated October 3, 2007 (''SIFMA Letter'').

[5] *See* letter from Sharon Zackula, Associate Vice President and Associate General Counsel, FINRA, to Nancy M. Morris, Secretary, Commission, dated October 11, 2007 (''FINRA Response to Comments'').

[6] For information about the four amendments, *see infra* Section III.

[7] Before submitting the proposal, FINRA (then known as NASD) sought member input about whether FINRA should release standard TRACE transaction-level data to the public; if access should be limited in any way; if the data should be redacted as to certain types of information; and if FINRA should provide access to any portion of the transaction-level historic data that previously had only been reported, but not disseminated. *See* NASD *Notice to Members* 06–32 (June 2006). The sole commenter was The Bond Market Association (''TBMA'') (now known as SIFMA). *See* comment letter from Mary C.M. Kuan, Vice President and Assistant General Counsel, TBMA, to Barbara Z. Sweeney, Office of the Corporate Secretary, NASD, dated August 14, 2006. TBMA supported access to the transaction-level historic data, provided that the data had no member participant identifiers and were sufficiently aged to eliminate any possibility of identifying current positions or trading strategies.

[8] For purposes of FINRA Rule 7730, ''Professional'' means a person who is not a Non-Professional, as defined in FINRA Rule 7730(f), as modified by Amendment No. 3 (formerly in NASD Rule 7730(c)(3)(A)). *See* e-mail from Sharon Zackula, Associate Vice President and Associate General Counsel, FINRA, to Michael Gaw, Assistant Director, and Geoffrey Pemble, Special Counsel, Division of Trading and Markets, Commission, dated December 11, 2008.

[9] In Amendment No. 3, FINRA proposed revisions to Rule 7730 to reflect pricing for multiple ''Data Sets'' as a result of a recent change to Rule 7730 in SR–FINRA–2009–010. *See* Amendment No. 3, *infra* Section III.

[10] The 2003 Historic Corporate Bond Data Set also includes the 2002 Historic Corporate Bond Data Set. *See* Amendment No. 3.

[11] The data that may be purchased under the data fee would be enabled for internal use and internal and/or external desktop display distribution. Re-distribution would be permitted only if the subscriber paid the bulk re-distribution fee.

[12] ''Tax-Exempt Organization'' as used in proposed Rule 7730 means an organization that is described in Section 501(c) of the Internal Revenue Code (26 U.S.C. 501(c)) and has received recognition of the exemption from federal income taxes from the Internal Revenue Service. *See* proposed FINRA Rule 7730(f)(2).

[13] The 2003 Historic Corporate Bond Data Set also includes the 2002 Historic Corporate Bond Data Set. *See* Amendment No. 3. Data that may be purchased under the data and bulk re-distribution fee would be enabled for internal use and internal and/or external desktop display distribution. In addition, the right to re-distribute the data in bulk is included

Continued

qualifies for the Tax-Exempt Organization fees if it does not re-distribute Historic TRACE Data in bulk, or if it re-distributes such data in bulk or otherwise at no charge solely to Non-Professionals [14] or other Tax-Exempt Organizations that agree to be subject to the same restrictions.[15]

FINRA also stated that it occasionally receives *ad hoc* requests for Historic TRACE Data from natural persons for non-commercial use. Under the proposal, FINRA may provide Historic TRACE Data to a natural person if the person represents that he or she is a Non-Professional; will receive and use the historic TRACE data solely for personal, non-commercial use; and is not engaged in, and indicates that he or she has no intention to engage in, any re-distribution of all or any portion of the data. FINRA may impose a fee under FINRA Rule 7730(e) to respond to such *ad hoc* requests. If FINRA charges a fee, it would do so to cover the administrative and operational costs of responding to such a request. Specifically, proposed FINRA Rule 7730(d)(2) states that that such a fee would be ''cost-neutral'' and would be ''comprised solely of the cost of the media and the cost of delivery (*e.g.*, U.S. Postal Service or other requested delivery service).'' [16]

FINRA has represented that the effective date of the proposed rule change will be announced in a *Regulatory Notice* to be published no later than 150 days following Commission approval, and the effective date will be no later than one to 30 days following the effective date of SR–FINRA–2009–010.[17]

III. Amendment Nos. 1, 2, 3, and 4

As originally filed, FINRA would have discretion whether to charge a fee for providing Historic TRACE Data to a Non-Professional. If FINRA decided to charge a fee, the fee would have been to recover ''the administrative and operational costs of responding to such a request,'' which referred to miscellaneous costs, such as postage. However, such costs were not specified in the rule text. In Amendment No. 1, FINRA amended proposed FINRA Rule 7730(d)(2) to specify that, when providing Historic TRACE Data to a Non-Professional, FINRA would charge a cost-neutral fee that is comprised solely of the cost of the media (such as a CD) used to store and deliver the data to the Non-Professional and the cost of delivery (such as postage or an express mail fee). In Amendment No. 1, FINRA also corrected certain technical errors.

In Amendment No. 2, FINRA amended the proposed rule change to reflect the renumbering of NASD Rule 7030 as FINRA Rule 7730 pursuant to the adoption of certain sections of the FINRA Consolidated Rulebook, as described below. In addition, FINRA made two non-substantive rule text amendments to reflect changes in FINRA style convention.

On September 25, 2008, the Commission approved proposed rule change SR–FINRA–2008–021, in which FINRA proposed, among other things, to adopt the NASD Marketplace Rules (the NASD Rule 4000 through 7000 Series) as the FINRA Rule 6000 through 7000 Series in the Consolidated FINRA Rulebook. The rule change became effective December 15, 2008, and NASD Rule 7030 was transferred to the Consolidated FINRA Rulebook as FINRA Rule 7730.[18]

In SR–FINRA–2008–021, FINRA made non-material changes to NASD Rule 7030 to: renumber the rule as Rule 7730 and changing all internal references to the rule number accordingly; change references to the ''Rule 6200 Series'' to the FINRA ''Rule 6700 Series,'' which is the renumbered TRACE rule series; delete references to ''NASD'' and replace them with ''FINRA;'' change ''as of'' to ''as/of''; and change ''Commission'' to ''SEC''.

After FINRA filed Amendment No. 2, the Commission approved proposed rule change SR–FINRA–2009–010,[19] which included amendments to Rule 7730. Among other changes, FINRA proposed to distinguish TRACE transaction data as two data bases (''Data Sets''), one comprised solely of corporate bond transaction information (the ''Corporate Bonds Data Set'') and a second data set comprised solely of Agency debt securities transaction information (''Agency Data Set''). Prior to SR–FINRA–2009–010, TRACE data was organized in a single corporate bond transaction database. As proposed in SR–FINRA–2009–010, each new Data Set would include the relevant transaction data, including primary transactions if applicable, and relevant fees would be charged per Data Set. Consequently, FINRA filed Amendment No. 3 to incorporate changes to the rule text of Rule 7730 approved in SR–FINRA–2009–010, including Rule 7730's application to these two Data Sets. Although the proposed amendments will require a person desiring to receive Historic TRACE Data to pay only one set-up fee, all other fees for Historic TRACE Data will be assessed per Data Set.[20] In addition, FINRA has proposed to renumber the three defined terms in Rule 7730(c)(3)(A), (B), and (C) as Rule 7730(f)(1), (2), and (3), and the proposed definition of ''Historic TRACE Data,'' as Rule 7730(f)(4). FINRA also proposes to incorporate minor amendments to the definition of ''Tax-Exempt Organization'' to delete the conditions regarding re-distribution of data that a Tax-Exempt Organization must adhere to in order to receive data under the reduced fee provisions for such organizations, and to restate such conditions in other parts of Rule 7730, where appropriate (The conditions regarding re-distribution were not substantively amended).

Also, in Amendment No. 3, FINRA provided additional information regarding the business, technical, administrative, data recovery, quality assurance, and other processes involved in creating, offering, and supporting proposed Historic TRACE Data on an ongoing basis, and an assessment of the potential demand for such data. According to FINRA, the creation of data products, such as Historic TRACE Data products,[21] involves a series of functions including: creation of business requirements, technical specifications, coding, code testing, quality assurance, and data retention/storage. The added technical processes

in the non-professional data and bulk re-distribution fee.

[14] A ''Non-Professional'' as used in FINRA Rule 7730 is a natural person who uses TRACE transaction data solely for his or her personal, non-commercial use. A Non-Professional subscriber must agree to certain terms of use of the TRACE data, including that he or she receive and use the TRACE transaction data solely for his or her personal, non-commercial use. *See* proposed FINRA Rule 7730(f)(1).

[15] *See* Amendment No. 4.

[16] Amendment No. 1.

[17] *See* Amendment No. 4.

[18] *See* Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving SR–FINRA–2008–021, SR–FINRA–2008–022, SR–FINRA–2008–026, SR–FINRA–2008–028, and SR–FINRA–2008–029).

[19] *See* Securities Exchange Act Release No. 60726 (September 28, 2009), 74 FR 50991 (October 2, 2009) (Order Approving SR–FINRA–2009–010); *see also Regulatory Notice* 09–57 (SEC Approves Amendments Expanding TRACE to Include Agency Debt Securities and Primary Market Transactions) (September 2009).

[20] Because transactions in Agency Debt Securities will not begin to be reported until March 1, 2010, the Historic Agency Data Set will not be populated with transaction data until that time. Also, as stated in proposed Rule 7730(f)(4), Historic TRACE Data will not become available until the transaction data have aged at least 18 months. Therefore, although the Historic Agency Data Set is incorporated in this proposed rule change, there will not be any Historic Agency Data to purchase until at least 18 to 24 months after March 1, 2010, the date when transaction data begins to be reported and the Historic Agency Data Set begins to be populated.

[21] TRACE Enhanced Historical Time & Sales data is a data product in development using Historic TRACE Data.

need to be incorporated into routines such as documentation libraries, disaster recovery procedures, and escalation procedures. FINRA costs include those associated with the drafting of legal subscription agreements, product description materials (*i.e.*, user manuals), the creation of accounts, and billing. FINRA has stated that, on an ongoing basis, it will need to support the product with regards to general and specific product inquiries, administration of subscriber agreements, customer tracking, billing, and, as the data will be delivered on password protected CDs, the physical creation and mailing of CDs.

FINRA estimates that the actual number of entities interested in purchasing this product, including professional organizations (*e.g.*, market data vendors, banks) and Tax-Exempt Organizations (primarily academic institutions), is limited to approximately eight to 12 entities in the first year, and that the revenue collected from the sale of Historic TRACE Data will be a small fraction of total revenue. The estimated initial demand for the product is anticipated to offset the development costs outlined above. Beyond the initial sale of Historic TRACE Data, the annual subscription renewals are estimated to cover the ongoing administrative costs of supporting the product.

In Amendment No. 4, FINRA proposed to clarify the limits on the restrictions that a Tax Exempt Organization is subject to regarding the re-distribution of Historic TRACE Data under proposed Rule 7730(d)(1)(B)(ii). Specifically, FINRA proposed to correct an inadvertent cross-reference to paragraph ''(b)(1)(B)'' to read ''(d)(1)(B).''

In addition, in Amendment No. 4, FINRA proposed to amend the proposed rule change regarding the announcement and the timing of the effective date to link the effective date of the proposed rule change to the effective date of SR–FINRA–2009–010. The proposed rule change as originally filed provides that FINRA would announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval, and the effective date would be no later than 90 days following publication of such *Regulatory Notice*.[22] In Amendment No. 4, FINRA proposed that the effective date of the proposed rule change will be announced in a *Regulatory Notice* to be published no later than 150 days following Commission approval, and the effective date will be no later than one to 30 days following the effective date of SR–FINRA–2009–010.

IV. Discussion

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.[23] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(5) of the Act,[24] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls.

The Commission received one comment on the proposed rule change.[25] The commenter generally was in favor of the fee approach proposed by FINRA, noting that fees proposed for Historic TRACE Data were ''substantially lower than those for other market data products of similar type and complexity.''[26] The commenter also supported FINRA's proposed *ad hoc* treatment of Non-Professionals' requests for Historic TRACE Data.[27] The commenter expressed some reservations, however, about certain aspects of the proposal. In particular, the commenter was concerned that it was unable to verify the fairness of the fees and determine if they would be reasonably related to FINRA costs.[28] FINRA responded that the proposed fees were appropriate for the reasons it set forth in the proposed rule change and that their fairness is not dependent upon the commenter's ability to verify FINRA's costs.[29] FINRA also stated that costs are not necessarily determinative of fees' reasonableness.[30] In Amendment No. 3, however, FINRA provided additional information regarding the FINRA business, technical, administrative, data recovery, quality assurance, and other processes involved in creating, offering, and supporting proposed Historic TRACE Data on an ongoing basis, and an assessment of the potential demand for such data.

After carefully considering the proposal and the comment submitted, the Commission believes that it is reasonable and consistent with the Act for FINRA to make Historic TRACE Data available to the public in the manner set forth in this proposal. Market participants and academics will be able to study more effectively the effects of TRACE implementation, while the conditions governing the provision of such information appear reasonably designed to prevent public disclosure of any market participant's current positions or strategy. FINRA has stated that the proposed fees are designed ''to offset the costs of developing and maintaining the new Historic TRACE Data database and providing such data to vendors, members, and other users,'' with reduced fees for qualifying Tax-Exempt Organizations.[31] In addition, the proposed fee for a natural person who makes an *ad hoc* request for historic TRACE data is designed ''to cover the administrative and operational costs of responding to such a request''[32] and would be ''comprised solely of the cost of the media and the cost of delivery (e.g., U.S. Postal Service or other requested delivery service).''[33] The Commission believes that the fees proposed herein by FINRA are consistent with the Act. However, market data fees with other bases could potentially be consistent with the Act. The Commission notes that it recently approved a proposal from another self-regulatory organization to charge a market data fee on a basis other than cost.[34]

The Commission finds good cause for approving the proposed rule change, as modified by Amendment Nos. 1, 2, 3, and 4 thereto, before the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** Accelerating approval of this proposal should benefit investors by facilitating their prompt access to Historic TRACE Data, and none of the amendments appear to raise any novel or significant regulatory issues. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act, to approve the proposal, as modified by Amendment Nos. 1, 2, 3, and 4, on an accelerated basis.

[22] Statements regarding the timing of FINRA's publication of a *Regulatory Notice* to announce the Commission's approval of the proposed rule change and the date of effectiveness are found at pages 11, 17 and 35 in the original rule filing.

[23] 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).

[24] 15 U.S.C. 78o–3(b)(5).

[25] *See supra* note 4.

[26] SIFMA Letter at 1.

[27] *See id.* at 3.

[28] *See id.* at 2.

[29] *See* FINRA Response to Comments at 2.

[30] *See id.*

[31] Notice, 72 FR at 51690.

[32] *Id.*

[33] *See* Amendment No. 1.

[34] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21) (Order Setting Aside Action by Delegated Authority and Approving Proposed Rule Change Relating to NYSE Arca Data).

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1, 2, 3, and 4, including whether Amendment Nos. 1, 2, 3, and 4 are consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–FINRA–2007–006 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–2007–006. 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 Number SR–FINRA–2007–006 and should be submitted on or before December 14, 2009.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[35] that the proposed rule change (File No. SR–FINRA–2007–006), as modified by Amendment Nos. 1, 2, 3, and 4 thereto, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant delegated authority.[36]

Florence E. Harmon,

Deputy Secretary.

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[35] 15 U.S.C. 78s(b)(2).

[36] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61009; File No. SR–ISE–2009–97]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Closing Settlement Value for the Brazilian Real

November 16, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 10, 2009, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. The Exchange has filed the proposal as 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

The Exchange proposes to amend its Rule 2212 regarding the closing settlement value for the Brazilian real. The text of the proposed rule change is available on the Exchange's Web site *http://www.ise.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

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 self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

ISE proposes to amend its rules regarding Foreign Currency Options (''FX Options'')[5] traded on the Exchange. Specifically, ISE proposes to amend its Rule 2213 regarding the closing settlement value for options on the Brazilian real. The Brazilian real is one of the 19 underlying currencies that have been approved for trading by the SEC.[6] Pursuant to the FX Options Filing, the Exchange currently lists options on 9 currency pairs and anticipates listing additional FX Options shortly, including options on the Brazilian real.

Currently, ISE's rule for determining the closing settlement value for FX Options, including the Brazilian real, states that the closing settlement value shall be shall be determined by using the WM/Reuters Intraday Spot rate on the last trading day during expiration week. However, based on conversations with market participants, the Exchange understands that the Brazilian real is a non-deliverable currency as a result of capital controls established by Brazil's central bank. And although Brazil has a very active domestic foreign currency futures market, there are strict controls related to obtaining the physical currency. Further, FX market participants worldwide prefer to use the official exchange rate, known as the PTAX, established by the Central Bank of Brazil (BACEN) for valuing derivative transactions involving the Brazilian real. The PTAX, which is calculated daily, has been published by BACEN since February 1, 1999. The PTAX has thus

[5] ISE began trading FX options on April 17, 2007 pursuant to Commission approval. *See* Securities Exchange Act Release No. 55575 (April 3, 2007), 72 FR 17963 (April 10, 2007) (SR–ISE–2006–59) (the ''FX Options Filing'').

[6] *Id.*

become the industry standard for determining settlement value.[7]

ISE therefore proposes to amend its rules to allow the closing settlement value for the Brazilian real to be determined based on the PTAX rate. Doing so will reflect the current industry standard with respect to this product and will align trading in it with other regulated and exchange-listed products in the U.S. The PTAX rate is the same as that used by the Bolsa de Mercadorias & Futuros to cash settle its U.S. dollar futures contract as well as that used by the Chicago Mercantile Exchange to cash settle its Brazilian real futures contract.

In the event the PTAX rate is not available, the Exchange shall calculate the closing settlement value for options on the Brazilian real using the WM/Reuters Intraday Spot price corresponding to 12:00 p.m. New York time, which is what the Exchange currently uses to calculate the closing settlement values for all the FX options that are currently listed on the Exchange.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act's [9] requirements that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. In particular, the proposed rule change will allow the Exchange to use the PTAX, an industry-recognized source, to determine the closing settlement value for options on the Brazilian real which the Exchange expects shortly to list for trading.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) [10] of the Act and Rule 19b–4(f)(6) [11] thereunder. The Exchange provided the Commission with 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 the proposed rule change.

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–ISE–2009–97 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–ISE–2009–97. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2009–97 and should be submitted on or before December 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

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[7] Additional information on the PTAX is available on BACEN's Web site at *http://www.bcb.gov.br/sddsi/taxacambio_i.htm.*

[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).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61002; File No. SR–FINRA–2009–050]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change Relating to Availability of Information Pursuant to FINRA Rule 8312 (FINRA BrokerCheck Disclosure)

November 13, 2009.

I. Introduction

On July 24, 2009, the Financial Industry Regulatory Authority, Inc.

(''FINRA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to make available in BrokerCheck information about former associated persons of a FINRA member who were the subject of a final regulatory action as defined in Form U4 that has been reported to the Central Registration Depository (''CRD®'' or ''CRD System''). The proposal was published for comment in the **Federal Register** on August 7, 2009.[3] The Commission received fifty-two comments on the proposal.[4] FINRA responded to the comments on October 15, 2009.[5] This order approves the proposed rule change.

II. Description of the Proposal

Pursuant to FINRA Rule 8312, BrokerCheck allows the public to obtain information regarding current and former members, as well as associated persons and persons who were associated with a member within the preceding two years. Formerly registered persons, although no longer in the securities industry in a registered capacity, may, however, work in other investment-related industries or attain positions of trust. FINRA thus proposed to expand the information available via BrokerCheck to certain information with respect to persons who were associated with a member but who have not been associated with a member in the preceding two years (''formerly associated persons''), if those persons were the subject of any final regulatory action, as defined in Form U4, that has been reported to CRD via a uniform registration form.[6]

''Final regulatory action'' includes any final action of the Commission, Commodity Futures Trading Commission, a Federal banking agency, the National Credit Union Administration, another Federal regulatory agency, a State regulatory agency, a foreign financial regulatory authority, or a self-regulatory organization, including actions that have been appealed.[7] FINRA staff will review the information on Forms U4 and U5 (including predecessor questions), as well as information filed on Form U6, to determine whether a formerly associated person is subject to a final regulatory action and should be included in BrokerCheck pursuant to the proposed rule.[8]

For such formerly associated persons,[9] FINRA will disclose: (i) Information concerning any final regulatory action; (ii) administrative information, such as employment and registration history as reported on a registration form; (iii) the most recently submitted comment, if any, provided by the person, if the comment is relevant and in accordance with the procedures established by FINRA; and (iv) dates and names of qualification examinations passed by the formerly associated person, if available.[10]

The proposed rule change would not expand access to other information that is included in the CRD System, such as customer complaints, bankruptcies, liens, criminal events or arbitration claims. In addition, a final regulatory action would not include any action limited to the revocation or suspension of an individual's authorization to act as an attorney, accountant or Federal contractor (Form U4, Question 14F).

If FINRA receives a request regarding a formerly associated person for which it has data in a different format, FINRA's staff will manually prepare the BrokerCheck report, convert the report to an electronic format, and make the report available through BrokerCheck. Once the information has been converted to the Web CRD format it will be available in Web CRD from that point forward.[11]

III. Summary of Comments and FINRA's Response

The Commission received fifty-two comment letters on the proposed rule change.[12] Most comments focus on two issues. First, commenters address the provision of FINRA Rule 8312 that provides for the release of certain information regarding an individual who is a current or former member or current associated person of a member of FINRA, or a person who has been an associated person of a member of FINRA within the past two preceding years. FINRA is not making a substantive change to this provision.[13] Second, commenters take issue with the limited nature of the information to be disclosed regarding formerly associated persons.

A. General Two-Year BrokerCheck Disclosure Period

Most information available through BrokerCheck is only available with respect to current or former members, or associated persons of members, or persons who were associated persons of FINRA members within the preceding two years.[14] Forty commenters argue that, for investor protection purposes, this two-year time frame should be increased so that information remains available to the public via BrokerCheck for a longer period of time—anywhere from five years to forever.[15] Twelve commenters[16] advised a six-year disclosure period, which corresponds to the time limit in FINRA's rule for the submission of arbitration claims involving public customers (''eligibility

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 60462 (August 7, 2009), 74 FR 41470 (August 17, 2009 ''Notice'').

[4] *See* Exhibit A for a list of comment letters.

[5] *See* letter to Elizabeth M. Murphy, Secretary, Commission, from Richard E. Pullano, Associate Vice President and Chief Counsel, FINRA, dated October 15, 2009 (''Response Letter'').

[6] *See* proposed FINRA Rule 8312(c).

[7] *See* Form U4 questions 14C, 14D, and 14E, as well as Question 7D of Form U5. *See also* Section 3(a)(39) of the Act.

[8] Under the proposed rule change, FINRA may disclose a final action that is reported by a regulator on a Form U6 even if that action has not been reported by an individual on a Form U4 because, for example, the individual was not registered at the time the final regulatory action was reported.

[9] Certain information about some formerly associated persons who have not been associated with a member since January 1, 1999, may not be available through BrokerCheck. As discussed more fully in the Notice, two conditions apply to a small percentage of individuals who were no longer registered at the time Web CRD was established in 1999. First, not all of these individuals' records are available in the Web CRD format; instead, their records exist in the Legacy CRD format. Second, for a very small percentage of individuals, certain administrative information is unavailable in either the Web or Legacy CRD format.

[10] *See* proposed FINRA Rule 8312(c).

[11] FINRA stated that if it identifies or becomes aware of potentially inappropriate information, including customer names, confidential account information or possibly offensive or potentially defamatory language in a BrokerCheck report, FINRA would balance the value of the language in controversy for regulatory and investor protection purposes against the objector's asserted privacy rights and/or potential defamation claims. Based on this balancing, FINRA may determine to redact language from BrokerCheck reports on a case-by-case basis. *See* the Notice, citing, *e.g.,* Securities Exchange Act Release No. 42402 (February 7, 2000), 65 FR 7582 (February 15, 2000) (Order Approving SR–NASD–99–45).

[12] *See supra,* note 4.

[13] Current FINRA Rule 8312(a); proposed to be re-numbered to FINRA Rule 8312(b).

[14] *Id.* FINRA stated that some commenters incorrectly mentioned that information regarding an individual is ''purged'' from BrokerCheck once that individual ceases to be registered with FINRA for a period of two years. *See,* e.g., comment letters from Lipner, Van Kampen, Sigler, Speyer, and Claxton. FINRA stated that the information is retained in the CRD system even though it is not displayed through BrokerCheck and would be available for display through BrokerCheck should the individual reregister with FINRA or otherwise become covered by BrokerCheck. *See* Response Letter at 2.

[15] *See* comment letters from Lipner, Van Kampen, Sigler, Pounds, Steiner, Neuman, Bleecher, Estell, Layne, PIABA, Schultz 1, Shewan, Port, Graham, Speyer, AARP, Griffin, Sherman, Cornell, Evans/Edmiston, St. John's, Rosenfield, Ilgenfritz, Buchwalter, Miller, Rosca, Guiliano, Greco, Sonn, Haigney, Sutherland, Davis, Mougey, Claxton, DeVita, Ledbetter, Gladden, McCauley, Malarney, and Willcutts.

[16] *See* comment letters from Pounds, Steiner, Estell, PIABA, Schultz 1, Graham, Rosenfield, Ilgenfritz, Miller, Greco, Sonn, and Haigney.

rule'').[17] FINRA believes that these comments are outside the scope of the rule proposal, since it is not proposing to change the two-year disclosure period currently set forth in Rule 8312; rather, the proposed rule change expands BrokerCheck only with respect to formerly associated persons who are subject to a final regulatory action.[18]

Nevertheless, FINRA notes that the two-year disclosure period coincides with the period in which an individual can return to the industry without being required to requalify by examination and the initial period in which an individual remains subject to FINRA's jurisdiction.[19] FINRA states that when the two-year time frame was proposed, FINRA believed that the two-year time frame struck the appropriate balance between an investor's interest in being easily able to obtain information about a former registered person and a person's desire for privacy once he has left the securities industry,[20] and it continues to believe that is the proper balance today.[21]

Finally, FINRA disagrees with the commenters who represent investors in securities litigation or other matters who suggest a six-year disclosure period, which FINRA believes is in order to make it easier to conduct research on former registered persons.[22] FINRA states that the BrokerCheck system was established principally to help members of the public determine whether to conduct or continue to conduct business with a FINRA member or any of the member's associated persons and not for the purpose suggested by these commenters.[23] FINRA believes that the commenters' attempt to link the time limitation on the submission of claims provided for under the eligibility rule and the time frame for BrokerCheck disclosure is misplaced, since the time limitation under the eligibility rule is determined by the date of the occurrence or event giving rise to the claim and has no relationship whatsoever to the termination of an individual's registration with FINRA.[24] Therefore, in FINRA's opinion, the commenters' suggested change is outside the scope of the rule proposal and also would not necessarily address the commenters' concerns.[25]

B. Expanding Access to Disclosure Information, Other Than Final Regulatory Actions, Pertaining to Individuals Not Registered With FINRA for More Than Two Years

Eighteen commenters express concern that FINRA's proposal may be too limiting in that it only expands BrokerCheck with respect to those formerly associated persons who are the subject of a final regulatory action, and for those persons, only with respect to certain information.[26] Many of these commenters suggest that BrokerCheck should include additional information, such as arbitration claims, criminal proceedings, and bankruptcies and liens, contending that these other categories are just as valuable to investors as final regulatory actions.[27] FINRA believes that these comments are outside the scope of the rule proposal because they pertain to categories of disclosure that are not the subject of the current rule proposal.[28]

Notwithstanding that, FINRA states these other categories of information are more relevant when the individual is registered or was recently registered (*i.e.,* within two years) and reiterates that it believes the proposal strikes a balance between personal privacy and investor protection concerns.[29] FINRA justifies one distinction by noting that while final regulatory actions are subject to procedures that allow an opportunity for the person to present arguments to a fact-finder about the allegations before the final disposition of the matter,[30] arbitration claims may not be subject to procedures that allow an opportunity for the person to present arguments to a fact-finder about the allegations before final disposition. Further, FINRA notes, a firm may choose to settle an arbitration claim regardless of whether the person wishes to contest the claim (*e.g.,* for business reasons). With respect to criminal charges and convictions, FINRA states that these claims that are reported subsequently may have a different disposition, which may significantly change the meaning of the matter as originally reported (for example, such charges or convictions may have been dismissed or expunged). Finally, FINRA does not think that reportable financial matters have the same degree of materiality as final regulatory actions such that they warrant disclosure on a permanent basis.

IV. Discussion and Commission Findings

After carefully reviewing the proposed rule change, the comment letters, and the Response Letter, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[31] In particular, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the Act,[32] which requires, among other things, that FINRA's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Specifically, the Commission believes that making information available through BrokerCheck about formerly associated persons who were the subject of a final regulatory action will help members of the public to protect themselves from unscrupulous people and thus the proposed rule change should help prevent fraudulent and manipulative acts and practices, and protect investors and the public interest. One commenter suggests the disclosure of this additional information may serve

[17] *See* FINRA Rule 12206.

[18] *See* Response Letter at 3. FINRA clarifies that four commenters (Lipner, Neuman, AARP, and Malarney) erroneously state that the proposal will limit the time frame during which information on former registered persons will be available through BrokerCheck.

[19] *See* Response Letter at 3, citing Securities Exchange Act Release No. 42240 (December 16, 1999), 64 FR 72125 (December 23, 1999) (Notice of Filing SR–NASD–99–45).

[20] *Id.* FINRA also notes that the Commission received no comments when FINRA proposed establishing the two-year disclosure period for BrokerCheck.

[21] *See* Response Letter at 3.

[22] *See* Response Letter at 4, citing *e.g.,* comment letters from PIABA, Rosca, Greco, Sonn, and Haigney.

[23] *See* Response Letter at 4.

[24] *Id.*

[25] *Id.*

[26] *See* comment letters from Caruso, Bleecher, PIABA, Schultz 1, Feldman, Sherman, Lewins, Cornell, Bakhtiari, Evans/Edmiston, St. John's, Rosenfield, NASAA, Guiliano, Sonn, Meyer, Haigney, and Amato. Two commenters stated that FINRA's proposed rule change would apply only to those formerly associated persons who are the subject of a final regulatory action and who work in other investment-related industries or positions of trust. *See* comment letters from Schultz 1 and Sonn. FINRA clarified that the proposal will, in fact, apply to all former registered persons who are the subject of a final regulatory action regardless of their current occupation, if any. *See* Response Letter at 4.

[27] *See, e.g.,* comment letters from PIABA, Schultz 1, Cornell, Evans/Edmiston, St. John's, and Rosenfield.

[28] *See* Response Letter at 4.

[29] *See* Response Letter at 5.

[30] The formerly associated person has the opportunity to submit a comment for publication in BrokerCheck in response to information provided through BrokerCheck if the comment is in the form and in accordance with the procedures established by FINRA and relates to the information provided through BrokerCheck.

[31] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[32] 15 U.S.C. 78*o*–3(b)(6).

as a deterrent to fraudulent activity.[33] The Commission believes that the information FINRA proposes to disclose is relevant to investors and members of the public who wish to educate themselves with respect to the professional history of a formerly associated person. It is possible that a formerly associated person could become a financial planner or work in another related field where his securities record would help members of the public decide if they should accept his financial advice or rely on his advice or expertise. One commenter suggested a formerly associated person could serve as a non-public arbitrator.[34] Clearly, in any of these circumstances, the formerly associated person's BrokerCheck information would be relevant in determining whether to do business with him, or, in the case of a claimant, in deciding whether to challenge a potential arbitrator.

The Commission agrees that the concerns raised by commenters who believe that the time frame for general disclosure should be increased are outside the scope of this proposal. However, the categories of information that should be disclosed for formerly associated persons is within the scope of the instant proposal and the commenters make a number of legitimate arguments with respect to the usefulness of the additional information they seek to have disclosed. The Commission understands that certain commenters, as well as other members of the public, may utilize information in BrokerCheck in considering whether to bring action against a formerly associated person for potentially actionable deeds [35] and believes that this is a legitimate use for BrokerCheck. The Commission recognizes that the public's ability to access information, whether to inquire about a registered person or to obtain information in connection with an alleged wrongdoing of a formerly associated person may serve to protect investors, the integrity of the marketplace, and the public interest. The Commission urges the public to utilize all sources of information, particularly the databases of the State regulators, as well as legal search engines and records searches, in conducting a thorough search of any associated person's activities.

The Commission notes that FINRA stated it would continue to evaluate all aspects of the BrokerCheck program to determine whether future circumstances should lead to greater disclosure through BrokerCheck.[36] FINRA has a statutory obligation to make information available to the public and,[37] as stated in the past, the Commission believes that FINRA should continuously strive to improve BrokerCheck because it is a valuable tool for the public in deciding whether to work with an industry member.[38] The changes proposed in this filing will enhance BrokerCheck by including more information that should prove useful to the general public.

For the reasons discussed above, the Commission finds that the rule change is consistent with the Act.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[39] that the proposed rule change (SR–FINRA–2009–050), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[40]

Florence E. Harmon,

Deputy Secretary.

Exhibit A—List of Comment Letters Received for FINRA–2009–050

1. Daniel W. Roberts, President/CEO, Roberts & Ryan Investments Inc., dated August 21, 2009 (''Roberts'').
2. Seth E. Lipner, Professor of Law, Zicklin School of Business, Baruch College, CUNY, dated August 27, 2009 (''Lipner'').
3. Al Van Kampen, Attorney at Law, dated August 31, 2009 (''Van Kampen'').
4. James A. Sigler, Esq., dated August 31, 2009 (''Sigler'').
5. Herb Pounds, dated August 31, 2009 (''Pounds'').
6. Leonard Steiner, Lawyer, dated August 31, 2009 (''Steiner'').
7. David P. Neuman, Stoltmann Law Offices, PC, dated August 31, 2009 (''Neuman'').
8. Steven B. Caruso, Esq., Maddox Hargett & Caruso, P.C., dated September 1, 2009 (''Caruso'').
9. Rob Bleecher, Attorney, dated September 1, 2009 (''Bleecher'').
10. Barry D. Estell, Esq., dated September 1, 2009 (''Estell'').
11. Richard M. Layne, Esq., Law Office of Richard M. Layne, dated September 1, 2009 (''Layne'').
12. Brian N. Smiley, President, Public Investors Arbitration Bar Association, dated September 4, 2009 (''PIABA'').
13. Laurence S. Schultz, Driggers, Schultz & Herbst, P.C., dated September 4, 2009 (''Schultz 1'').
14. Scott R. Shewan, Pape Shewan LLP, dated September 4, 2009 (''Shewan'').
15. Robert C. Port, Esq., dated September 4, 2009 (''Port'').
16. Jan Graham, Graham Law Offices, dated September 4, 2009 (''Graham'').
17. Jeffrey A. Feldman, dated September 7, 2009 (''Feldman'').
18. Debra G. Speyer, Esq., Law Offices of Debra G. Speyer, dated September 7, 2009 (''Speyer'').
19. Tim Canning, Law Offices of Timothy A. Canning, dated September 8, 2009 (''Canning'').
20. David Certner, Legislative Counsel and Legislative Policy Director, AARP, dated September 8, 2009 (''AARP'').
21. Keith L. Griffin, Griffin Law Firm, LLC, dated September 8, 2009 (''Griffin'').
22. Steven M. Sherman, Sherman Business Law, received September 8, 2009 (''Sherman'').
23. Richard A. Lewins, Esq., dated September 8, 2009 (''Lewins'').
24. William A. Jacobson, Esq., Associate Clinical Professor of Law, Director, Cornell Securities Law Clinic, dated September 8, 2009 (''Cornell'').
25. Ryan K. Bakhtiari, Aidikoff, Uhl and Bakhtiari, dated September 8, 2009 (''Bakhtiari'').
26. Jonathan W. Evans and Michael S. Edmiston, dated September 8, 2009 (''Evans/Edmiston'').
27. Christine Lazaro, Supervising Attorney, Lisa A. Catalano, Director, Peter J. Harrington, Legal Intern, Securities Arbitration Clinic, St. John's University School of Law, dated September 8, 2009 (''St. John's'').
28. William S. Shepherd, Managing Partner, Shepherd Smith Edwards Kantas, LLP, dated September 8, 2009 (''Shepherd'').
29. Howard Rosenfield, Law Offices of Howard Rosenfield, received September 8, 2009 (''Rosenfield'').
30. Rex Staples, General Counsel, North American Securities Administrators Association, dated September 8, 2009 (''NASAA'').
31. Scott C. Ilgenfritz, Johnson, Pope, Bokor, Ruppel & Burns, LLP, dated September 8, 2009 (''Ilgenfritz'').
32. Steve A. Buchwalter, Esq., dated September 8, 2009 (''Buchwalter'').
33. John Miller, Attorney, Swanson Midgley, LLC, dated September 9, 2009 (''Miller'').
34. Alin L. Rosca, Attorney at Law, John S. Chapman & Associates, LLC, received September 9, 2009 (''Rosca'').
35. Nicholas J. Guiliano, The Guiliano Law Firm, received September 9, 2009 (''Guiliano'').
36. W. Scott Greco, Greco Greco, P.C., dated September 9, 2009 (''Greco'').

[33] *See* Cornell letter.

[34] *See* Estell letter.

[35] *See supra,* note 22.

[36] *See* Response Letter at 5.

[37] *See* Section 15A(i) of the Act.

[38] *See, e.g.,* Securities Exchange Act Release No. 59916 (May 13, 2009), 74 FR 23750 (May 20, 2009).

[39] 15 U.S.C. 78s(b)(2).

[40] 17 CFR 200.30–3(a)(12).

37. Jeffrey Sonn, Esq., Sonn & Erez, PLC, dated September 9, 2009 (''Sonn'').
38. Stephen P. Meyer, Esq., Meyer, Ford & Glasser, dated September 10, 2009 (''Meyer'').
39. Dayton P. Haigney, III, Attorney at Law, dated September 10, 2009 (''Haigney'').
40. John E. Sutherland, Brickley, Sears & Sorett, P.A., dated September 11, 2009 (''Sutherland'').
41. Theodore M. Davis, Esq., dated September 11, 2009 (''Davis'').
42. Peter J. Mougey, Esq., dated September 14, 2009 (''Mougey'').
43. Roger F. Claxton, Law Office of Roger F. Claxton, dated September 15, 2009 (''Claxton'').
44. Richard D. DeVita, Esq., dated September 15, 2009 (''DeVita'').
45. Dale Ledbetter, Ledbetter & Associates, P.A., dated September 16, 2009 (''Ledbetter'').
46. William J. Gladden, JD, CFP, dated September 16, 2009 (''Gladden'').
47. Steven M. McCauley, Esq., dated September 16, 2009 (''McCauley'').
48. Michael W. Malarney, Esq., The Pearl Law Firm, P.A., dated September 17, 2009 (''Malarney'').
49. Ronald M. Amato, Esq., Shaheen, Novoselsky, Staat, Filipowski Eccleston, PC, dated September 18, 2009 (''Amato'').
50. Thomas P. Willcutts, Willcutts Law Group, LLC, dated September 21, 2009 (''Willcutts'').
51. Scot D. Bernstein, Law Offices of Scot D. Bernstein, dated September 24, 2009 (''Bernstein'').
52. Laurence S. Schultz, Driggers, Schultz & Herbst, P.C., dated September 30, 2009 (''Schultz 2'').

[FR Doc. E9–27997 Filed 11–20–09; 8:45 am]
BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60980; File No. SR–NASDAQ–2009–098]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Members Using the NASDAQ Options Market

November 10, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 30, 2009, The NASDAQ Stock Market LLC (''NASDAQ'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. 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 proposes to modify pricing for NASDAQ members using the Nasdaq Market Center. This proposed rule change, which is effective upon filing, will become operative on November 2, 2009. The text of the proposed rule change is available at *http://nasdaqomx.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, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is modifying NASDAQ Rule 7050, the fee schedule for NOM, regarding orders with an account type of ''Customer.'' Specifically, Nasdaq is establishing a fee of $0.35 per executed contract for Customer orders in Penny Pilot options, as opposed to the fee of $0.20 that has applied to such orders since July 2009. Nasdaq notes that this fee remains lower than the fees that other options exchanges apply to such customer orders.

Nasdaq believes that the proposed fees are competitive, fair and reasonable, and non-discriminatory in that they apply equally to all similarly situated members and customers. As with all fees, Nasdaq may adjust these proposed fees in response to competitive conditions by filing a new proposed rule change.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[3] in general, and with Section 6(b)(4) of the Act,[4] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls. Consistent with past practice, the proposed change identifies a class of person subject to transaction execution fees based on the role of that class in bringing order flow to NASDAQ.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[5] and subparagraph (f)(2) of Rule 19b–4 thereunder.[6] 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

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] 15 U.S.C. 78f.
[4] 15 U.S.C. 78f(b)(4).
[5] 15 U.S.C. 78s(b)(3)(a)(ii).
[6] 17 CFR 240.19b–4(f)(2).

Number SR–NASDAQ–2009–098 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–2009–098. 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 will also 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–2009–098 and should be submitted on or before December 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–27993 Filed 11–20–09; 8:45 am]

BILLING CODE 8011–01–P

SELECTIVE SERVICE SYSTEM

Computer Matching Between the Selective Service System and the Department of Education

AGENCY: Selective Service System.

ACTION: Notice.

In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818 (June 19, 1989)), and OMB Bulletin 89–22, the following information is provided:

1. Name of Participating Agencies

The Selective Service System (SSS) and the Department of Education (ED).

2. Purpose of the Match

The purpose of this matching program is to ensure that the requirements of Section 12(f) of the Military Selective Service System Act [50 U.S.C. App. 462 (f)] are met. This program has been in effect since December 6, 1985.

3. Authority for Conducting the Matching

Computerized access to the Selective Service Registrant Registration Records (SSS 10) enables ED to confirm the registration status of applicants for assistance under Title IV of the Higher Education Act of 1965 (HEA), as amended (20 U.S.C. 1070 *et seq.*). Section 12(f) of the Military Selective Service Act, as amended [50 U.S.C. App. 462(f)], denies eligibility for any form of assistance or benefit under Title IV of the HEA to any person required to present himself for and submit to registration under Section 3 of the Military Selective Service System Act [50 U.S.C. App. 453] who fails to do so in accordance with that section and any rules and regulations issued under that section. In addition, Section 12(f)(2) of the Military Selective Service System Act specifies that any person required to present himself for and submit to registration under Section 3 of the Military Selective Service System Act must file a statement with the institution of higher education where the person intends to attend or is attending that he is in compliance with the Military Selective Service System Act. Furthermore, Section 12(f)(3) of the Military Selective Service System Act authorizes the Secretary of Education, in agreement with the Director of the Selective Service, to prescribe methods for verifying the statements of compliance filed by students.

Section 484(n) of the HEA [20 U.S.C. 1091(n)], requires the Secretary to conduct data base matches with SSS, using common demographic data elements, to enforce the Selective Service registration provisions of the Military Selective Service Act [50 U.S.C. App. 462(f)], and further states that appropriate confirmation of a person's shall fulfill the requirement to file a separate statement of compliance.

4. Categories of Records and Individuals Covered

1. Federal Student Aid Application File (18–11–01).

Individuals covered are men born after December 31, 1959, but at least 18 years old by January 1 of the applicable award year.

2. Selective Service Registration Records (SSS 10).

5. Inclusive Dates of the Matching Program

Commence on January 2, 2010 or 40 days after copies of the matching agreement are transmitted simultaneously to the Committee on Government Affairs of the Senate, the Committee on Government Operations of the House of Representatives, and the Office of Management and Budget, whichever is later, and remain in effect for eighteen months unless earlier terminated or modified by agreement of the parties.

6. Address for Receipt of Public Comments or Inquires

Mr. Gastón Naranjo, Selective Service System, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

Dated: November 17, 2009.

Ernest E. Garcia,

Acting Director.

[FR Doc. E9–28081 Filed 11–20–09; 8:45 am]

BILLING CODE 8015–01–P

DEPARTMENT OF STATE

[Public Notice 6816; OMB Control Number 1405–0082]

30-Day Notice of Proposed Information Collection: DS–1884, Petition To Classify Special Immigrant Under INA 203(b)(4) as an Employee or Former Employee of the U.S. Government Abroad

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

• *Title of Information Collection:* Petition to Classify Special Immigrant under INA 203(b)(4) as an Employee or Former Employee of the U.S. Government Abroad.

[7] 17 CFR 200.30–3(a)(12).

- *OMB Control Number:* 1405–0082.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Office of Visa Services (CA/VO).
- *Form Number:* DS–1884.
- *Respondents:* Aliens petitioning for immigrant visas under INA 203(b)(4).
- *Estimated Number of Respondents:* 300 per year.
- *Estimated Number of Responses:* 300 per year.
- *Average Hours per Response:* 10 minutes.
- *Total Estimated Burden:* 50 hours per year.
- *Frequency:* Once per petition.
- *Obligation to Respond:* Required to Obtain Benefit.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from November 23, 2009.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *E-mail:* *oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Lauren Prosnik of the Office of Visa Services, U.S. Department of State, 2401 E Street, NW., L–603, Washington, DC 20522, who may be reached at (202) 663–2951.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond.

Abstract of Proposed Collection

DS–1884 solicits information from petitioners for special immigrant classification under Section 203(b)(4) of the Immigration and Nationality Act. An alien is classifiable as a special immigrant under Section 203(b)(4) if they meet the statutory qualifications in INA Section 101(a)(27)(D). A petitioner may apply within one year of notification by the Department of State that the Secretary has approved a recommendation that special immigrant status be accorded to the alien. DS–1884 solicits information that will assist the consular officer in ensuring that the petitioner is statutorily qualified to receive such status, including meeting the years of service and exceptional service requirements.

Methodology

Petitioners will submit this form to consular officers at post.

Dated: November 16, 2009.

Edward Ramotowski,

Deputy Assistant Secretary, Acting, Bureau of Consular Affairs, Department of State.

[FR Doc. E9–28037 Filed 11–20–09; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 6818]

30-Day Notice of Proposed Information Collection: DSP–122, Supplemental Registration for the Diversity Immigrant Visa Program, OMB No. 1405–0098

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Supplemental Registration for the Diversity Immigrant Visa Program.
- *OMB Control Number:* 1405–0098.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Office of Visa Services.
- *Form Number:* DSP–122.
- *Respondents:* Diversity visa applicants.
- *Estimated Number of Respondents:* 60,000.
- *Estimated Number of Responses:* 60,000.
- *Average Hours per Response:* 30 minutes.
- *Total Estimated Burden:* 30,000.
- *Frequency:* Once per application.
- *Obligation to Respond:* Required to obtain benefit.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from November 23, 2009.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *E-mail:* *oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Lauren Prosnik of the Office of Visa Services, U.S. Department of State, 2401 E. Street, NW., L–603, Washington, DC 20522, who may be reached at (202) 663–2951.

SUPPLEMENTARY INFORMATION:

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond.

Abstract of Proposed Collection

The Kentucky Consular Center (KCC) will register selected Diversity Visa lottery entries and then send the applicant an Instruction Package for Immigrant Visa Applicants, which consists of DS–122 (Supplemental Registration for the Diversity Immigrant Visa Program) and DS–230 (Application for Immigrant Visa and Alien Registration Part I and II). In order for an applicant to be considered documentarily qualified for a visa, the applicant must complete and return both of the above-mentioned forms to KCC. Upon receipt of these forms KCC will transmit the Immigrant Visa Appointment Package and schedule an appointment for the applicant.

Methodology

Applicants must return the completed form to the KCC via mail.

Dated: November 16, 2009.

Edward Ramotowski,

Deputy Assistant Secretary, Acting, Bureau of Consular Affairs, Department of State.

[FR Doc. E9–28041 Filed 11–20–09; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 6817]

30-Day Notice of Proposed Information Collection: DS–3032, Choice of Address and Agent for Immigrant Visa Applicants, OMB No. 1405–0126

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Choice of Address and Agent for Immigrant Visa Applicants.
- *OMB Control Number:* 1405–0126.
- *Type of Request:* Extension of Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Office of Visa Services.
- *Form Number:* DS–3032.
- *Respondents:* All immigrant visa applicants.
- *Estimated Number of Respondents:* 330,000.
- *Estimated Number of Responses:* 330,000.
- *Average Hours per Response:* 10 minutes.
- *Total Estimated Burden:* 55,000 hours.
- *Frequency:* Once per application.
- *Obligation to Respond:* Required to obtained benefit.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from November 23, 2009.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *E-mail: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. *Attention:* Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Lauren Prosnik of the Office of Visa Services, U.S. Department of State, 2401 E. Street, NW., L–603, Washington, DC 20522, who may be reached at (202) 663–2951.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond.

Abstract of Proposed Collection:

When an approved immigrant visa petition is received at the National Visa Center (NVC) and is determined to be current for processing, NVC will send the petition beneficiary Form DS–3032, which allows the beneficiary to choose an agent to receive mailings from NVC and assist in the paperwork or paying required fees. The applicant is not required to choose an agent and may have all mailings sent to an address abroad. However, the alien's case will be held at NVC until the signed form is returned. If the form is not returned within one year, NVC will begin the case termination process. DS–3032 is not required if a G–28 (Notice of Entry of Appearance as Attorney or Representative) is received from DHS and the attorney is the agent, the alien is self-petitioning, or a child is being adopted. Once the form has been signed and returned to NVC the applicant process will proceed.

Methodology:

DS–3032 will be submitted via mail to the National Visa Center.

Dated: November 16, 2009.

Edward Ramotowski,

Deputy Assistant Secretary, Acting, Bureau of Consular Affairs, Department of State.

[FR Doc. E9–28038 Filed 11–20–09; 8:45 am]

BILLING CODE 4710–06–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS389]

WTO Dispute Settlement Proceeding Regarding European Communities—Certain Measures Affecting Poultry Meat and Poultry Meat Products From the United States

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (''USTR'') is providing notice that on October 23, 2009, the United States requested the establishment of a panel under the *Marrakesh Agreement Establishing the World Trade Organization* (''WTO Agreement'') with respect to certain measures of the European Communities (''EC'') affecting the import and marketing of poultry products from the United States. That request may be found at www.wto.org contained in a document designated as WT/DS389/4. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before January 8, 2010 to be assured of timely consideration by USTR.

ADDRESSES: Public comments should be submitted electronically to *http://www.regulations.gov*, docket number USTR–2009–0005. If you are unable to provide submissions by *http://www.regulations.gov*, please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission. If (as explained below) the comment contains confidential information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395–3640.

FOR FURTHER INFORMATION CONTACT: J. Sloane Strickler, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395–6164.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, USTR is providing notice that the establishment of a dispute settlement panel has been requested pursuant to the WTO

Understanding on Rules and Procedures Governing the Settlement of Disputes (''DSU''). If such a panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within nine months after it is established.

Major Issues Raised by the United States

The EC prohibits the import of poultry treated with any substance other than water unless that substance has been approved by the EC. The EC has not approved any other substance. Consequently, the EC prohibits the import of poultry that has been processed with chemical treatments (''pathogen reduction treatments'' or ''PRTs'') designed to reduce the amount of microbes on the meat, effectively prohibiting the shipment of virtually all U.S. poultry to the EC. The EC has not published or otherwise made available the process for approving a substance. The EC also maintains a measure regarding the marketing standards for poultry meat, which defines ''poultrymeat'' as only ''poultrymeat suitable for human consumption, which has not undergone any treatment other than cold treatment.''

In 2002, the United States requested the European Commission to approve the use of four PRTs in the production of poultry intended for export to the EC: acidified sodium chlorite, trisodium phosphate, peroxyacids, and chlorine dioxide. However, after more than six years, including unexplained delays, the EC has not approved any of these four PRTs and instead has rejected the approval of their use.

The EC's failure to approve is despite the fact that various EC agencies have issued scientific reports regarding a number of different aspects related to the processing of poultry with these four PRTs. Those reports did not find any scientific basis for banning the use of these PRTs. To the contrary, the conclusion of these reports is that the importation and consumption of poultry processed with these four PRTs does not pose a risk to human health.

The United States considers that the EC's failure to approve these four PRTs is in breach of the EC's WTO obligations, in particular: Articles 2.2, 5.1, 5.2, 7, and 8, and Annexes B(1), B(5), and C(1) of the *Agreement on the Application of Sanitary and Phytosanitary Measures* (''SPS Agreement''); Article 4.2 of the *Agreement on Agriculture* (''Agriculture Agreement''); Articles III:4, X:1, and XI:1 of the *General Agreement on Tariffs and Trade 1994* (''GATT 1994''); and Article 2.1 of the *Agreement on Technical Barriers to Trade* (''TBT Agreement'').

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit public comments electronically to *http://www.regulations.gov* docket number USTR–2009–0005. If you are unable to provide submissions by *http://www.regulations.gov*, please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

To submit comments via *http://www.regulations.gov,* enter docket number USTR–2009–0005 on the home page and click ''search''. The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''Notice'' under ''Document Type'' on the left side of the search-results page, and click on the link entitled ''Submit a Comment.'' (For further information on using the *http://www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''How to Use This Site'' on the left side of the home page.)

The *http://www.regulations.gov* site provides the option of providing comments by filling in a ''Type Comment and Upload File'' field, or by attaching a document. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type ''See attached'' in the ''Type Comment and Upload File'' field.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395–3640. A non-confidential summary of the confidential information must be submitted to *http://www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' at the top and bottom of the cover page and each succeeding page; and

(3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax. A non-confidential summary of the confidential information must be submitted to *http://www.regulations.gov*. The non-confidential summary will be placed in the docket and open to public inspection.

USTR will maintain a docket on this dispute settlement proceeding, accessible to the public. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions, any non-confidential submissions, or non-confidential summaries of submissions, received from other participants in the dispute; the report of the panel; and, if applicable, the report of the Appellate Body.

Comments will be placed in the docket and open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15 or information determined by USTR to be confidential in accordance with 19 U.S.C. 2155(g)(2). Comments open to public inspection may be viewed on the *http://www.regulations.gov* Web site.

Daniel Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. E9–28046 Filed 11–20–09; 8:45 am]

BILLING CODE 3190–W0–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–303 (Sub-No. 34X)]

Wisconsin Central Ltd.—Abandonment Exemption—in Brown County, WI

Wisconsin Central Ltd. (WCL) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon a 0.25-mile line of railroad between milepost 97.50 and milepost 97.75, in Denmark, Brown County, WI.[1] The line traverses United States Postal Service Zip Code 54208.

WCL has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line to be rerouted; (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 23, 2009, unless stayed pending reconsideration.[2] Petitions to stay that do not involve environmental issues,[3] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[4] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 3, 2009.[5] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 14, 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 WCL's representative: Jeremy M. Berman, Fletcher & Sippel LLC, 29 N. Wacker Dr., Suite 920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

WCL has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by November 27, 2009. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), WCL 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 WCL's filing of a notice of consummation by November 23, 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 November 17, 2009.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–28026 Filed 11–20–09; 8:45 am]

BILLING CODE 4915–01–P

[1] WCL is a wholly owned subsidiary of Canadian National Railway Company.

[2] Pursuant to 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Board at least 50 days before the abandonment or discontinuance is to be consummated. WCL has indicated a proposed consummation date of December 22, 2009, but, because the verified notice was filed on November 3, 2009, consummation may not take place prior to December 23, 2009.

[3] 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.

[4] Each OFA must be accompanied by the filing fee, which currently is set at $1,500. *See* 49 CFR 1002.2(f)(25).

[5] WCL states that it has entered into a contract with the Wisconsin Department of Natural Resources (WDNR) under which WDNR will purchase the right-of-way for use as a trail.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 8, 2009, vol. 74, no. 172, page 46292. FOQA is a voluntary program for the routine collection and analysis of digital flight data from airplane operations.

DATES: Please submit comments by December 23, 2009.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Flight Operational Quality Assurance (FOQA) Program.

Type of Request: Extension without change of a currently approved collection.

OMB Control Number: 2 120–0660.

Forms(s) There are no FAA forms associated with this collection.

Affected Public: An estimated 30 Respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden Per Response: Approximately 1 hour per response.

Estimated Annual Burden Hours: An estimated 360 hours annually.

Abstract: FOQA is a voluntary program for the routine collection and analysis of digital flight data from airplane operations. The purpose is to enable early corrective action for potential threats to safety. 14 CFR 13.401 codifies protection from punitive enforcement action based on FOQA information and requires operators with FAA approved FOQA programs to provide aggregate FOQA data to the FAA. Aggregate FOQA information

provided to the FAA is protected from public release tinder 14 CFR part 193.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov*, or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection, ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on November 16, 2009.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E9–27942 Filed 11–20–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), U.S. DOT.

ACTION: Notice of limitation on claims for judicial review of actions by FHWA and other Federal agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(*l*)(1). These actions relate to a proposed highway project known as the Marin Sonoma Narrows High Occupancy Vehicle (HOV) Widening project on US 101 from south of the Route 37 Interchange in the City of Novato, Marin County, to north of the Corona Road Overcrossing in the City of Petaluma, Sonoma County, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before May 24, 2010. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Lanh Phan, Transportation Engineer, Federal Highway Administration, 650 Capitol Mall, Suite 4–100, Sacramento, CA 95814, weekdays between 7 a.m. and 4 p.m., telephone 916–498–5046, *lanh.phan@dot.gov*. For California Department of Transportation: Melanie Brent, Office Chief, Caltrans Environmental Analysis, P.O. Box 23660, Oakland, CA 94623–0660, weekdays between 7:30 a.m. and 4:30 p.m., telephone 510–286–5231, *melanie_brent@dot.ca.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: The Marin Sonoma Narrows HOV Widening Project in Marin and Sonoma Counties. The project consists of the addition of continuous northbound and southbound HOV lanes along the above-defined 16-mile stretch of US 101. As the principal route in the coastal northwest region between the San Francisco Bay Area and Oregon, US 101 provides a continuous north/south route through Marin and Sonoma Counties for long distance, intercity, and intracity traffic. The project is needed to reduce recurring traffic congestion and improve mobility, and address physical and operational deficiencies of the roadway. The continuous northbound and southbound HOV lanes would be accomplished within the existing median of the US 101 facility, with minor outside widening in the southern and northern segments of the project. However, in the more rural middle segment, the project will replace the existing four-lane expressway, with open medians and direct access driveways, with a six-lane, access-controlled freeway to standardize horizontal and vertical curves, lane widths, and the construction of one new interchange.

The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) for the project, approved on July 21, 2009, and in the FHWA Record of Decision (ROD), issued on October 29, 2009, and in other documents in the FHWA project records. The FEIS, ROD, and other project records are available by contacting Caltrans at the address provided above. The FHWA FEIS and ROD can be viewed and downloaded from the Caltrans project Web site at *http://www.dot.ca.gov/dist4/msn/* or from the Caltrans District 4 Web site at *http://www.dot.ca.gov/dist4/msn/msn_feir_s/msn_feir.htm*.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].
2. *Air:* Clean Air Act, 42 U.S.C. 7401–7671(q).
3. *Paleontology:* Antiquities Act of 1906 [12 U.S.C. 431–433], Federal-Aid Highway Act of 1935 [200 U.S.C. 78].
4. *Wildlife:* Endangered Species Act [16 U.S.C. 1521–1544 and Section 1536], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712], Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 *et seq.*].
5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].
6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209]; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended.
7. *Wetlands and Water Resources:* Clean Water Act, 33 U.S.C. 1251–1377 (Section 404, Section 401, Section 319); Flood Disaster Protection Act, 42 U.S.C. 4001–4128; Rivers and Harbors Act of 1899, 33 U.S.C. 401–406.
8. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601–9675; Superfund Amendments and

Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992(k).

9. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species; E.O. 12088 Federal Compliance with Pollution Control.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to his program.)

Authority: 23 U.S.C. 139(*l*)(1).

Issued on: November 16, 2009.

Cindy Vigue,

Director, State Programs, Federal Highway Administration, Sacramento, California.

[FR Doc. E9–28044 Filed 11–20–09; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 17, 2009.

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury PRA Department Clearance Officer, Department of the Treasury, Room 11010, and 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 23, 2009 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0892.

Type of Review: Extension.

Title: Report of Cash Payment Over $10,000 Received in a Trade or Business.

Form: 8300, 8300–SP.

Description: Anyone in a trade or business who, in the course of such trade or business, receives more than $10,000 in cash or foreign currency in one or more related transactions must report it to the IRS and provide a statement to the payer. Any transaction that must be reported under Title 31 on Form 4789 is exempted from reporting the same transaction on Form 8300. The USA Patriot Act of 2001 (Pub. L. 107–56) authorized the Financial Crimes Enforcement Network to collect the information reported on Form 8300. In a joint effort to develop a dual use form, IRS and FinCEN worked together to ensure that the transmission of the data collected to * * *.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 87,757 hours.

Clearance Officer: R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Shagufta Ahmed, (202) 395–7873, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Celina M. Elphage,

Treasury PRA Clearance Officer.

[FR Doc. E9–27977 Filed 11–20–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 17, 2009.

The Department of Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 23, 2009 to be assured of consideration.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0045.

Type of Review: Extension.

Title: Distilled Spirits Plants—Excise Taxes (TTB REC 5110/06).

Description: This collection of information is necessary to account for and verify taxable removals of distilled spirits. The data is used to audit tax payments.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 3,458 hours.

OMB Number: 1513–0029.

Type of Review: Extension.

Form: TTB F 5120.20.

Title: Certification of Tax Determination—Wine.

Description: TTB F 5120.20 supports the exporter's claim for drawback, as the producing winery verifies that the wine being exported was in fact tax paid.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 500 hours.

OMB Number: 1513–0056.

Type of Review: Extension.

Title: Distilled Spirits Plants—Transaction and Supporting Records (TTB REC 5110/5).

Description: Transaction records provide the source data for accounts of distilled spirits in all DSP operations. They are used by DSP proprietors to account for spirits and by TTB to verify those accounts and consequent tax liabilities.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 13,516 hours.

OMB Number: 1513–0084.

Type of Review: Extension.

Title: Labeling of Sulfites in Alcoholic Beverages.

Description: In accordance with our consumer protection responsibilities, as mandated by law, TTB requires label disclosure statements on all alcoholic beverage products released from U.S. bottling premises or customs custody that contain 10 parts per million or more of sulfites. The disclosure reduces the consumer's exposure to sulfites, which has been shown to cause an allergic-type reaction in humans.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 9,518 hours.

OMB Number: 1513–0012.

Type of Review: Extension.

Form: TTB F 5150.18.

Title: User's Report of Denatured Spirits.

Description: The information on TTB F 5150.18 is used to pinpoint unusual activities in the use of specially denatured spirits. The form shows a

summary of activities at permit premises. TTB examines and verifies certain entries on these reports to identify unusual activities, errors, and omissions.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 1,133 hours.

OMB Number: 1513–0080.

Type of Review: Extension.

Title: Equipment and Structures (TTB REC 5110/12).

Description: Marks, signs, and calibrations are necessary on equipment and structures at a distilled spirits plant. These tools are used for the identification of major equipment and the accurate determination of contents.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 1 hour.

OMB Number: 1513–0039.

Type of Review: Extension.

Form: TTB F 5110.11.

Title: Distilled Spirits Plants Warehousing Records (TTB REC 5110/02) and Monthly Report of Storage Operations.

Description: The information collected is used to account for proprietor's tax liability, adequacy of bond coverage, and protection of the revenue. It also provides data to analyze trends, audit plant operations, monitor industry activities and compliance to provide for efficient allocation of field personnel, plus provide for economic analysis.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 5,520 hours.

OMB Number: 1513–0011.

Type of Review: Extension.

Form: TTB F 5150.19.

Title: Formula and/or Process for Article Made With Specially Denatured Spirits.

Description: TTB F 5150.19 is completed by persons who use specially denatured spirits in the manufacture of certain articles. TTB uses the information provided on the form to ensure the manufacturing formulas and processes conform to the requirement of 26 U.S.C. 5273.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 2,415 hours.

OMB Number: 1513–0038.

Type of Review: Extension.

Form: TTB F 5100.16.

Title: Application to Receive Spirits and/or Denatured Spirits by Transfer in Bond.

Description: TTB F 5100.16 is completed by distilled spirits plant proprietors who wish to receive spirits in bond from other distilled spirits plants. TTB uses the information to determine if the applicant has sufficient bond coverage for the additional tax liability assumed when spirits are transferred in bond.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 300 hours.

OMB Number: 1513–0049.

Type of Review: Extension.

Form: TTB F 5110.43.

Title: Distilled Spirits Plant Denaturation Records (TTB REC 5110/04) and Monthly Report of Processing (Denaturing) Operations.

Description: The information collected is necessary to account for and verify the denaturation of distilled spirits. It is used to audit plant operations, monitor the industry for the efficient allocation of personnel resources, and compile statistics for government economic planning.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 1,176 hours.

OMB Number: 1513–0082.

Type of Review: Extension.

Title: Alternate Methods or Procedures and Emergency Variations from Requirements for Exports of Liquors (TTB REC 5170/7).

Description: TTB allows exporters to request approval of alternate methods from those specified in regulations under 27 CFR part 28. TTB uses the information to evaluate needs, jeopardy to the revenue, and compliance with the law. TTB also uses the information to identify areas where regulations need changing.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 200 hours.

OMB Number: 1513–0046.

Type of Review: Extension.

Form: TTB F 5110.38.

Title: Formula for Distilled Spirits under the Federal Alcohol Administration Act.

Description: TTB F 5110.38 is used to determine the classification of distilled spirits for labeling and for consumer protection. The form describes the person filing, type of product to be made, and restrictions to the labeling and manufacture. The form is used by TTB to ensure that a product is made and labeled properly and to audit distilled spirits operations.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 4,000 hours.

Clearance Officer: Frank Foote, (202) 927–9347, Alcohol and Tobacco Tax and Trade Bureau, Room 200 East, 1310 G Street, NW., Washington, DC 20005.

OMB Reviewer: Shagufta Ahmed, (202) 395–7873, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. E9–27978 Filed 11–20–09; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–33: OTS Nos. 02887 and H4651]

Athens Federal Community Bank, Athens, TN; Approval of Conversion Application

Notice is hereby given that on November 12, 2009, the Office of Thrift Supervision approved the application of Athens Federal Community Bank, Athens, Tennessee, to convert to the stock form of organization. Copies of the application are available for inspection by appointment (phone number: (202) 906–5922 or e-mail: *public.info@ots.treas.gov*) at the Public Reading Room, 1700 G Street, NW., Washington, DC 20552, and the OTS Southeast Regional Office, 1475 Peachtree Street, NE., Atlanta, GA 30309.

Dated: November 16, 2009.

By the Office of Thrift Supervision.

Sandra E. Evans,

Federal Register Liaison.

[FR Doc. E9–28003 Filed 11–20–09; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Century Bank, a Federal Savings Bank, Sarasota, 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 Century Bank, a Federal Savings Bank, Sarasota, Florida (OTS No. 08071), as of November 13, 2009.

Dated: November 16, 2009.

By the Office of Thrift Supervision.

Sandra E. Evans,

Federal Register Liaison.

[FR Doc. E9–27992 Filed 11–20–09; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–34: OTS Nos. 0890 and H4521]

OmniAmerican Bank, Fort Worth, TX; Approval of Conversion Application

Notice is hereby given that on November 12, 2009, the Office of Thrift Supervision approved the application of OmniAmerican Bank, Fort Worth, Texas, to convert to the stock form of organization. Copies of the application are available for inspection by appointment (phone number: (202) 906–5922 or e-mail: *public.info@ots.treas.gov*) at the Public Reading Room, 1700 G Street, NW., Washington, DC 20552, and the OTS Western Regional Office, 225 E. John Carpenter Freeway, Suite 500, Irving, Texas 75062–2326.

Dated: November 16, 2009.

By the Office of Thrift Supervision.

Sandra E. Evans,

Federal Register Liaison.

[FR Doc. E9–28024 Filed 11–20–09; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–32; OTS No. H–4647]

OBA Financial Services, Inc., Germantown, MD; Approval of Conversion Application

Notice is hereby given that on November 12, 2009, the Office of Thrift Supervision approved the application of OBA Bank, Germantown, Maryland, to convert to the stock form of organization. Copies of the application are available for inspection by appointment (phone number: 202–906–5922 or e-mail *Public.Info@OTS.Treaas.gov*) at the Public Reading Room, 1700 G Street, NW., Washington, DC 20552, and the OTS Southeast Regional Office, 1475 Peachtree Street, NE., Atlanta, Georgia 30309.

Dated: November 16, 2009.

By the Office of Thrift Supervision.

Sandra E. Evans,

Federal Register Liaison.

[FR Doc. E9–28002 Filed 11–20–09; 8:45 am]

BILLING CODE 6720–01–P

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as Amended by Public Law 104–13; Submission for OMB Review; Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Proposed collection; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on the proposed collection as provided by 5 CFR 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 1101 Market Street (MP 3C), Chattanooga, Tennessee 37402–2801; (423) 751–6004.

Comments should be sent to OMB Office of Information & Regulatory Affairs, Attention: Desk Officer for Tennessee Valley Authority, no later than December 23, 2009.

SUPPLEMENTARY INFORMATION:

Type of Request: Regular Submission; proposal for new data collection.

Title of Information Collection: Reservoir Land Management Plan.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households, business or other for-profit, non-profit institutions, farms, Federal Government, and State or local governments.

Small Business or Organizations Affected: Yes.

Estimated Number of Annual Responses: 1,000.

Estimated Total Annual Burden Hours: 250.

Estimated Average Burden Hours per Response: .25 hour.

Need For and Use of Information: As part of TVA's efforts to update Reservoir Land Management Plans, TVA will conduct surveys to gather public input from the public regarding zoning allocations for TVA properties. Information gathered will be used to satisfy the requirements of the NEPA public input process and will be used to aid TVA in making zone allocation decisions regarding use of TVA lands.

James W. Sample,

Director of CyberSecurity.

[FR Doc. E9–27990 Filed 11–20–09; 8:45 am]

BILLING CODE 8120–08–P

Federal Register

Monday,
November 23, 2009

Part II

Securities and Exchange Commission

17 CFR Part 242

Regulation of Non-Public Trading Interest; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 242

[Release No. 34–60997; File No. S7–27–09]

RIN 3235–AK46

Regulation of Non-Public Trading Interest

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules and amendments to joint-industry plans.

SUMMARY: The Securities and Exchange Commission (''Commission'') is proposing to amend the regulatory requirements of the Securities Exchange Act of 1934 (''Exchange Act'') that apply to non-public trading interest in National Market System (''NMS'') stocks, including so-called ''dark pools'' of liquidity. First, it is proposing to amend the definition of ''bid'' or ''offer'' in Exchange Act quoting requirements to apply expressly to actionable indications of interest (''IOIs'') privately transmitted by dark pools and other trading venues to selected market participants. The proposed definition would exclude, however, IOIs for large sizes that are transmitted in the context of a targeted size discovery mechanism. Second, the Commission is proposing amendments to the display obligations of alternative trading systems (''ATSs'') in Regulation ATS under the Exchange Act, including a substantial lowering of the trading volume threshold in Regulation ATS that triggers public display obligations for ATSs. Third, the Commission is proposing to amend the joint-industry plans for publicly disseminating consolidated trade data to require real-time disclosure of the identity of dark pools and other ATSs on the reports of their executed trades. The proposals are intended to promote the Exchange Act goals of transparency, fairness, and efficiency.

DATES: Comments should be received on or before February 22, 2010.

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

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. S7–27–09 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

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

All submissions should refer to File No. S7–27–09. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: *Actionable IOIs:* Theodore S. Venuti, Special Counsel, at (202) 551–5658, Arisa Tinaves, Special Counsel, at (202) 551–5676, Gary M. Rubin, Attorney, at (202) 551–5669; *ATS Display Obligations:* Brian Trackman, Special Counsel, at (202) 551–5616, Edward Cho, Special Counsel, at (202) 551–5508; *Post-Trade Transparency for ATSs:* Natasha Cowen, Special Counsel, at (202) 551–5652, Mia Zur, Special Counsel, at (202) 551–5638, Nicholas Shwayri, Law Clerk, at (202) 551–5667, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The Commission is proposing to amend the regulatory requirements of the Exchange Act that apply to non-public trading interest in NMS stocks,[1] including so-called ''dark pools'' of liquidity. Such trading interest is considered non-public, or ''dark,'' primarily because it is not included in the consolidated quotation data for NMS stocks that is widely disseminated to the public.

Consolidated market data is the primary vehicle for public price transparency in the U.S. equity markets. It includes both: (1) Pre-trade transparency—real-time information on the best-priced quotations at which trades may be executed in the future (''consolidated quotation data''); and (2) post-trade transparency—real-time reports of trades as they are executed (''consolidated trade data'').[2] The central processors for consolidated market data in NMS stocks collect quotation and trade information from the relevant self-regulatory organizations (''SROs'')—the equity exchanges and the Financial Industry Regulatory Authority (''FINRA'')—and distribute the information in a consolidated stream pursuant to joint-SRO plans. Rule 603(b) of Regulation NMS requires that consolidated market data for each NMS stock be disseminated through a single plan processor. Consolidated market data is designed to assure that the public has a single source of affordable, accurate, and reliable information on the best quoted prices and last sale prices for each NMS stock.[3]

In general, dark liquidity (that is, trading interest that is not included in the consolidated quotation data) is not a new phenomenon. Market participants that need to trade in large size, such as institutional investors, always have sought ways to minimize their transaction costs by completing their trades without prematurely revealing the full extent of their trading interest to the broader market.[4] For many years,

[1] Rule 600(b)(47) of Regulation NMS defines ''NMS stock'' to mean any NMS security other than an option. Rule 600(b)(46) defines ''NMS security'' to mean any security for which trade reports are made available pursuant to an effective transaction reporting plan. In general, NMS stocks are those that are listed on a national securities exchange.

[2] 17 CFR 242.603(b).

[3] The consolidated quotation data streams and their policy objectives are fully described in the Commission's Concept Release on Regulation of Market Information Fees and Revenues. Securities Exchange Act Release No. 42208 (December 9, 1999), 64 FR 70613 (December 17, 1999) (''Market Information Concept Release'').

[4] The Commission previously has noted the interest of, and steps taken by, institutional investors to minimize the price impact of their trading:

Another type of implicit transaction cost reflected in the price of a security is short-term price volatility caused by temporary imbalances in trading interest. For example, a significant implicit

the manual trading floors of exchanges were a primary source of dark liquidity in the form of floor traders that ''worked'' the large orders of their customers, executing each such order in a number of smaller transactions without revealing to counterparties the total size of the order. In addition, broker-dealers acting as over-the-counter (''OTC'') market makers and block positioners long have provided liquidity directly to their customers that is not reflected in the consolidated quotation data. Moreover, Rule 604 of Regulation NMS, which imposes limit order display requirements, recognizes the need of large investors to control the public display of their trading interest. Rule 604(b)(4), for example, provides a general exception from the public display requirement for a block size order, unless the customer placing the order requests that the order be displayed.[5] In general, the Commission has sought over the years to promote the public display of trading interest by attempting to provide positive incentives for display, but has never sought to prohibit trading venues from offering dark liquidity services to investors.[6]

The term ''dark pool'' is not used in the Exchange Act or Commission rules. For purposes of this release, the term refers to ATSs that do not publicly display quotations in the consolidated quotation data. Although dark pools publicly report their executed trades in the consolidated trade data, the trade reports are not required to identify the particular ATS that executed the trade. In contrast, the trade reports of registered exchanges are required to identify the exchange that executed the trade and thereby provide more transparency about the location of liquidity in NMS stocks.[7]

In recent years, an increasing number of dark pools have organized to provide their customers with electronic access to dark liquidity trading services. The number of active dark pools trading NMS stocks has increased from approximately 10 in 2002 to approximately 29 in 2009.[8] For the second quarter of 2009, the trading volume of these dark pools was approximately 7.2% of the total share volume in NMS stocks, with no individual dark pool executing more than 1.3%.[9] By way of comparison, no single registered securities exchange currently executes more than 19% of volume in NMS stocks.[10] Given this dispersal of volume among a large number of trading venues, dark pools with their 7.2% market share collectively represent a significant source of liquidity in NMS stocks.

The particular business models and trading mechanisms of dark pools can vary widely. For example, some dark pools, such as block crossing networks, offer specialized size discovery mechanisms that attempt to bring large buyers and sellers in the same NMS stock together anonymously and to facilitate a trade between them. The average trade size of these block crossing networks can be as high as 50,000 shares.[11] Most dark pools, though they may handle large orders, primarily execute trades with small sizes that are more comparable to the average size of trades in the public markets, which was less than 300 shares in August 2009.[12] These dark pools that primarily match smaller orders (though the matched orders may be ''child'' orders of much larger ''parent'' orders) execute more than 90% of dark pool trading volume.[13]

The emergence of dark pools as a significant source of liquidity for NMS stocks raises a variety of important policy issues that deserve serious consideration. In this regard, the Commission has undertaken a broad review of equity market structure to assess its performance in recent years and whether market structure rules have kept pace with, among other things, changes in trading technology and practices. To help facilitate its review, the Commission intends to consider in the near future whether to publish a concept release requesting comment and data on a wide range of market structure topics. These likely would include the benefits and drawbacks of dark liquidity in all its forms, including dark pools, the order flow arrangements of OTC market makers, and undisplayed orders on exchanges.

The proposals in this release accordingly do not attempt to address all of the issues regarding dark liquidity. The proposals instead address three issues with respect to dark liquidity that the Commission preliminarily believes warrant attention, are sufficiently discrete, and as to which the Commission has sufficient information to proceed with a proposal.

One such issue arises from the messages, often called IOIs, that some

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cost for large investors (who often represent the consolidated investments of many individuals) is the price impact that their large trades can have on the market. Indeed, disclosure of these large orders can reduce the likelihood of their being filled. Consequently, large investors often seek ways to interact with order flow and participate in price competition without submitting a limit order that would display the full extent of their trading interest to the market. Among the ways large investors can achieve this objective are: (1) To have their orders represented on the floor of an exchange market; (2) to submit their orders to a market center that offers a limit order book with a reserve size feature; or (3) to use a trading mechanism that permits some form of ''hidden'' interest to interact with the other side of the market. A market structure that facilitates maximum interaction of trading interest can produce price competition *within* displayed prices by providing a forum for the representation of undisclosed orders.

Securities Exchange Act Release No. 42450 (February 23, 2000), 65 FR 10577, 10581 (February 28, 2000) (SR–NYSE–99–48) (''Concept Release on Market Fragmentation'') (citations omitted) (emphasis in original). The Commission also noted the harm that short-term volatility can cause to investors:

In theory, short-term price swings that hurt investors on one side of the market can benefit investors on the other side of the market. In practice, professional traders, who have the time and resources to monitor market dynamics closely, are far more likely than investors to be on the profitable side of short-term price swings (for example, by buying early in a short-term price rise and selling early before the price decline).

Id. at 10581 n. 26.

[5] Rule 600(b)(9) of Regulation NMS defines ''block size'' to mean an order of at least 10,000 shares; or for a quantity of stock having a market value of at least $200,000.

[6] The Commission's recently proposed amendment to Rule 602 of Regulation NMS to eliminate an exception for the use of ''flash orders'' reflects this approach. *See* Securities Exchange Act Release No. 60684 (September 18, 2009), 74 FR 48632 (September 23, 2009). Although flash orders are used to access dark liquidity, the concerns that prompted the Commission's proposal relate to the use of the ''flash'' mechanism (that is, the dissemination of valuable order information to certain market participants rather than in the consolidated quotation data).

[7] *See infra* note 85 and accompanying text. *See also* the CTA Plan, Section VI(f) and the Nasdaq UTP Plan, Section VI(c)(3).

[8] Data compiled from Forms ATS submitted to the Commission for 2d quarter 2009. Some trading venues, such as OTC market makers, offer dark liquidity primarily in a principal capacity and do not operate as ATSs. For purposes of this release, these trading venues are not defined as dark pools because they are not ATSs. These trading venues may, however, offer electronic dark liquidity services that are analogous to those offered by dark pools. If subject to the quoting requirements of Rule 602 of Regulation NMS, for example, an OTC market maker would be covered by the proposal to amend the definition of bid or offer to address actionable IOIs.

[9] Data compiled from Forms ATS submitted to the Commission for 2d quarter 2009.

[10] *See, e.g.,* market volume statistics reported by BATS Exchange, Inc., available at *http://www.batstrading.com/market_summary* (no single national securities exchange executed more than 19.0% of volume in NMS stocks during 5-day period ending September 21, 2009).

[11] *See, e.g., http://www.liquidnet.com/about/liquidStats.html* (average U.S. execution size in July 2009 was 49,638 shares for manually negotiated trades via Liquidnet's negotiation product); *http://www.pipelinetrading.com/AboutPipeline/CompanyInfo.aspx* (average trade size of 50,000 shares in Pipeline).

[12] *See, e.g., http://www.nasdaqtrader.com/trader/aspx?id=marketshare* (average size of NASDAQ matched trades in July 2009 was 228 shares); *http://nyxdata.com/nysedata/asp/factbook* (NYSE Group average trade size in all stocks traded in July 2009 was 267 shares).

[13] Data compiled from Forms ATS submitted to Commission for 2d quarter 2009.

dark pools privately transmit to selected market participants concerning their actionable orders in NMS stocks. As discussed further in section II below, these actionable IOIs are intended to attract immediately executable order flow to the trading venue, and, in this sense, they function quite similarly to displayed quotations. As a result, dark pools that distribute actionable IOIs are no longer completely dark on a pre-trade basis. Rather, they are ''lit'' to a select group of market participants and dark with respect to the rest of the public. By privately transmitting valuable order information concerning the best prices for NMS stocks to selected market participants, actionable IOIs create the potential for two-tiered access to information, something that has long been a serious concern of the Commission.[14] It therefore is proposing two initiatives that would address this concern.

First, the Commission is proposing to amend the definition of ''bid'' or ''offer'' in Rule 600(b)(8) of Regulation NMS to apply explicitly to actionable IOIs. This definition of bid or offer is a key element that determines the public quoting requirements of exchanges and OTC market makers under Rule 602 of Regulation NMS, as well as ATSs under Rule 301(b) of Regulation ATS. In this respect, the revised definition would apply equally to all types of trading venues and help promote fair competition among them. Importantly, however, the proposed definition of bid or offer would recognize the need for targeted size discovery mechanisms that can enable investors to trade more efficiently in sizes much larger than the average size of trades in the public markets.[15] Specifically, the proposed amendment to the definition would exclude any actionable IOIs ''for a quantity of NMS stock having a market value of at least $200,000 that are communicated only to those who are reasonably believed to represent current contra-side trading interest of at least $200,000'' (''size-discovery IOIs'').[16]

As a second initiative to address actionable IOIs, the Commission is proposing to lower substantially the trading volume threshold in Rule 301(b) of Regulation ATS that triggers the obligation for ATSs to display their best-priced orders in the consolidated quotation data. Currently, an ATS is not required to include its best-priced orders for an NMS stock in the consolidated quotation data (even if it widely disseminates such orders) when its trading volume in that NMS stock is less than 5%.[17] Similarly, many, if not all, dark pools that transmit actionable IOIs would not be required to include this actionable order information in the consolidated quotation data if the Regulation ATS display threshold remains at 5%. The Commission is proposing to lower the volume threshold to 0.25% to help assure that the public, through the consolidated quotation data, has access to valuable order (including actionable IOI) information about the best prices and sizes for NMS stocks that trade on an ATS.

The practical result of the proposed amendment to the definition of bid or offer and the proposed lowering of the ATS volume threshold would be that ATSs could not privately display actionable IOIs only to select market participants and thereby create two-tiered access to information on the best available prices for NMS stocks. In addition, by lowering the trading volume threshold, more ATS quotes would be made available to the public by requiring their inclusion in the consolidated quotation data. As discussed below, the Commission preliminarily believes that this result would enhance price transparency and promote fairer and more efficient markets.

Finally, the Commission is proposing an initiative to improve the post-trade transparency of dark pools and other ATSs. As ATSs that trade in the OTC market, dark pools must be members of FINRA, and they are required to report their trades to FINRA for inclusion in the consolidated trade data. These trade reports do not, however, identify the particular venue that executed the trade, unlike the trade reports of registered exchanges.[18] To address this information gap, the Commission is proposing to amend the joint-SRO plans for publicly disseminating consolidated trade data to require real-time disclosure of the identity of ATSs on the reports of their executed trades. The proposal is designed to improve the quality of information about sources of liquidity in NMS stocks, as well as to increase public confidence in the integrity of the U.S. equity markets.[19]

II. Actionable IOIs

A. Concerns About Actionable IOIs

In recent years, a number of dark pools have begun to transmit IOIs to selected market participants that convey substantial information about their available trading interest.[20] These messages are not included in the consolidated quotation data, although, like displayed quotations, they can be significant inducements for the routing of orders to a particular trading venue. Indeed, some exchanges, when they do not have available trading interest to execute orders at the best displayed prices, give participants a choice of routing their orders to undisplayed venues in response to IOIs rather than to public markets in response to the best displayed quotations.[21]

Although these IOIs may not explicitly specify the price and size of available trading interest at the dark pool, the practical context in which they are transmitted renders them

[14] *See infra* note 59 and accompanying text.

[15] *See supra* note 12 (average size of trades in public markets is less than 300 shares). The market value of a 300 share order in a $30 stock is $9,000.

[16] For purposes of this release, the term ''size discovery IOIs'' means IOIs that qualify for the proposed exclusion for certain IOIs with large size. The term ''actionable IOIs'' means any actionable IOI other than size discovery IOIs.

[17] Those ATSs that operate as electronic communication networks (''ECNs'') and qualify for the ECN display alternative under Rule 602(b)(5)(ii) voluntarily have chosen to include their best-priced orders in the consolidated quotation data even when their volume in an NMS stock is less than 5%. The proposed amendments to Regulation ATS would not affect the display practices of these ECNs.

[18] *See infra* note 85 and accompanying text. ATSs are broker-dealers that have chosen to comply with Regulation ATS and thus are exempt from the statutory definition of ''exchange.'' 17 CFR 240.3a1–1(a)(2).

[19] *See, e.g.,* Securities Exchange Act Release No. 30569 (April 10, 1992), 57 FR 13396, 13398–13399 (April 16, 1992) (discussing benefits of transparency to the operation of fair and efficient capital markets).

[20] Data compiled from Forms ATS submitted to the Commission for 2d quarter 2009 suggest that approximately 11 of 29 active dark pools in NMS stocks use some form of IOI. *See also* Peter Chapman and Nina Mehta, *2008 Review: IOIs Expand and Do More Heavy Lifting,* Traders Magazine (December 2008) (''The year just passed witnessed the transformation of the indication of interest. Long a plain vanilla communication tool between the sellside and the buyside, the IOI is being reinvented to meet the requirements of a new era of trading.''); John Hintz, *Institutions and Sell Side Alike Grapple with Impact of IOIs,* Securities Industry News, September 8, 2008 (''The dozens of dark pools that have emerged in recent years have each sought to offer unique features to draw order flow and increase fill rates. But some of the platforms' ''special sauce'' may make them less than fully dark.'').

[21] *See, e.g.,* NYSE Arca, ''Client Notice: NYSE Arca to Provide Indication of Interest (IOI) Routing'' (March 12, 2008) (routing service for ''non-displayed liquidity pools''); Rob Curran, NYSE, Nasdaq Expanding Roles as 'Dark Pools' Converge, Dow Jones News Service (June 13, 2008) (''Only if the dark-pool partners give an indication they may have a better price on the security will Nasdaq route an order there.''); Nina Mehta, *Arca Beats Nasdaq to Dark Pools,* Traders Magazine Online News, March 14, 2008 (''Now, after a marketable order checks Arca's book for liquidity, it passes through what [Arca executive] calls a 'cloud' of electronic indications from as many as 29 dark pools (not all are online yet). The order executes against indications pooled in the cloud before being routed to protected quotes on other markets. Customers that execute against the cloud are guaranteed NBBO-or-better executions.'').

''actionable''—that is, the messages effectively alert the recipient that the dark pool currently has trading interest in a particular symbol, side (buy or sell), size (minimum of a round lot of trading interest), and price (equal to or better than the national best bid for buying interest and the national best offer for selling interest).

For example, a dark pool may send an IOI to a group of market participants communicating an interest in buying a specific NMS stock. Given that Rule 611 of Regulation NMS generally prevents trading centers, including dark pools, from executing orders at prices inferior to the national best bid or offer (''NBBO''), the IOI recipient reasonably can assume that the price associated with the IOI is the NBBO or better. Moreover, the IOI may be part of a course of conduct in which the recipient has responded with orders to the sender and repeatedly received executions at the NBBO or better with a size of at least one round lot. With this information (both explicit and implicit), the recipient of the IOI can reasonably conclude that sending a contra-side marketable order [22] responding to the IOI will result in an execution if the dark pool trading interest has not already been executed against or cancelled. In this respect, actionable IOIs are functionally quite similar to displayed quotations at the NBBO.

The order information communicated by actionable IOIs can be extremely valuable. Actionable IOIs with prices (whether explicit or implicit) better than the NBBO would effectively narrow the quoted spread for an NMS stock, if included in the consolidated quotation data. For example, if the NBBO for an NMS stock were $20.10 and $20.14, an actionable IOI to buy with a price of $20.12 would, if included in the consolidated quotation data, create a new NBBO of $20.12 and $20.14 and thereby reduce the quoted spread by 50%. Reducing quoted spreads is important not only for those that trade with the displayed quotations, but also for other investors, including those whose orders are routed to OTC market makers for executions that often are derived from NBBO prices.[23] In addition, actionable IOIs with prices (whether explicit or implicit) equal to the NBBO could substantially improve the quoted depth at the best prices for an NMS stock. For example, an investor may wish to sell 500 shares of a stock when the size of the national best bid may be only 100 shares. The existence of multiple dark pools that contemporaneously had transmitted actionable IOIs to buy the stock would represent a substantial increase in the available size at NBBO prices or better.

The public, however, does not have access to this valuable information concerning the best prices and sizes for NMS stocks. Rather, dark pools transmit this information only to selected market participants. In this regard, actionable IOIs can create a two-tiered level of access to information about the best prices and sizes for NMS stocks that undermines the Exchange Act objectives for a national market system.[24] The consolidated quotation data is intended to provide a single source of information on the best prices for a listed security across all markets, rather than force the public to obtain data from many different exchanges and other markets to learn the best prices.[25] This objective is not met when dark pools or other trading venues disseminate information that is functionally quite similar to quotations, yet is not included in the consolidated quotation data.

The Commission also is concerned that the private use of actionable IOIs may discourage the public display of trading interest and reduce quote competition among markets. The Commission long has emphasized the need to encourage displayed liquidity in the form of publicly displayed limit orders.[26] Such orders establish the current ''market'' for a stock and thereby provide a critical reference point for investors. Actionable IOIs, however, often will be executed by dark pools at prices that match the best displayed prices for a stock at another market. In this respect, actionable IOIs at NBBO matching prices potentially deprive those who publicly display their interest at the best price from receiving a speedy execution at that price. The opportunity to obtain the fastest possible execution at a price is the primary incentive for the display of trading interest.[27] Particularly if actionable IOIs continued to expand in trading volume, they could significantly undermine the incentives to display limit orders and to quote competitively, thereby detracting from the efficiency and fairness of the national market system.

Moreover, for market participants that wish to supply liquidity in the form of non-marketable resting orders (such as those that match or improve NBBO prices), actionable IOIs provide a tool to achieve this result without displaying quotations publicly. The availability of these private messages as an alternative means to attract order flow may reduce the incentives of market participants to quote publicly. More generally, actionable IOIs divert a certain amount of order flow that otherwise might be routed directly to execute against displayed quotations in other markets.[28] Given the importance of displayed quotations for market efficiency, the Commission is particularly concerned about additional marketable order flow that may be diverted from the public quoting markets and that could further reduce the incentives for the public display of quotations.

B. Description of Proposal

To address these concerns, the Commission is proposing to amend the Exchange Act quoting requirements to apply expressly to actionable IOIs. In particular, it is proposing to amend the definition of ''bid'' or ''offer'' in Rule 600(b)(8) of Regulation NMS. ''Bid'' and ''offer'' are key terms that determine the scope of the two primary rules that specify the types of trading interest that must be included in the consolidated quotation data: Rule 602 of Regulation NMS and Rule 301(b)(3) of Regulation ATS.

Rule 602 of Regulation NMS specifies the public quoting requirements of national securities exchanges, national securities associations (currently, FINRA is the only national securities association that is subject to Rule 602), exchange members, and OTC market makers. In general, Rule 602 requires exchange members and certain OTC market makers to provide their best-priced bids and offers to their respective

[22] A ''marketable'' order is priced so that it is immediately executable at the best displayed quotations (that is, a buy order priced at the national best offer or higher and a sell order priced at the national best bid or lower).

[23] *See, e.g.,* Concept Release on Market Fragmentation, *supra* note 4, at 10582–10583 (discussing broker-dealer internalization and noting that ''a market maker with access to directed order flow often may merely match the displayed prices of other market centers and leave the displayed interest unsatisfied'').

[24] *See infra* note 59 and accompanying text.

[25] *See* 17 CFR 242.603(b) (providing for the distribution of all consolidated information for an individual NMS stock through a single plan processor).

[26] *See, e.g.,* Securities Exchange Release No. 51808 (June 9, 2005), 70 FR 37496, 37527 (June 29, 2005) (''NMS Release'') (''The Commission believes, however, that the long-term strength of the NMS as a whole is best promoted by fostering greater depth and liquidity, and it follows from this that the Commission should examine the extent to which it can encourage the limit orders that provide this depth and liquidity to the market at the best prices.''); Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290, 48293 (September 12, 1996) (''Order Handling Rules Release'') (''[T]he display of customer limit orders advances the national market system goal of the public availability of quotation information, as well as fair competition, market efficiency, best execution, and disintermediation.'').

[27] *See* NMS Release, *supra* note 26, at 37505.

[28] *See supra* note 21 and accompanying text.

exchanges or FINRA.[29] The exchanges and FINRA, in turn, are required to make their best bids and offers available in the consolidated quotation data.[30]

Rule 600(b)(8) of Regulation NMS currently defines ''bid'' or ''offer'' to mean ''the bid price or the offer price communicated by a member of a national securities exchange or member of a national securities association to any broker or dealer, or to any customer, at which it is willing to buy or sell one or more round lots of an NMS security, as either principal or agent, *but shall not include indications of interest.''* [31] This exclusion of IOIs was part of the definition of bid or offer when it was originally drafted in 1978 for inclusion in the predecessor of Rule 602.[32] In the adopting release, the term ''indication of interest'' was not defined, discussed, or expressly limited to a non-actionable communication of trading interest.

Rule 301(b)(3) of Regulation ATS specifies the order display and access requirements of ATSs.[33] When an ATS exceeds a 5% trading volume threshold in an NMS stock, the ATS is required to provide its best-priced orders to an exchange or association for inclusion in the consolidated quotation data made available under Rule 602. The term ''order'' is defined in Rule 300(e) of Regulation ATS to mean ''any firm indication of a willingness to buy or sell a security, as either principal or agent, *including any bid or offer quotation,* market order, limit order, or other priced order.'' [34] This definition of ''order'' therefore includes, but is not limited to, ''bid or offer quotations.'' Although Regulation ATS does not define the term ''bid or offer quotation,'' the Commission considers it to have the same meaning as the terms ''bid'' or ''offer'' in Rule 600(b)(8) of Regulation NMS.[35]

When Regulation ATS was adopted in 1998, the Commission addressed the issue of whether IOIs were covered by the term ''order'' in the context of whether an IOI was ''firm'' or ''non-firm.'' It noted that ''[w]hether or not an indication of interest is 'firm' will depend on what actually takes place between a buyer or seller. The label put on an order—'firm' or 'non-firm'—is not dispositive.'' [36] The Commission further stated that ''a system that displays *bona fide,* non-firm indications of interest—including, but not limited to, indications of interest to buy or sell a particular security without either prices or quantities associated with those indications—will not be displaying 'orders'. * * * Nevertheless, the price or size of an indication of interest may be either explicit or may be inferred from the facts and circumstances accompanying the indication.'' [37] The Regulation ATS Adopting Release also noted that the definition of order was ''intended to be broader than the terms bid and offer in [the predecessor of Rule 602].'' [38]

The Commission preliminarily believes that the quoting requirements of both Rule 602 and Regulation ATS should clearly cover actionable IOIs. It therefore is proposing to amend the definition of ''bid'' or ''offer'' in Rule 600(b)(8) by expressly limiting its exclusion of IOIs to those ''that are not actionable.'' For example, an IOI would be considered actionable under the proposal if it explicitly or implicitly conveys all of the following information about available trading interest at the IOI sender: (1) Symbol; (2) side (buy or sell); (3) a price that is equal to or better than the NBBO (the national best bid for buy orders and the national best offer for sell orders); and (4) a size that is at least equal to one round lot. In determining whether or not an IOI conveys this information, all of the facts and circumstances surrounding the IOI should be considered, including the course of dealing between the IOI sender and the IOI recipient.[39]

Under the proposal, when a quoting obligation under Rule 602 or Rule 301(b)(3) is triggered by the sending of an actionable IOI (*i.e.,* sending an actionable IOI would be the communicating or displaying of a bid or an offer), the IOI sender would be considered a quoting venue and subject to the quoting requirements that generally apply to that type of venue, whether it be an exchange, an OTC market maker, or an ATS. These requirements would include, for example, restrictions on the display of locking or crossing quotations under Rule 610(d) of Regulation NMS. In addition, the IOI sender would be required to reflect accurate information about the underlying order or other trading interest in the consolidated quotation data. This required order information would include the specific limit price and size of the underlying order or other trading interest.[40] The IOI sender also would be required to update the information as necessary, for example, to reflect executions or cancellations of the underlying order. Of course, customers of the dark pool would remain free, as they are entitled to do with quoting venues today, to control the release of their buying or selling interest.[41] Customers could not, however, consent to the dissemination of information sufficient for the transmission of an actionable IOI, yet withhold this information from the consolidated quotation data that is made available to the public.[42]

The Commission recognizes that some trading venues, such as block crossing networks, may use actionable IOIs as part of a trading mechanism that offers significant size discovery benefits (that is, finding contra-side trading interest for large size without affecting prices). These benefits may be particularly valuable for institutional investors that need to trade efficiently in sizes much larger than those that are typically available in the public quoting markets. These size discovery mechanisms could be rendered unworkable, however, if their narrowly targeted IOIs for large size were required to be included in the

[29] Under the definition of ''subject security'' in Rule 600(b)(73)(ii)(A) of Regulation NMS, an OTC market maker is not required to provide its best bids and offers for an NMS stock if the executed volume of the firm during the most recent calendar quarter comprised one percent or less of the aggregate trading volume for such NMS stock.

[30] 17 CFR 242.603(b).

[31] 17 CFR 242.600(b)(8) (emphasis added).

[32] Securities Exchange Act Release No. 14415 (January 26, 1978), 43 FR 4342 (February 1, 1978) (''The terms ''bid'' or ''offer'' shall mean the bid price of the offer price most recently communicated by an exchange member or third market maker to any broker or dealer, or to any customer, at which he is willing to buy or sell a particular amount of a reported security, as either principal or agent, but shall not include indications of interest.'').

[33] The requirements for ATS order display and access are discussed in section III below.

[34] 17 CFR 242.300(e) (emphasis added).

[35] Rule 600(b)(62) of Regulation NMS defines ''quotation'' to mean ''a bid or an offer.''

[36] Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844, 70850 (December 22, 1998) (''Regulation ATS Adopting Release''). The discussion in the Regulation ATS Adopting Release specifically referenced the definition of ''order'' in Rule 3b–16(c) under the Exchange Act, which is relevant for purposes of the meaning of ''exchange.'' Rule 3b–16 was adopted at the same time as Regulation ATS, and their definitions of ''order'' are the same.

[37] *Id.*

[38] *Id.*

[39] *See supra* note 36 and accompanying text.

[40] *See, e.g.,* 17 CFR 242.301(b)(3)(ii) (requiring ATSs to provide the best prices and sizes of orders at the highest buy price and the lowest sell price for such NMS stock).

[41] Rule 604 of Regulation NMS, for example, explicitly recognizes the ability of customers to control whether their limit orders are displayed to the public. Rule 604(b)(2) provides an exception from the limit order display requirement for orders that are placed by customers who expressly request that the order not be displayed. Rule 604(b)(4) provides an exception for all block size orders unless the customer requests that the order be displayed.

[42] In addition, the Commission notes that existing Rule 301(b)(10) of Regulation ATS, 17 CFR 242.301(b)(10), requires an ATS to establish adequate safeguards and procedures to protect subscribers' confidential trading information. To meet this requirement, an ATS that markets itself as a dark pool, yet sends IOIs to third parties regarding subscriber orders, should adequately explain its use of IOIs to its subscribers.

consolidated quotation data. Accordingly, the Commission is proposing a further amendment to the current definition of ''bid'' or ''offer'' in Rule 600(b)(8) to exclude any IOIs ''for a quantity of NMS stock having a market value of at least $200,000 that are communicated only to those who are reasonably believed to represent current contra-side trading interest of at least $200,000.''

The purpose of this proposed exception for a targeted size discovery mechanism is to provide an opportunity for block crossing networks and other trading venues to offer new ways for investors that need to trade in large size to find contra-side trading interest of equally large size. The $200,000 figure is taken from the definition of ''block size'' in Rule 600(b)(9) of Regulation NMS, which covers orders of at least 10,000 shares *or* for a quantity of stock having a market value of $200,000. The Commission does not believe, however, that the 10,000 share alternative in the block size definition would be appropriate for the proposed size discovery exclusion from the definition of bid or offer, particularly with respect to low-priced stocks. For example, the market value of an IOI for 10,000 shares of a stock priced at $3 per share is only $30,000. To assure that the proposed size discovery exclusion would be limited to truly large size orders, the Commission is proposing to limit the exception to IOIs with a market value of at least $200,000.

C. Request for Comments

The Commission seeks comment and data on all aspects of the proposed amendment of the definition of bid or offer in Rule 600(b)(8) to apply expressly to actionable IOIs. Would the proposal promote the transparency, fairness, and efficiency of the national market system? Would it promote fair competition among trading venues in NMS stocks? Do commenters believe that the Commission has provided sufficient information about the attributes of an actionable IOI for trading venues to comply? Should the rule text include an express definition of ''actionable IOI,'' and, if so, what should it be? For example, should rule text incorporate the elements discussed above (symbol, side, price, and size), as well as a facts and circumstances analysis? Would an express definition be sufficient to address the full range of the policy concerns the Commission identifies in this release and prevent circumvention by market participants? Do actionable IOIs offer significant benefits for market participants that could not be realized if they were defined as bids or offers for purposes of Rule 602 of Regulation NMS and Rule 301(b) of Regulation ATS? If so, could similar benefits be achieved through other means? What is the typical size of an actionable IOI? How many large orders use actionable IOIs? What is the amount of order flow that is diverted from displayed quotations due to actionable IOIs? Please quantify and provide supporting data if possible.

Comment also is requested on the proposed size discovery exclusion from the definition of bid or offer. Would the proposed exclusion promote more efficient trading for investors that need to trade in large size? Is the exclusion narrowly drafted to cover those trading mechanisms that offer valuable size discovery benefits without inappropriately excluding trading interest concerning the best prices and sizes for NMS stocks from the consolidated quotation data? Comment also is requested on whether market value is the appropriate criterion for size, and whether $200,000 is the appropriate figure. Should this figure be higher or lower? Please explain why. For example, is the $200,000 figure appropriate for high-priced stocks? Should the exclusion include a size criterion based on number of shares? If yes, should it be 10,000 shares, as in Rule 600(b)(9), or a larger or smaller number of shares? Finally, comment is requested on whether other criteria for size, such as percentage of average daily share volume in a security, would be more appropriate.

III. ATS Display Obligations

The Commission is also proposing certain amendments to Regulation ATS.[43] In conjunction with the Commission's proposed amendments to the definition of ''bid'' or ''offer'' in Rule 600(b)(8) of Regulation NMS, the proposed amendments to Regulation ATS would seek to further integrate the best-priced orders available on ATSs into the national market system by revising the order display requirements in Rule 301(b)(3) of Regulation ATS.[44] Specifically, the Commission is proposing to amend Rule 301(b)(3)(i)(B) of Regulation ATS[45] to reduce the average daily trading volume threshold, that would trigger the order display and execution access requirements for an ATS, from 5% to 0.25%. The Commission is also proposing to amend Rule 301(b)(3)(ii) of Regulation ATS[46] to clarify that an ATS must publicly display and provide access to its best-priced orders in NMS stocks when such orders are displayed to more than one person (other than ATS employees), regardless of whether such persons are subscribers of the ATS. Finally, the Commission is proposing to amend Rule 301(b)(3) to parallel the proposed size discovery exclusion from the definition of ''bid'' or ''offer'' discussed in section II above.

A. Lowering the Threshold for Display Requirement

Rule 301(b)(3) of Regulation ATS imposes certain order display and execution access obligations on ATSs. Currently, the obligations apply to any ATS that ''(A) displays subscriber orders to any person (other than alternative trading system employees); and (B) during at least 4 of the preceding 6 calendar months, had an average trading volume of 5 percent or more of the aggregate average daily share volume for [an] NMS stock as reported by an effective transaction reporting plan.''[47] If an ATS meets these criteria, it is required to comply with Rule 301(b)(3)(ii),[48] which requires the ATS to provide to a national securities exchange or national securities association (each of which is a ''self-regulatory organization'' or ''SRO'') the prices and sizes of the orders at the highest buy price and the lowest sell price for that NMS stock, displayed to more than one subscriber of the ATS, for inclusion in the quotation data made available by the SRO to vendors. An ATS that meets the volume threshold also is required to comply with Rule 301(b)(3)(iii), which sets forth certain access standards regarding the orders that the ATS is required to provide to an SRO pursuant to Rule 301(b)(3)(ii).

The Commission is proposing to amend Rule 301(b)(3)(i)(B) by reducing the average daily trading volume threshold from 5% to 0.25%. Thus, under the proposed amendment, the display and access requirements of Rules 301(b)(3)(ii) and 301(b)(3)(iii), respectively, would apply if the ATS's average daily volume in an NMS stock were 0.25% or more during at least four of the preceding six calendar months. Average daily trading volume would continue to be based on volumes reported by an effective transaction reporting plan.

The Commission preliminarily believes that lowering the volume threshold would further the goals of the national market system by reducing the potential for two-tiered markets and

[43] 17 CFR 242.300 *et seq.*

[44] 17 CFR 242.301(b)(3).

[45] 17 CFR 242.301(b)(3)(i)(B).

[46] 17 CFR 242.301(b)(3)(ii).

[47] 17 CFR 242.301(b)(3)(i).

[48] 17 CFR 242.301(b)(3)(ii).

improving the quality of quotation data made available to the public. As discussed above, the Commission is proposing to amend the definitions of ''bid'' or ''offer'' in Rule 600(b)(8) of Regulation NMS in a manner that would, among other things, make these sections consistent with the Commission's policy statements in adopting Regulation ATS that actionable IOIs are orders for purposes of that regulation.[49]

The Commission believes that broker-dealers operating ATSs should be subject to quoting requirements that broadly parallel those applicable to other market participants. Currently, the order display and execution access requirements in Regulation ATS do not apply to an ATS unless, among other things, the ATS has an average daily trading volume in an NMS stock of 5% or more. Few if any dark pool ATSs exceed the 5% threshold for any NMS stocks although, as explained above,[50] ATSs collectively account for a significant share of trading volume. Many dark pool ATSs communicate order information via actionable IOIs that could, if appropriately integrated, contribute to the overall efficiency and quality of the national market system. Without any attendant change to Regulation ATS to lower the 5% threshold, the proposed amendments to the definitions of ''bid'' or ''offer'' in Rule 600(b)(8) of Regulation NMS would have less effect, because most ATSs could remain under the 5% threshold and thus continue to communicate actionable IOIs only to selected market participants. Therefore, in conjunction with the proposed amendments to Rule 600(b)(8), the Commission is proposing to substantially lower the threshold at which an ATS incurs an obligation under Regulation ATS to provide orders to an SRO for inclusion in the public quote stream. The Commission preliminarily believes that such amendment would be consistent with the mandate set forth in Section 11A of the Exchange Act[51] to promote a national market system.

Congress in 1975 endorsed the development of a national market system and granted the Commission broad authority to implement it.[52] Chief among the objectives of the national market system are coordinating markets, reducing fragmentation, and limiting the possibility of tiered markets where the best trading opportunities are available only to selected market participants.[53] As the Commission has long recognized, proper coordination of markets requires transparency and access across the national market system.[54] Market participants must be able to know where the best trading opportunities exist, and have the ability to execute orders in response to those opportunities. The Commission has taken a number of actions designed to further these goals,[55] such as by providing, through Regulation ATS, a regulatory framework that promotes competition among and innovation by exchange and non-exchange trading centers while attempting to minimize detrimental market fragmentation. As the Commission observed in 1997, the failure ''to fully coordinate trading on alternative trading systems into national market systems mechanisms has impaired the quality and pricing efficiency of secondary equity markets. * * * Although these systems are available to some institutions, orders on these systems frequently are not available to the general investing public.'' [56] The Commission noted that such ''hidden markets''—where superior quotations might be available to a subset of market participants—impeded the goals of the national market system.[57]

Later, when adopting Regulation ATS in 1998, the Commission stated that ''it is inconsistent with congressional goals for a national market system if the best trading opportunities are made accessible only to those market participants who, due to their size or sophistication, can avail themselves of prices in alternative trading systems. The vast majority of investors may not be aware that better prices are disseminated to alternative trading system subscribers and many do not qualify for direct access to these systems and do not have the ability to route their orders, directly or indirectly, to such systems. As a result, many customers, both institutional and retail, do not always obtain the benefit of the better prices entered into an alternative trading system.'' [58] The Commission further stated that, ''in light of the significant trading volume on some alternative trading systems, integration of institutional and non-market maker broker-dealer orders into the national market system is essential to prevent the development of a two-tiered market.'' [59] Beyond the general benefits of such integration, the Commission specifically noted that ''prices displayed only on alternative trading systems are immediately known to key market players who can adjust their trading to take advantage of their information advantage.'' [60]

While initially proposing a 10% threshold,[61] the Commission ultimately adopted a 5% threshold. As noted in the Regulation ATS Adopting Release: ''The Commission believes that lowering the threshold to five percent will provide more benefits to investors, promote additional market integration, and further discourage two-tier markets. At the same time, the Commission believes that those alternative trading systems with less than five percent of the volume would not add sufficiently to transparency to justify the costs associated with linking to a market.'' [62]

[49] *See supra* note 36 and accompanying text.

[50] *See supra* notes 9 and 10 and accompanying text.

[51] 15 U.S.C. 78k–1.

[52] *See* Public Law 94–29, 89 Stat. 97 (1975) (adopting Section 11A of the Exchange Act).

[53] *See* 15 U.S.C. 78k–1(a)(1)(D) (''The linking of all markets for qualified securities through communication and data procession facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to best execution of such orders''). *See also* Securities Exchange Act Release No. 39884 (April 21, 1998), 63 FR 23504, 23514 (April 29, 1998) (''Regulation ATS Proposing Release''); Securities Exchange Act Release No. 38672 (May 23, 1997), 62 FR 30485, 30492 (June 4, 1997) (''Concept Release'') (citing *inter alia* SEC, Statement of the Securities and Exchange Commission on the Future Structure of the Securities Markets (February 2, 1972), 37 FR 5286 (March 14, 1972)); Securities Exchange Act Release No. 36310 (September 29, 1995), 60 FR 52792 (October 10, 1995).

[54] *See, e.g.,* Regulation ATS Proposing Release, *supra* note 53, 63 FR at 23511.

[55] *See, e.g.,* Rules 610 and 611 of Regulation NMS, 17 CFR 242.610 and 242.611; Order Handling Rules Release, *supra* note 26 and accompanying text. *See also* H.R. Rep. 94–123, 94th Cong., 1st Sess. 50 (1975) (concluding that ''Investors must be assured that they are participants in a system which maximizes the opportunities for the most willing seller to meet the most willing buyer'').

[56] Concept Release, *supra* note 53, 63 FR at 30492. *See also* Regulation ATS Proposing Release, *supra* note 53, 63 FR at 23514.

[57] *See* Regulation ATS Proposing Release, *supra* note 53, 63 FR at 23514–15 (''The use of these systems to facilitate transactions in securities at prices not incorporated into the [national market system] has resulted in fragmented and incomplete dissemination of quotation information. Recent evidence suggests that the failure of the current regulatory approach to fully integrate trading on alternative trading systems into [the national market system] mechanisms has impaired the quality and pricing efficiency of secondary equity markets, particularly in light of the explosive growth in trading volume on such alternative trading systems'').

[58] Regulation ATS Adopting Release, *supra* note 36, 63 FR at 70865.

[59] *Id.* at 70866.

[60] *Id.* at 70869. *See also* Order Handling Rules Release, *supra* note 26, 61 FR at 48308 (''[T]he ECN amendment is intended to integrate into the public quote the prices of market makers and specialists that are now widely disseminated to ECN subscribers but are not available to the rest of the market'').

[61] *See* Regulation ATS Proposing Release, *supra* note 53, 63 FR at 23515.

[62] Regulation ATS Adopting Release, *supra* note 36, 63 FR at 70867.

The Commission continues to have the same concerns about fragmentation, two-tiered markets, and lack of transparency potentially caused by ATSs as it did when adopting Regulation ATS. However, as explained below, it now preliminarily believes that the 5% threshold for triggering ATS display obligations is too high, and that developments in technology, communications, and market structure warrant a substantial reduction of the ATS display threshold, to 0.25%.

Since the Commission adopted Regulation ATS, the equity markets have evolved significantly and trading activity has become substantially less concentrated. The market shares of major national securities exchanges have declined over the last several years.[63] More recently adopted national market system rules require robust intermarket linkages and protection of best-priced quotations.[64] As noted above,[65] a large number of ATSs operating as dark pools have commenced operations and collectively represent a significant source of liquidity for NMS stocks. Many dark pool ATSs send actionable IOIs regarding subscriber orders held in their systems. Such actionable IOIs typically represent orders that are at or inside the NBBO, which—if incorporated into the public quote stream—could substantially benefit the national market system by, among other things, providing additional liquidity and promoting vigorous price competition between orders and between markets.

Because the number of trading centers has increased and the concentration of trading activity has become more dispersed, even smaller trading centers can now, collectively, have a substantial impact on price discovery for the overall market. For this reason, the Commission preliminarily believes that, to maintain a fair and efficient national market system, the majority of information about orders in NMS stocks communicated by ATSs to selected market participants—whether via actionable IOIs or otherwise—should participate in the public price discovery process. To accomplish this goal, the Commission is proposing to substantially lower the trading volume threshold in Rule 301(b)(3) of Regulation ATS. At the same time, consistent with the goals it articulated in adopting Regulation ATS,[66] the Commission continues to believe that competition is important to a successful national market system, and that ATSs help promote competition among trading centers. Accordingly, rather than proposing to reduce the threshold to 0% and, thereby, effectively requiring that any orders communicated by an ATS to more than one person be made available to the market as a whole, the Commission is proposing a new threshold of 0.25%.

Regulation ATS was designed to balance the benefits of reducing barriers to entry for non-exchange trading venues with the need for appropriate regulation and coordination among exchange and non-exchange trading venues.[67] The proposed display threshold of 0.25% is designed to keep barriers to entry for new ATSs low so as to promote competition, while reducing the amount of important price information that is selectively displayed outside the public quote stream. A new ATS that has not yet reached the 0.25% threshold in an NMS stock would, under the proposed amendments, be permitted to communicate orders in NMS stocks—whether via actionable IOIs or otherwise—to selected market participants. Such an ATS would be able to commence operations without, at least initially, incurring linkage and other costs associated with the requirement to provide order display and execution access. Although the Commission preliminarily believes that these costs are not unduly burdensome, the Commission is sensitive to these costs and preliminarily believes that it is not appropriate at this time to impose such costs on new ATSs that display subscriber orders outside the public quote stream, whether by communicating actionable IOIs or otherwise.[68]

Although the Commission preliminarily believes that most established ATSs that communicate actionable IOIs would be covered by the proposed trading volume threshold,[69] it also preliminarily believes that the proposed amendments to Rule 301(b)(3)(ii) of Regulation ATS would not impose significant costs or inappropriate compliance burdens on such ATSs. As discussed below,[70] for those ATSs that would become subject to Regulation ATS's order display and execution access requirements because of the lowering of the display threshold, and that would comply with that obligation by providing their best-priced orders to an SRO for inclusion in the public quote stream, the Commission preliminarily believes that the costs of linking to an SRO are not substantial. The communications and order-routing systems necessary to comply with Regulation ATS's order display and execution access requirements have improved significantly since they were originally adopted. The Commission believes that robust and extremely fast linkages that were not available at that time are now widely offered on commercially reasonable terms. It also appears that the market for these services is highly competitive, further reducing their cost. The Commission notes that for ATSs currently operating as ECNs, even those with relatively small market shares, already incur the costs associated with providing their best-priced orders to an SRO for inclusion in the public quote stream.[71]

[63] *See supra* notes 9 and 10 and accompanying text.

[64] *See, e.g.,* Rules 610 and 611 of Regulation NMS, 17 CFR 242.610 and 242.611; NMS Release, *supra* note 26, 70 FR at 37501–37503 (summary of basis for requirements).

[65] *See supra* notes 8–10 and accompanying text.

[66] *See* Regulation ATS Adopting Release, *supra* note 36, 63 FR at 70846–47 (''The final rules seek to establish a regulatory framework that makes sense both for current and future securities markets. This regulatory framework should encourage market innovation while ensuring basic investor protections * * *. The Commission believes the framework it is adopting meets the varying needs and structures of market participants and is flexible enough to accommodate the business objectives of, and the benefits provided by, alternative trading systems'').

[67] *See* Regulation ATS Adopting Release, *supra* note 36, 63 FR at 70847 (''The Commission believes the framework it is adopting meets the varying needs and structures of market participants and is flexible enough to accommodate the business objectives of, and the benefits provided by, alternative trading systems'').

[68] If the proposed changes to Rule 301(b)(3) are adopted, a new ATS could engage in limited display of orders in any NMS stock until it reached an average daily trading volume of 0.25% or more in that NMS stock over four of the preceding six months. The Commission preliminarily believes that this proposed threshold should provide a new ATS entrant sufficient opportunity to initiate and develop its business. A new ATS also could structure its business to avoid any display of orders, and thus any impact of the proposed amendments. Consequently, the Commission does not anticipate that the proposed amendments would lessen competition among or innovation by securities markets.

[69] Based on information provided to the Commission by dark pool ATSs on their quarterly Forms R–31, many such ATSs are above 0.25% of total national volume in all NMS stocks. If an ATS has over 0.25% of total national volume in all NMS stocks, it likely exceeds 0.25% in many individual NMS stocks—and thus would become subject to Regulation ATS's display and execution access requirements with respect to such NMS stocks, if the 0.25% threshold were to be adopted by the Commission.

[70] *See infra* in section VI.B.

[71] Some ECNs display or have in the past displayed their orders in FINRA's Alternative Display Facility (''ADF''). Market participants that wish to trade against an ECN order displayed on the ADF must route a contra-side order to the ECN, as the ADF itself does not provide execution functionality. Other ECNs display or have in the past displayed their orders on national securities exchanges that provide an ''order delivery'' functionality. When an order arrives at the exchange seeking to execute against an ECN order

Continued

Any ATS would be able to avoid any direct impact from the proposed amendments by ceasing to send actionable IOIs to more than one person. Such an ATS would not incur any costs to link to an SRO for the purpose of providing its best-priced orders to an SRO for inclusion in the public quote stream. The Commission understands that some ATSs already operate on a completely dark basis, which suggests that this may be a viable business strategy for additional ATSs.[72]

The proposed amendments are designed to create a more level playing field with respect to order display and execution access for all market participants that receive and attempt to execute orders, including exchanges, ATSs, and OTC market makers. By amending Rule 301(b)(3) to make the order display and execution access requirements of ATSs more closely parallel those of other market participants, the Commission preliminarily believes that the national market system would be fairer, more transparent, and more competitive—to the benefit of all investors.

B. Elimination of ''in the alternative trading system'' Limitation

In its current form, the display requirement of Regulation ATS applies only with respect to orders that are displayed to more than one person *in the alternative trading system.*[73] As the Commission noted in the Regulation ATS Adopting Release, the term ''person in the alternative trading system'' means a subscriber of the ATS.[74] The Commission noted that this language would permit ATSs that operated a negotiation feature from incurring any order display obligations pursuant to Regulation ATS.[75]

The Commission proposes to amend Rule 301(b)(3)(ii) by eliminating the phrase ''in the alternative trading system'' and replacing it with the phrase ''(other than alternative trading system employees).'' The purpose of eliminating the phrase ''in the alternative trading system'' would be to make an ATS that meets the volume threshold subject to the display obligation whenever it displays an order in an NMS stock to more than one person, regardless of whether those persons are subscribers of the ATS. When the Commission adopted Regulation ATS in 1998, trading technology and business strategies had not yet evolved to the point where communicating order information to anyone other than a subscriber of an ATS was feasible or even desirable. Given the state of the market in 1998, the Commission did not consider imposing, and thus did not adopt, a display obligation with respect to order information communicated to non-subscribers.

More recent technological developments require the Commission to revisit this issue. As markets have become highly automated and systems for sending, receiving, and processing large numbers of electronic messages have grown more robust and more widely available, many market participants—including some ATSs—now communicate actionable IOIs to attract potential counterparties for subscriber orders that they hold.[76] In many cases, the recipients of those IOIs are not subscribers of the ATS and thus are not ''in'' the ATS. In its current form, however, Rule 301(b)(3) does not cover this type of display, even if the ATS exceeds the current 5% threshold.

The development and implementation of new technology—particularly the ability of third-party vendors to provide fast and robust order-routing services to a wide number of venues on commercially attractive terms—support extending Regulation ATS's display requirements to instances where orders are displayed to more than one person, regardless of whether such persons are subscribers of the ATS. Whether or not a recipient of such order information is deemed to be ''in'' the ATS, communication of such information to a limited subgroup of market participants has the potential to create a two-tiered market.[77] Thus, the Commission preliminarily believes that the phrase ''in the alternative trading system'' unduly restricts the order display and execution access obligations of ATSs, and that the proposed amendment to Rule 301(b)(3)(ii) is appropriate to further the objectives of a national market system.

While the Commission is proposing to delete the phrase ''in the alternative trading system'' from Rule 301(b)(3)(ii), it is proposing to replace it with the phrase ''(other than alternative trading system employees).'' The ability of ATS employees to see such order information should not affect whether the ATS is required to provide its best-priced orders to an SRO for inclusion in the public quote stream. Existing Rule 301(b)(3)(i)(A) already contains the language ''(other than alternative trading system employees).'' By inserting the same phrase in Rule 301(b)(3)(ii), the Commission would clarify that no display obligations are triggered because ATS employees can see subscribers' order information.

C. Size Discovery Exclusion

The Commission proposes to revise Rule 301(b)(3)(ii) of Regulation ATS to add an exclusion for certain large orders to make it consistent with the proposed amendments to the definition of ''bid'' or ''offer'' discussed in section II above. Rule 301(b)(3)(ii) currently states that an ATS is required to provide to an SRO the prices and sizes of the orders at the highest buy price and the lowest sell price for any NMS stock for inclusion in the public quote stream that are, among

that is displayed on the exchange, the exchange will ''deliver'' the contra-side order to the ECN for execution. This order delivery functionality is designed to eliminate the possibility of a double execution of the ECN order (once against an order sent to the exchange and once against an order sent directly to the ECN). To be competitive and comply with relevant regulatory requirements, including Regulation NMS, the exchange and ECN trading systems must be closely integrated and have very high reliability and speed. The prevalence of these order display and routing arrangements employed by ECNs suggests that it would not be inappropriately burdensome for other ATSs to undertake similar order display and routing arrangements to include their trading interest in the consolidated quotation data.

[72] Certain ATSs generate executions by communicating actionable IOIs to selected market participants and thereby benefit from the current regulatory structure. The Commission acknowledges that the proposed amendments could impact such ATSs. However, as explained in this Release (*see infra* section VI.B), the Commission preliminarily believes that the potential benefits to the broader market of the proposed changes to Rule 301(b)(3) would justify these impacts.

[73] *See* 17 CFR 240.301(b)(3)(ii) (''[s]uch alternative trading system shall provide to a national securities exchange or national securities association the prices and sizes of orders at the highest buy price and the lowest sell price for such NMS stock, displayed to more than one person in the alternative trading system, for inclusion in the quotation data made available by the national securities exchange or national securities association'').

[74] *See* Regulation ATS Adopting Release, *supra* note 36, 63 FR at 70866 (''alternative trading systems are not required to provide to the public quote stream orders displayed to only one other alternative trading system subscriber''); *id.* at 70867 (''Rule 301(b)(3) only requires alternative trading systems to publicly disseminate the best priced orders that are displayed to other alternative trading subscribers'').

[75] *See id.* at 70866. Using a negotiation feature, two subscribers of an ATS would communicate with each other using the facilities of the ATS in an attempt to reach agreement on the terms of a transaction. The negotiation could result in one subscriber communicating a firm order to another subscriber, which the latter could accept or reject.

[76] The recipient of such information can respond by sending a firm order back to the sender with the goal of interacting with the contra-side order held by the sender.

[77] However, under the proposal, a negotiation system that allowed one subscriber to communicate an order to a second subscriber in an attempt to reach agreement on the terms of a transaction would continue to be exempt from any order display or execution access requirements under Regulation ATS, because the system is not displaying subscriber orders to more than one person.

other things, displayed to more than one person in the ATS. The Commission proposes to amend Rule 301(b)(e)(ii) to exclude ''orders having a market value of at least $200,000 that are displayed only to those who are reasonably believed to represent current contra-side trading interest of at least $200,000.''

With respect to such ''size discovery orders,'' [78] this proposed amendment to Rule 301(b)(3)(ii) would make the exception from the order display and execution access requirements applicable to ATSs consistent with the proposed exception in Rule 602 applicable to exchanges and responsible brokers and dealers. If Rule 301(b)(3)(ii) were not amended in this manner, the proposed exception to display requirements for size discovery IOIs in Rule 602 would not apply to ATSs. Rule 300(e) of Regulation ATS [79] defines the term ''order'' for purposes of Regulation ATS as including ''any bid or offer quotation'' which, if the Commission adopts this proposal, would no longer include size discovery IOIs. However, Rule 300(e) also defines the term ''order'' to include any ''other priced order.'' Because a size discovery order could be an ''other priced order,'' a size discovery order could be subject to the order display and execution access requirements of Rule 301(b)(3)(ii), regardless of any change to the definition of ''bid'' or ''offer'' in Rule 602. Therefore, the Commission is proposing to amend Rule 301(b)(3)(ii) to explicitly provide that ''orders having a market value of at least $200,000 that are displayed only to those who are reasonably believed to represent current contra-side trading interest of at least $200,000'' would not be subject to Regulation ATS's order display and execution access requirements.[80] For the same reasons discussed in section II above,[81] the Commission preliminarily believes that the proposed amendment to Rule 301(b)(3)(ii) would appropriately balance preventing two-tiered markets and encouraging the public display of limit orders with affording certain large orders some opportunity for size discovery without having to be displayed in the public quote stream.

D. Request for Comment

The Commission requests the views of commenters on all aspects of the proposed amendments to Regulation ATS described above. The Commission also requests particular comment on the following:

1. Is 0.25% of aggregate average daily share volume in an NMS stock an appropriate threshold to trigger the order display and execution access requirements of Regulation ATS? Why or why not? Should the Commission adopt a higher or lower threshold? If so, what should that threshold be and why? Should the Commission leave the threshold at 5%? Would a threshold of 0.25% achieve the desired balance of not creating a barrier to entry for new ATSs while capturing most established ATSs that communicate actionable IOIs? Are there other considerations and goals the Commission should take into account in establishing a new threshold?

2. Should the Commission adopt a threshold based on additional or different criteria other than trading volume (*e.g.,* adjusting the trading volume threshold based on the liquidity of an NMS stock)? If the Commission were to do so, how should that threshold be determined and calculated? For example, what would be the appropriate time period for a liquidity-based threshold?

3. Is it consistent with the Commission's goals to permit very low volume ATSs to display orders to more than one person outside the public quote stream (by communicating actionable IOIs or otherwise) as would be the case with a display threshold of 0.25%, or should the display threshold be 0%? Are such IOIs typically used for more or less liquid NMS stocks? Should the types of NMS stocks that are typically associated with IOI usage affect the setting of the display threshold? If so, how?

4. Would lowering the average daily trading volume threshold to 0.25% promote price transparency and price discovery in the national market system? Why or why not? Are there other rule amendments the Commission could adopt that would achieve the Commission's goals?

5. Should the order display requirements of Rule 301(b)(3) include a size discovery exclusion for large orders? Is a principal amount of $200,000 an appropriate value to define large orders for this purpose? Should the Commission adopt a higher or lower threshold? If so, what should that threshold be and why? Are there other or additional criteria, such as number of shares, on which the exclusion should be based? If so, what are those criteria?

6. Is the amendment to Rule 301(b)(3)(ii) eliminating the phrase ''in the alternative trading system'' appropriate? Should the application of the order display requirements of Rule 301(b)(3)(ii) remain limited to orders that are displayed only to subscribers of an ATS? If so, why?

7. What would be the most likely method of compliance by ATSs were the Commission to adopt the proposed amendments to Rule 301(b)(3)? Do you believe that ATSs that currently send actionable IOIs would choose to comply with the proposed amendments to Regulation ATS by submitting subscriber orders to an SRO for inclusion in the public quote stream or by going completely dark (*i.e.,* not disclosing any information about subscriber orders, whether via IOIs or otherwise)? What percentage of ATSs (whether by number or by the percentage of ATS trading volume that they represent) do you estimate would choose each option? Are there other options not discussed here that ATSs might pursue? Are there other policy implications that the Commission should consider regarding the likely responses by ATSs if the Commission were to adopt the proposed amendments?

8. Do you believe that subscribers of ATSs would change how they use ATSs if the Commission were to adopt the proposed amendments to Regulation ATS? If so, how?

9. How would the proposed amendments affect ATS revenues and the ability of ATSs to offer new products and services?

10. How would the proposed amendments affect internalization and payment-for-order-flow arrangements? Would the proposed amendments provide greater incentives to initiate internalization programs in lieu of developing a new ATS?

11. Would the proposed amendments increase or decrease trading costs for

[78] The Commission notes that the proposed exclusion from Rule 301(b)(3)(ii) would apply to ''orders'' meeting certain criteria rather than to ''indications of interest,'' which are the subject of the proposed exception to Rule 600(b)(8) of Regulation NMS discussed above. Because the term ''order'' is defined broadly in Regulation ATS and incorporated into multiple aspects of the regulation (*i.e.,* recordkeeping and reporting requirements), the Commission preliminarily believes that an effort to distinguish and exclude size discovery IOIs from the definition of ''order'' under Regulation ATS would have additional and unintended effects on Regulation ATS.

[79] 17 CFR 242.300(e).

[80] Because the Commission's objective in the present proposal relates only to order display and execution access required by Rule 301(b)(3)(ii), no change to the definition in Rule 300(e) is being proposed. Therefore, other requirements relating to orders in Regulation ATS—including fair access; capacity, integrity, and security; recordkeeping; reporting; and the confidential treatment of trading information (*see* 17 CFR 242.301(b)(5), (b)(6), (b)(8), (b)(9), and (b)(10), respectively—would continue to apply with respect to all orders, whatever their size. In addition, executions of all orders, whatever their size, would continue to count toward an ATS's trading volume threshold for purposes of Rule 301(b)(3).

[81] *See supra* section II.

institutional investors? If so, please describe and quantify.

12. What would be the effects, if any, on the price discovery process for NMS stocks, their overall liquidity, or other trading characteristics if more ATSs went completely dark?

13. What costs would an ATS incur as a result of the proposed amendments to Rule 301(b)(3)? If an ATS that communicates actionable IOIs chose to comply with amended Rule 301(b)(3) by providing orders to an SRO for inclusion in the public quote stream, what would be the costs of the attendant linkage and order-routing systems (on both an initial and ongoing basis) and their related costs (*e.g.,* compliance costs)? Do you agree with the Commission's preliminary assessment that fast and robust linkage and order-routing systems are widely available to market participants on commercially reasonable terms?

14. Would the proposed amendments to Rule 301(b)(3) have any impact (positive or negative) beyond those described in this release? Would the proposed amendments raise any additional issues that the Commission should consider?

IV. Post-Trade Transparency for ATSs

A. Background

1. Joint-SRO Arrangements for Disseminating Market Information

Section 11A(a)(2) of the Exchange Act, adopted by the Securities Acts Amendments of 1975 (''1975 Amendments''),[82] directs the Commission, having due regard for the public interest, the protection of investors and the maintenance of fair and orderly markets, to use its authority under the Exchange Act to facilitate the establishment of a national market system for securities in accordance with the Congressional findings and objectives set forth in Section 11A(a)(1) of the Exchange Act. Among those findings and objectives is ''the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.'' [83]

Using this authority, the Commission has required the SROs to act jointly pursuant to various national market system plans in disseminating consolidated market information.[84] Under this regulatory framework, the SROs have developed and funded, and presently operate, the systems that disseminate a highly-reliable, real-time stream of consolidated market information throughout the United States and the world.

The joint-industry plans that provide for the dissemination of last sale information for equity securities are the Consolidated Tape Association Plan (''CTA Plan'') and the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (''Nasdaq UTP Plan'') (collectively ''the Plans'').[85] These plans govern the arrangements for disseminating consolidated trade information. Among other things, the plans require the individual SROs to provide trade information for an NMS stock to a securities information processor (''SIP''), which then consolidates the information into a single stream for dissemination to the public. In this way, the public has access to a highly reliable source of information that is consolidated from all the market centers that trade a particular security.[86]

The CTA Plan provides for the dissemination of trade information for any CTA ''Eligible Security'' which is defined as any common stock, long-term warrant, preferred stock, or right admitted to dealings on the New York Stock Exchange LLC (''NYSE''), NYSE Amex LLC (''NYSE Amex'') or the ''regional exchanges.'' [87] The CTA Plan is administered by the Consolidated Tape Association (''CTA''), which consists of a representative from each of the twelve U.S. equities markets.[88]

The Nasdaq UTP Plan was approved on a pilot basis in 1990;[89] it became operational in 1994.[90] The Nasdaq UTP Plan governs the collection, processing, and dissemination on a consolidated basis of quotation information and transaction reports in Eligible Securities for each of its Participants.[91] Eligible Securities under the Nasdaq UTP Plan means any Nasdaq Global Market or Nasdaq Capital Market security (''Nasdaq securities'') as defined in Nasdaq Rule 4200, but does not include any security that is defined as an ''Eligible Security'' within Section VII of the CTA Plan.[92] This consolidated information provides investors with the current quotation and last sale information in Nasdaq securities. It enables investors to ascertain from one data source the current prices in all the markets trading Nasdaq securities. The Nasdaq UTP Plan serves as the transaction reporting plan for its Participants and is a prerequisite for their trading of Nasdaq securities.[93] The Nasdaq UTP Plan is administered by the participating exchanges and association, and applies to all of the markets that trade equity securities.[94] Amendments submitted by SROs to the Plans are subject to Commission review under Rule 608 of Regulation NMS.[95] Further, the Commission may itself amend National Market System plans, pursuant to Rule 608(b)(2) of Regulation NMS.

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[82] Public Law 94–29, 89 Stat. 97 (1975).

[83] Section 11A(a)(1)(C)(iii) of the Exchange Act, 15 U.S.C. 78k–1(a)(1)(C)(iii).

[84] *See, e.g.,* 17 CFR 242.601. This rule requires exchanges to file a transaction reporting plan concerning transactions in listed equity securities executed through their facilities and imposes a parallel requirement on associations for transactions effected otherwise than on a national securities exchange.

[85] The CTA Plan is available at *http://www.nyxdata.com/cta* and the Nasdaq UTP Plan is available at *http://www.utpdata.com.* These plans are transaction reporting plans as well as National Market System Plans and were submitted by the plan participants for notice, comment, and approval by the Commission. The CTA Plan was originally declared effective pursuant to Section 17(a) of the Act and Rule 17a–15 thereunder. *See* Securities Exchange Act Release No. 10787 (May 10, 1974), 39 FR 17799 (May 20, 1974). It was subsequently approved, as amended, under Section 11A of the Act. *See* Securities Exchange Act Release No. 16589 (February 19, 1980), 45 FR 12377 (February 26, 1980). The Nasdaq UTP Plan was approved pursuant to Section 11A(a)(3)(B). *See* Securities Exchange Act Release No. 28146 (June 26. 1990), 55 FR 27917 (July 6, 1990).

[86] For a more detailed description of the Plans, *see* Market Information Concept Release, *supra* note 3, 64 FR at 70616.

[87] Nasdaq securities are expressly excluded from this definition. *See* CTA Plan, Sections I(p) and (q), and VII. The Consolidated Quotation Plan provides for the consolidation of quotations from the markets trading the securities covered by the CTA Plan.

[88] The participants are: BATS Exchange, Inc.; Chicago Board Options Exchange, Inc.; Chicago Stock Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; International Securities Exchange, LLC; The NASDAQ Stock Market LLC; NASDAQ OMX BX, Inc.; NASDAQ OMX PHLX, Inc.; National Stock Exchange, Inc.; New York Stock Exchange LLC; NYSE Amex LLC; and NYSE Arca, Inc. (collectively, the ''Participants'').

[89] *See supra* note 85.

[90] *See* Securities Exchange Act Release No. 34371 (July 13, 1994), 59 FR 37103 (July 20, 1994). Before 1994, the Commission had to grant unlisted trading privileges (''UTP'') to an exchange in order for the exchange to trade an over-the-counter (''OTC'') security. Before the Nasdaq UTP Plan was approved, the Commission approved a limited pilot for exchanges to trade OTC securities. *See* Securities Exchange Act Release No. 22412 (September 16, 1985), 50 FR 38640 (September 24, 1985). In 1994, the Exchange Act was amended to permit exchanges to trade OTC securities on a UTP basis without Commission action.

[91] *See* Nasdaq UTP Plan, Section II.

[92] *See* Nasdaq UTP Plan, Section III (B).

[93] *See* 17 CFR 242.608; *See also* Securities Exchange Act Release No. 55647 (April 19, 2007), 72 FR 20891 (April 26, 2007).

[94] *See supra* note 7.

[95] *See* 17 CFR 242.608.

2. Alternative Trading Systems and Their Arrangements for Disseminating Market Information

Rules applicable to ATSs are set forth in Regulation ATS.[96] ATSs can choose whether to register as national securities exchanges or to register as broker-dealers and comply with additional requirements under Regulation ATS, depending on their activities and trading volume.[97] ATSs that register as broker-dealers [98] are required to be SRO members.[99] Because ATSs effect transactions in the OTC market, they must be members of FINRA.[100]

Rule 601(b) of Regulation NMS under the Exchange Act, which governs the dissemination of transaction reports and last sale information in national market system securities, requires SRO members to transmit the information required by the transaction reporting plans to the SRO.[101] OTC trades, including trades executed by ATSs, are reported to the consolidated trade streams through one of the trade reporting facilities (''TRFs'') operated by FINRA on behalf of exchanges,[102] or through FINRA's ADF.[103] The published trade reports identify the trades as OTC trades; they do not identify the particular ATS or other broker-dealer that reported the trade.[104]

B. Proposed Amendments to the Plans

The Commission has long believed that one of the most important functions it can perform for investors is to ensure that they have access to the information they need to protect and further their own interests.[105] The Commission has consistently supported making timely and accurate reports of transactions available to the public.[106] A transparent market is a market in which investors and their brokers have information about the current buying and selling interest in a security, as well as information about the price and size of recent transactions and where those transactions have taken place.[107] In particular, the Commission has long been an advocate of post-trade transparency and has encouraged the markets to enhance the information made available to the public regarding transactions effected on exchanges and in the OTC market.[108] As the Commission has stated in the past, transparency allows all market participants to assess overall supply and demand, substantially counteracts the effects of fragmentation that necessarily characterize a decentralized market structure, without forcing all executions into one market, and can reduce the ''information gap'' between investors with differing degrees of sophistication.[109] Nationwide disclosure of market information is necessary to assure the efficient pricing of securities, to maximize the depth and liquidity of the securities markets and to provide investors with the opportunity to receive the best possible execution of their orders.[110]

Since the adoption of Regulation ATS, the equity markets have evolved and, among other things, trading activity has become less concentrated. The share of trading volume at certain major national securities exchanges has declined over the last several years.[111] ATSs, including those that are ECNs and those that are dark pools, have gained a growing share of equity trading in the past several years.[112] Currently, approximately 38 percent of trading volume in NMS stocks is reported as OTC (which includes ATS trades).[113] The lack of information concerning the ATS on which trades are executed makes it difficult, if not impossible, for the public to assess ATS trading in real-time, and to reliably identify the volume of executions in particular stocks on individual ATSs.

The Commission preliminarily believes that the current level of post-trade transparency for ATSs is inadequate. Requiring ATS trades to carry a specific identifier that would be disseminated publicly would equalize the trade reporting requirements for exchanges and ATSs, both of which operate systems that bring together orders of multiple buyers and sellers on an agency basis. Accordingly, the Commission is proposing to amend the Plans to require the disclosure of the identity of individual ATSs on trade reports in the public data stream, the same way exchange trades are identified. Requiring the public disclosure of the individual ATS that executed a trade should enable market participants to better assess in real-time where executions in particular securities are occurring among various ATSs in the over-the-counter market. In addition, the proposal should allow more reliable trading volume statistics to be calculated for individual ATSs. The Commission preliminarily believes this should enhance the ability of broker-dealers and their customers to more effectively find liquidity and achieve best execution in the over-the-counter market.

However, the Commission is sensitive to the need of investors executing large size trades to control the information flow concerning their transactions, and preliminarily believes that the disclosure of the identity of the ATS that has executed a particular large size trade could potentially cause undue information leakage about that trading. Identification of an ATS that focuses on such block trading, for example, could signal to the market that the entity trading may plan to execute more trades in the same securities, with the risk that other market participants may attempt to take advantage of this information, to the detriment of the entity engaged in those large trades. The Commission preliminarily believes that the benefits of not disclosing the identity of ATSs that execute large size trades justify not providing such post-trade information about large size trades. The Commission also preliminarily believes that the exception for large size trades strikes the appropriate balance between the need of investors executing large size trades to

[96] *See* 17 CFR 242.300 *et seq.*

[97] *See* 17 CFR 242.301.

[98] *See* Section 15(b) of the Act, 15 U.S.C. 78*o*(b).

[99] *See* Section 15(b)(8) of the Act, 15 U.S.C. 78*o*(b)(8).

[100] *Id.*

[101] *See* 17 CFR 242.601(b).

[102] *See* FINRA Rules 6300 *et seq.* FINRA has established the following TRFs (each in conjunction with the pertinent Exchange): the FINRA/NASDAQ TRF and the FINRA/NYSE TRF.

[103] *See* FINRA Rules 6200 *et seq.* The ADF is both a trade reporting and quotation display and collection facility for purposes of transactions in NMS stocks effected otherwise than on an exchange.

[104] Members reporting trades to FINRA attach their unique Market Participant Symbols (''MPIDs'') for reporting a trade to a TRF or the ADF, but the MPID is not disseminated publicly on trade reports. Trades reported to one of the two FINRA TRFs are transmitted to the SIPs for CTA or Nasdaq UTP (and disseminated to the public) with a market center identifier of FINRA and a sub-indicator for the relevant exchange TRF (*i.e.,* NYSE or NASDAQ).

[105] *See, e.g.,* Market Information Concept Release, *supra* note 3, at 70614.

[106] *See, e.g.,* Securities Exchange Act Release No. 16589 (February 19, 1980), 45 FR 12377 (February 26, 1980) (amending the rule governing the collection and dissemination of transaction reports and last sale data).

[107] *See, e.g.,* Securities Exchange Act Release No. 50700 (November 18, 2004), 69 FR 71256, 71271 (December 8, 2004).

[108] *See, e.g.,* Securities Exchange Act Release No. 30569 (April 10, 1992), 57 FR 13396 (April 16, 1992) (stating, among other things, that real-time publicly disseminated trade reporting is crucial to the efficient and fair operation of capital markets).

[109] *See id.*

[110] *See, e.g.,* SEC, Statement of the Securities and Exchange Commission on the Future Structure of the Securities Markets (February 2, 1972), 37 FR 5286, 5287 (March 14, 1972).

[111] *See supra* notes 9–10 and accompanying text.

[112] *See* Securities Exchange Act Release No. 59248 (January 14, 2009), 74 FR 4357, 4361 (January 26, 2009); *see also* Regulation ATS Adopting Release, *supra* note 36, at 70844.

[113] *See, e.g.,* market volume statistics available at *http://www.batstrading.com/market_summary* (OTC volume in NMS stocks was 37.7% during 5-day period ending September 21, 2009).

minimize significant information leakage and the right of the investing public to have this identifying post-trade information. Therefore, the Commission is not proposing to require the identification of ATSs on trade reports in the public data stream for large size trades.[114]

Specifically, the Commission is proposing to revise the definition in the CTA Plan of Last Sale Price Information, to add language at the end of the first paragraph of Section VI(f) (Market Identifiers) of the CTA Plan, and to revise the second and third sentences of Section VIII(a) (Responsibility of Exchange Participants). Together, these changes would amend the CTA Plan to require that all last sale prices collected by FINRA from each ATS be accompanied by an identifier unique to the ATS and distributed by the SIP, unless the trade has a market value of at least $200,000. Such trades would continue to be reported as OTC trades without an ATS identifier.

The Commission also is proposing to amend the Nasdaq UTP Plan to achieve the same result. Specifically, the Commission is proposing to revise the definition of ''Transaction Reports'' in Section III (U), the language in Section VI(C)(3) regarding processor dissemination of information via transaction reports, and Section VIII(B) regarding Transaction Reports. Together, these changes would amend the Nasdaq UTP Plan to require that all last sale prices collected by FINRA from each ATS be accompanied by an identifier unique to the ATS and distributed by the SIP, unless the trade has a market value of at least $200,000. Such trades would continue to be reported as OTC trades without an ATS identifier.

Currently, as discussed above, the identity of the ATSs is not reported to the public data stream. Recognizing the changes that have taken place in the marketplace and the increased share of equity trading by ATSs in the last number of years, the Commission preliminarily believes that requiring the disclosure of the identity of ATSs on their trade reports in the public data stream should be beneficial to investors. The proposed amendments would augment available trade information, provide important information about trading volumes of ATSs, including dark pools, as well as information on which ATSs may have liquidity in particular stocks. The Commission also preliminarily believes that the resulting improved transparency would help ensure that publicly available prices fully reflect overall supply and demand, equip the investing public with tools to make better investment decisions, increase the perception of fairness that is necessary for the healthy functioning of the national market system, and, as a result, enhance public confidence in the securities markets.[115]

C. Request for Comment on Proposed Plan Amendments

The Commission invites interested persons to submit written comments on any aspect of the proposed Plan amendments. The Commission seeks comment on whether there are alternative approaches to improving ATS post-trade transparency that the Commission should consider that would achieve the Commission's stated goals. The Commission specifically seeks comment on whether the amendment of the Plans is the best way to address the matter. If there are alternative approaches, such as requiring the TRFs to make the identity of ATSs that submit trade reports available to the public as part of their proprietary data streams, please discuss your suggested approach, its feasibility, and how it would achieve the Commission's goals. In addition, the Commission seeks comment on the timing and level of detail that ATSs should be required to provide about their trading activity. Would summary information, such as end-of-day volume statistics be preferable to real-time, trade-by-trade disclosure? If so, please explain your reasoning. Would real-time identification of ATS trades cause inappropriate information leakage concerning customer orders or result in other unintended consequences? What modifications could the Commission make to its proposal to address any such concerns? Will the proposed change affect trading on exchanges, where no large trade exception applies? The Commission also seeks comment on whether the proposed exception to the ATS trade reporting requirement for large size trades is justified and would help minimize concerns about information leakage. If a large size trade exception is not appropriate, please explain why you believe such an exception is not necessary. Further, is the proposed threshold the appropriate one, or should it be higher or lower? Should the Commission consider using a threshold other than a dollar threshold, such as a certain number of shares? How should the Commission establish such a threshold; for example, should it use other existing thresholds? If the Commission adopts the Plan amendments with the exemption for large size trades, should the Commission require that the information with respect to which ATS effected the large size trades be made public at the end of the day (or at other time intervals), rather than in real-time as would occur if this were included in the consolidated data stream? In addition, comment is requested on the effect of the proposed post-trade disclosure on investors, ATSs, vendors and others that may be affected by the proposed amendments, as well as the effect on the market place and any competitive effect the proposed Plan changes may have.

V. Paperwork Reduction Act

A. Actionable IOIs

The proposed amendment of Rule 600(b)(8) of Regulation NMS does not contain any ''collection of information requirements'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[116] Rule 600 of Regulation NMS contains all of the defined terms used in Regulation NMS. The proposed amendment of Rule 600(b)(8) would revise the definition of ''bid'' or ''offer'' by expressly limiting its exclusion of IOIs to those ''that are not actionable and indications of interest for a quantity of NMS stock having a market value of at least $200,000 that are communicated only to those who are reasonably believed to represent current contra-side trading interest of at least $200,000.'' The practical result of the amendment would be that actionable IOIs that do not qualify for the size discovery exclusion would be ''bids'' or ''offers.''

While the amendment to Rule 600(b)(8) does not contain any collection of information requirements within the meaning of the PRA, the proposed change in the definition of ''bid'' or ''offer'' could affect the collection of information burdens under Rule 602 of Regulation NMS.[117] ''Bid''

[114] As with the other proposed amendments discussed above in the release, the Commission is proposing to use the $200,000 figure to define large size trades. It is a figure that is well recognized as constituting a large size order. The Commission is concerned that with these large size trades there is more potential for information leakage. For a more detailed discussion of large size trades and the $200,000 figure, *see* section II.

[115] *See supra* notes 107–109 and accompanying text.

[116] 44 U.S.C. 3501, *et seq.*

[117] The proposed amendment to Rule 600(b)(8) of Regulation NMS also may affect the obligations imposed by Rule 301(b)(3) of Regulation ATS on ATSs that meet the specified trading volume threshold. Rule 301(b)(3) does not, however, currently contain a collection of information requirement as defined by the PRA because it currently affects fewer than ten entities. However, the proposal to lower the trading volume threshold contained in Rule 301(b)(3)(i)(B) could affect the number of entities subject to Rule 301(b)(3) so that

and ''offer'' are key terms that determine the scope of Rule 602 of Regulation NMS. In general, Rule 602 requires exchange members and OTC market makers to provide their best-priced bids and offers to their respective exchanges and FINRA. The exchanges and FINRA, in turn, are required to make their best bids and offers available in the consolidated quotation data. The Commission does not believe that the proposed amendment to Rule 600(b)(8) would require any new or additional collection of information under Rule 602. Exchange members and certain OTC market makers would continue to be required to provide their best-priced bids and offers to their respective exchanges and FINRA.[118] The proposed amendment to Rule 600(b)(8) could increase the number of ''bids'' or ''offers'' that exchange members and OTC market makers would be required to review to determine their best-priced bids and offers. It is the Commission's understanding that all exchange members and OTC market makers have systems and procedures in place to make this determination today. As a result, the Commission believes that any burden increase in determining their best-priced bids and offers due to the proposed inclusion of actionable IOIs in the definition of ''bid'' or ''offer'' would not substantively or materially change existing collection burdens.[119] The Commission encourages comment on all aspects of this issue. In addition, the Commission encourages specific comment on:

1. To what extent, if at all, would the proposed amendment to Rule 600(b)(8) increase the number of bids or offers that exchange members and OTC market makers would be required to review and report to their respective exchanges and FINRA for inclusion in the consolidated quotation data? Please provide data and specific quantifications.

2. To what extent, if at all, would system changes or increases in system capacities be necessary to exchange members or OTC market makers to comply with the requirements of Rule 602, if the Commission were to adopt the proposed amendments to Rule 600(b)(8)?

B. ATS Display Obligations

Certain provisions of the proposed amendments to Regulation ATS rules contain ''collection of information requirements'' within the meaning of the PRA.[120] The Commission has submitted the information to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507 and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The title of this collection is ''Rule 301, Form ATS and Form ATS–R'' (OMB Control Number 3235–0509).

1. Summary of Collection of Information

Rule 301(b)(3) of Regulation ATS governs order display and execution access for ATSs. Currently, the rule provides that an ATS incurs order display and execution access obligations if it displays subscriber orders in an NMS stock to more than one person in the ATS and the ATS has 5% or more of the average daily trading volume in such NMS stock, as reported by an effective transaction reporting plan. An ATS meeting these criteria must provide to an SRO the prices and sizes of the orders at the highest buy price and the lowest sell price for such NMS stock for inclusion in the public quote stream.

The proposed amendment to Rule 301(b)(3)(i)(B) of Regulation ATS would broaden the applicability of these order display and execution access requirements by reducing the trading volume threshold from 5% of the aggregate average daily share volume to 0.25%. The proposed amendment to Rule 301(b)(3)(ii) would clarify that the order display and execution access requirements apply when a subscriber order is displayed to more than one person (other than ATS employees), regardless of whether such persons are subscribers of the ATS. The proposed amendments to Rule 301(b)(3)(i)(A) and (ii) would provide an exception to the order display and execution access requirements for orders that have a market value of at least $200,000 and are communicated only to those who are reasonably believed to represent current contra-side trading interest of at least $200,000.

The proposed amendments would not impact Form ATS or Form ATS–R. ATSs would continue to evaluate and submit the same information on these forms. Accordingly, the proposed amendments, if adopted, would not result in any revision to those collections of information. However, the proposed amendments could result in more ATSs being required to establish connections to SROs in order to display their best-priced orders. Each such ATS also could be required to expand or modify its systems capacity, internal controls, and compliance policies and procedures to provide orders to an SRO in a manner consistent with the SRO's rules and enable market participants to access such orders for execution. These requirements would constitute a ''collection of information'' that would be subject to the PRA.

The current collection of information, ''Rule 301, Form ATS and Form ATS–R'' (OMB Control Number 3235–0509), does not contain a collection of information with respect to Rule 301(b)(3) of Regulation ATS. When adopted, Rule 301(b)(3) did not contain a collection of information because fewer than ten entities were affected by Rule 301(b)(3).[121] In addition, under the current 5% volume threshold, it remains the case that fewer than ten ATSs are required to send best-priced orders to an SRO for inclusion in the consolidated public quote system.[122]

Since the adoption of Regulation ATS, the number of ATSs has grown significantly, and the national market system and the nature of order interaction have evolved considerably. Currently, there are numerous dark pool ATSs, many of which use actionable IOIs as a means to attract order flow. The proposed amendment to Rule 600(b)(8) of Regulation NMS to include actionable IOIs within the definition of ''bid'' or ''offer'' and the proposed lowering of the trading volume threshold in Rule 301(b)(3) from 5% to 0.25% might impose collection of information requirements on ten or more ATSs. For this reason, the Commission has prepared an estimate of the associated compliance burdens on ATSs for purposes of the PRA, as further detailed below.

The Commission preliminarily believes that the proposed amendment to Rule 301(b)(3) of Regulation ATS would not, if adopted, substantively or materially change collection burdens for SROs under the requirements of Rule

the amended rule would contain a collection of information. The PRA burden associated with the proposed amendment to, and amendments affecting the application of, Rule 301(b)(3)(i)(B) are discussed below in section V.B.

[118] Under the definition of ''subject security'' in Rule 600(b)(73)(ii)(A) of Regulation NMS, an OTC market maker is not required to provide its best bids and offers for an NMS stock if the executed volume of the firm during the most recent calendar quarter comprised one percent or less of the aggregate trading volume for such NMS stock.

[119] The information collection contained in Rule 602, entitled ''Dissemination of Quotations—Rule 11Ac1–1,'' the precursor to Rule 602, has been assigned control number 3235–0461. The Commission, however, will be updating the overall burden estimate for this collection of information to account for an increase in the number of self-regulatory organizations subject to the Rule.

[120] 44 U.S.C. 3501 *et seq.*

[121] *See supra* note 117.

[122] This information is based on discussions of Commission staff with certain potential ATS respondents and other market participants.

602 of Regulation NMS.[123] Under the proposal, order information that is communicated by ATSs to more than one person outside the public quote stream (whether via actionable IOIs or otherwise) could be required to be incorporated into the public quote stream. As described above, to do so an ATS would send the order information to an SRO, and that SRO would then be responsible under Rule 602 for incorporating the information into the consolidated public quote stream.[124] The Commission preliminarily believes, however, that the additional burden on the SRO of including such ATS orders with the large volume of quotations that the SRO already includes in the public quote stream under Rule 602 would not be substantive or material. The Commission encourages comment on this point.

2. Proposed Use of Information

Rule 301(b)(3) of Regulation ATS requires an ATS to provide to an SRO the prices and sizes of the orders at the highest buy price and the lowest sell price in an NMS stock upon the satisfaction of certain threshold conditions under Rules 301(b)(3)(i)(A) and (B). If the Commission adopts the proposed amendments to Rule 301(b)(3), more than ten entities could become subject to the requirement to provide this order information to an SRO. Such information would be used by the SRO to determine the SRO's best bid, best offer, and aggregate quotation sizes. The SRO must make that information public, pursuant to Rule 602 of Regulation NMS.[125] This information is used, among other ways, by market participants to understand the market and to inform their trading decisions. The Commission also may use this information as part of its general market oversight and regulatory functions.

3. Respondents

There are approximately 73 ATSs that are subject to Regulation ATS. Of these, approximately 11 are dark pool ATSs that use actionable IOIs. Approximately one other ATS that is not an ECN displays subscriber orders in NMS stocks on a limited basis in some other fashion.[126] Therefore, the Commission preliminarily believes that up to 12 ATS respondents could be impacted by the proposed amendments to Rule 301(b)(3).[127] The remaining 61 ATSs likely would not be impacted for PRA purposes by the proposed amendments, because they: (a) do not display subscriber orders in NMS stocks to more than one person (whether by communicating actionable IOIs or otherwise), (b) are ECNs and already publicly display subscriber orders, or (c) do not effect transactions in NMS stocks.[128] The Commission seeks comment on the number of ATSs that could be impacted by the proposed changes and the nature of such impacts.

4. Total Initial and Annual Reporting and Recordkeeping Burdens

The proposed amendments to Rule 301(b)(3) of Regulation ATS would, if adopted, increase the collection of information burdens only with respect to those ATSs with sufficient volume in an NMS stock (0.25% or more of the aggregate average daily share volume) that choose to communicate actionable IOIs or that otherwise display order information to more than one person. An ATS crossing the 0.25% threshold would be required to provide its best-priced orders to an SRO for inclusion in the public quote stream. As stated previously, ATSs that are completely dark (*i.e.,* that do not display any subscriber order information, whether by communicating actionable IOIs or otherwise) would not be impacted by the proposed amendments to Rule 301(b)(3).

The Commission preliminarily believes that including actionable IOIs as bids or offers under Rule 600(b)(8) of Regulation NMS and reducing the average daily trading volume threshold in Rule 301(b)(3) of Regulation ATS from 5% to 0.25% could increase the order display and execution access obligations of ATSs that transmit actionable IOIs or otherwise display order information to selected market participants. These obligations could entail the initial burdens of re-programming their current systems to monitor the ATS's percentage of trading in NMS stocks, establishing linkages to an SRO for the purpose of submitting orders to the SRO for public display and of providing access to market participants wishing to trade against such orders, and expanding systems capacity and internal controls, including establishing or modifying applicable compliance policies and procedures, to carry out these functions in a manner consistent with the SRO's rules.[129] The Commission preliminarily believes that such obligations could include ATS staff time to build new systems or re-program current systems, as well as ongoing ATS staff time to maintain such systems and carry out their associated functions.

The Commission preliminarily estimates that the one-time, initial annualized expense for potential ATS respondents to establish connectivity to an SRO would be approximately $3,900,000.[130] In addition, the Commission preliminarily estimates that the one-time, initial annualized burdens for all potential ATS respondents to comply with the proposed amendments to Rule 301(b)(3) would be approximately 17,880 burden hours.[131] This figure is based on the

[123] *See supra* notes 117 and 118 and accompanying text.

[124] *See id.*

[125] 17 CFR 242.602.

[126] The Commission notes that there are presently four ATSs operating as ECNs, as defined in Rule 600(b)(23) of Regulation NMS, 17 CFR 242.600(b)(23). These ATSs already display customer orders in the public quote stream and permit market participants to access such orders. Accordingly, these systems would not have new burdens under Rule 301(b)(3), as the Commission is proposing to amend it.

[127] The Commission notes that, of these 12 potential respondents, any could choose to avoid Regulation ATS's order display and execution access requirements by choosing not to display subscriber orders to more than one person (or by displaying to more than one person only size discovery orders). Nevertheless, as set forth above, the Commission preliminarily believes that the proposed changes to Rule 301(b)(3) constitute a ''collection of information'' under the PRA. The proposed amendments also could impact new ATSs or existing ATSs that expand their business activities.

[128] The Commission obtains information on the securities that are traded by ATSs from the Forms ATS filed with the Commission by ATSs.

[129] Currently, under Rule 301(b)(3) of Regulation ATS, an ATS that displays subscriber orders to any person (other than ATS employees) and has an average daily trading volume of 5% or more of the aggregate daily share volume for an NMS stock is required to provide to an SRO the best priced orders for such NMS stock for inclusion in the public quote stream. Thus, ATSs are already required to monitor trading levels in NMS stocks and have policies and procedures in place to do so. As a result of the proposed amendments to Rule 301(b)(3), which would lower the average daily trading volume threshold from 5% to 0.25% and provide for an exception to the display obligation for orders that have a market value of at least $200,000 and are communicated only to those who are reasonably believed to represent current contra-side trading interest of at least $200,000, ATSs could be required to re-program their respective systems that monitor trading levels in NMS stocks to reflect this change in the average daily trading volume threshold.

[130] This figure is the total initial, one-time annualized expense to establish electronic connections with an SRO for all potential ATS respondents and is based on discussions of Commission staff with certain potential ATS respondents and other market participants. The Commission derived the total estimated expense from the following: (($25,000 relating to hardware- and software-related expenses) + ($25,000 monthly ongoing costs to maintain the connection × 12 months)) × (12 potential ATS respondents) = $3,900,000.

[131] This figure is based on discussions of Commission staff with certain potential ATS respondents and other market participants. The Commission derived the total estimated one-time burdens from the following: [((Sr. Programmer at 320 hours) + (Compliance Manager at 20 hours) + (Compliance Attorney at 20 hours) + (Programmer Analyst at 20 hours) + (Sr. Systems Analyst at 30

estimated number of hours for initial internal development and implementation by an ATS to re-program its system, expand system capacity, and adjust internal controls, including costs to establish or modify applicable compliance policies and procedures.

The Commission also has estimated the ongoing expenses of complying with the proposed amendments to Rule 301(b)(3), which could include, among other things, maintaining connectivity with an SRO, monitoring daily trade activity, and ensuring compliance. The Commission preliminarily estimates that the ongoing annualized expense for all potential ATS respondents to maintain connectivity to an SRO would be approximately $3,600,000.[132] In addition, the Commission preliminarily estimates that the ongoing annualized burdens for all potential ATS respondents to comply with the proposed amendments to Rule 301(b)(3) would be approximately 9,648 burden hours.[133] This figure includes the estimated number of internal professional staff hours for running compliance policies and procedures (including monitoring daily trading activity), ongoing system maintenance and development, and personnel costs associated with maintaining connectivity to an SRO.

The Commission is also proposing a change to Rule 301(b)(3)(ii) that would add an exception to the display and execution access requirements for orders that have a market value of at least $200,000 and are communicated only to those who are reasonably believed to represent current contra-side trading interest of at least $200,000. The Commission preliminarily believes that no ATS would incur any increased burdens because of the proposed exception. An ATS would incur either the same burdens (because it communicated no orders that met the terms of the proposed exception) or fewer burdens (because some or all of the orders that it communicated met the terms of the proposed exception, thus reducing the number of orders under the proposed amendments to Rule 301(b)(3) that the ATS would otherwise have to provide to an SRO for inclusion in the public quote stream). Some ATSs that might avail themselves of the proposed exception already have in place the functionality to communicate size discovery orders, have average execution sizes above $200,000, and have developed strategies to identify market participants that are reasonably believed to represent current contra-side trading interest of at least $200,000.[134] Thus, the Commission preliminarily believes that such ATSs would not incur any costs if the Commission were to adopt the proposed exception.

The Commission seeks comment on the reporting and recordkeeping collection of information burdens associated with the proposed amendments. In particular:

1. How many ATSs would incur collection of information burdens if the proposed amendments to Regulation ATS were adopted by the Commission?

2. Would ATSs respond to the proposed amendments by linking to an SRO for the purpose of displaying their best-price orders in the public quote stream or by going completely dark? If the former, what would the initial and ongoing PRA burdens be of linking to an SRO to provide such orders and to offer execution access to those orders consistent with the SRO's rules?

3. What are the burdens, both initial and annual, that an ATS would incur for programming, establishing connectivity to an SRO, expanding systems capacity, and establishing compliance programs if the Commission were to adopt the proposed amendments? Would there be additional burdens associated with the collection of information under these proposed amendments?

4. What additional burdens, both initial and annual, if any, would an ATS incur related to the proposed exception for size discovery orders?

5. Retention Period of Recordkeeping Requirements

An ATS would be required to retain records and information pertaining to its operations, including information that would have to be disclosed under the proposed amendments to Rule 301(b)(3), pursuant to, and for the periods specified in, Regulation ATS.[135] In addition, the broker-dealer operating an ATS is subject to the recordkeeping requirements specified in Section 17 of the Exchange Act and the rules and regulations thereunder.[136]

6. Collection of Information is Mandatory

Any collection of information pursuant to the proposed amendments to Rule 301(b)(3) would be a mandatory collection of information.

7. Responses to Collection of Information Will Not Be Kept Confidential

The collection of information resulting from the proposed amendments to Rule 301(b)(3) would not be confidential and would be publicly available.

8. Request for Comment

Pursuant to 44 U.S.C. 3505(c)(2)(B), the Commission solicits comment to:

1. Evaluate whether the proposed collection of information is necessary for the performance of the functions of the agency, including whether the information shall have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

C. Post-Trade Transparency for ATSs

Certain provisions of the proposed amendments to the CTA Plan and the Nasdaq UTP Plan would result in a new ''collection of information requirement'' within the meaning of the PRA.[137] The Commission is therefore submitting this proposal to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507 and 5 CFR 1320.11. The title for the collection of information requirements is the ''CTA Plan and the Nasdaq UTP Plan, 'Post-trade Transparency for ATSs.'''

hours)) × (2 months) + ((Sr. Programmer at 2 hours) + (Compliance Manager at 6 hours) + (Compliance Attorney at 4 hours) + (Compliance Clerk at 40 hours) + (Sr. Systems Analyst at 2 hours) + (Director of Compliance at 5 hours) + (Sr. Computer Operator at 8 hours)) × (10 months)] × (12 potential ATS respondents) = 17,880 burden hours.

[132] This figure is the total ongoing annualized expense to maintain electronic connections with an SRO for all potential ATS respondents and is based on discussions of Commission staff with certain potential ATS respondents and other market participants. The Commission derived the total estimated expense from the following: (($25,000 monthly ongoing costs to maintain the connection × 12 months)) × (12 potential ATS respondents) = $3,600,000.

[133] This figure is based on discussions of Commission staff with certain potential ATS respondents and other market participants. The Commission derived the total estimated ongoing burdens from the following: ((Sr. Programmer at 2 hours) + (Compliance Manager at 6 hours) + (Compliance Attorney at 4 hours) + (Compliance Clerk at 40 hours) + (Sr. Systems Analyst at 2 hours) + (Director of Compliance at 5 hours) + (Sr. Computer Operator at 8 hours)) × (12 months) × (12 potential ATS respondents) = 9,648 burden hours.

[134] The Commission obtains information about ATSs' trading methods from the Forms ATS submitted to it by ATSs.

[135] *See, e.g.,* 17 CFR 242.302; 17 CFR 242.303.

[136] *See* 15 U.S.C. 78q; 17 CFR 240.17a–1 *et seq.*

[137] 44 U.S.C. 3501 *et seq.*

Compliance with the collection of information requirements would be mandatory. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. OMB has not yet assigned a control number to the new collection requirements in the proposed amendments to the CTA Plan and Nasdaq UTP Plan.

1. Summary

The CTA Plan and the Nasdaq UTP Plan are the joint-industry plans that provide for the dissemination of last sale information for equity securities and set forth the arrangements for dissemination of consolidated trade information. Currently, trades executed in the OTC market, including trades executed by ATSs, are reported to the consolidated trade streams through one of the TRFs operated by FINRA on behalf of the exchanges or to the ADF. As ATSs effect transactions in the OTC market, they must be FINRA members and the trade reports currently identify their trades as OTC trades. The ATS that executed the trade, however, is not currently identified in the public data streams.

The proposed amendments to the CTA Plan and the Nasdaq UTP Plan would require the disclosure of the identity of those ATSs subject to Regulation ATS on trade reports in the public data steam. Specifically, the proposed amendments to the CTA Plan and the Nasdaq UTP Plan would require that all last sale prices collected by FINRA from each ATS subject to Regulation ATS be accompanied by an identifier unique to the ATS and be transmitted to the SIP, unless the trade is a large size trade with a market value of at least $200,000.

The proposed Plan amendments by redefining terms in the Plans, indirectly would require ATSs to include a unique identifier when transmitting last sale price data to FINRA. All ATSs currently report their transactions to FINRA, under FINRA rules, using an MPID, but the Commission understands some ATSs currently use the MPID of their sponsoring broker-dealer. As a result, some ATSs may need to obtain a unique MPID from FINRA, which FINRA provides at no cost.[138] Those ATSs would need to re-program their systems to substitute the new MPID for their sponsoring broker-dealer's MPID when transmitting last sale price data to FINRA. The Commission believes that the proposed amendments to the CTA Plan and the Nasdaq UTP Plan with respect to the ATSs would result in a ''collection of information,'' but would not trigger a burden outside the ordinary and customary business of the ATS for purposes of the PRA.

The proposed Plan amendments would require FINRA to transmit to the SIPs a unique identifier from each ATS subject to Regulation ATS, unless the trade is a large size trade (a trade with a market value of at least $200,000). Currently, FINRA receives the MPID information from the ATSs as required by FINRA rules. FINRA, however, currently removes the MPID from the trade reports before submitting them to the SIPs. Under the proposed Plan amendments, FINRA would need to re-program its systems to transmit the MPIDs for ATS trades to the SIPs, except for large size trades with market value of at least $200,000. The Commission believes that the proposed amendments to the CTA Plan and the Nasdaq UTP Plan with respect to FINRA would result in a ''collection of information,'' as well as a minor burden for purposes of the PRA.

The proposed Plan amendments would require the SIPs, for the CTA Plan and the Nasdaq UTP Plan, to disseminate information provided to them by FINRA. Under the proposed Plan amendments, the SIPs would need to re-program their systems to enable them to accept as well as transmit trade reports with the additional data element, the MPID, for those ATS transactions that have a market value of less than $200,000. The Commission believes that the proposed amendments to the CTA Plan and the Nasdaq UTP Plan with respect to the SIPs would result in a minor burden for purposes of the PRA.

The Commission encourages comment on all of these points.

2. Proposed Use of Information

The proposed amendments to the CTA Plan and the Nasdaq UTP Plan would require that all last sale prices collected by FINRA from each ATS subject to Regulation ATS be accompanied by an identifier unique to the ATS and be transmitted to the SIP, unless the trade is a large size trade with a market value of at least $200,000. If the Commission adopts the proposed amendments to the Plans, some ATSs would now be required to get a unique identifier, rather than use the identifier of their sponsoring broker-dealer. Such information should enable the public to determine more accurately the volume of executions occurring on any particular ATS, as well as on ATSs in general. The SIPs must make this information public, pursuant to the CTA Plan and Nasdaq UTP Plan. This information is used, among other ways, by market participants to understand the market and to inform their trading decisions. The Commission also may use this information as part of its general market oversight and regulatory functions.

3. Respondents

There are approximately 73 ATSs that are subject to Regulation ATS. Of these, approximately 30 are dark pool ATSs. The Commission understands that some of these ATSs disseminate market data using the identifier of their sponsoring broker-dealer while others already use a unique identifier for their trades. Those using their sponsoring broker-dealer's identifier would have to acquire another identifier and incur a one-time systems cost to change the identifier that gets affixed to their trade reports. The ATSs using a unique identifier would not be affected for PRA purposes by the proposed Plan amendments, because they currently use a unique identifier. All last sale prices for OTC transactions are collected by FINRA and then transmitted to the SIP. The Commission seeks comment on the number of ATSs that could be affected by the proposed changes and the nature of such effects on the ATSs, FINRA, and the SIP.

4. Total Initial and Annual Reporting and Recordkeeping Burdens

The proposed amendments to the CTA Plan and Nasdaq UTP Plan would, if adopted, to varying degrees, increase the collection of information burdens for ATSs, FINRA, and the SIPs.

a. Burden on ATSs

The Commission understands that all ATSs currently report their transactions to FINRA pursuant to FINRA's rules using an MPID, with some ATSs reporting their transactions using an MPID of their sponsoring broker-dealer, while other ATSs use a unique MPID. The Plan changes would require that each ATS have a unique MPID. Therefore, some ATSs would have to acquire an MPID from FINRA. The Commission preliminarily believes that ATSs that already use a unique MPID would not incur additional collection of information burdens related to the transmission of unique MPIDs. Those ATSs that currently use an MPID of their sponsoring broker-dealer may incur a de minimis cost in re-programming their systems to substitute the new MPID for the one currently used in transmitting their transactions to FINRA.

[138] ATSs can obtain an additional MPID from FINRA. *See* FINRA Rules 6160 and 6170.

The Commission preliminarily believes that this collection of information would not involve any substantive or material change in the burden that already exists as part of the ATSs' ordinary and customary activities in providing MPID information to FINRA in the normal course of business, pursuant to FINRA's rules.[139]

b. Burden on FINRA

Currently, when FINRA reports transactions to the SIPs, the MPID is dropped from every transaction report and an identifier is appended indicating the trade was executed OTC. Under the proposed amendments, each ATS trade report would carry a unique ATS indicator, in addition to the OTC indicator, unless the trade is a large size trade. FINRA, upon the receipt of an ATS trade report with a unique indicator would retransmit the trade report to the SIP, after excluding the ATS identifier from trade reports for large size trades. FINRA would have to re-program its systems to allow for the trade report message to carry the unique identifier for each ATS and to exclude the identifier for large size trades from the transmission to the SIPs.

The Commission preliminarily estimates that the one-time, initial annualized expense for FINRA for development, including re-programming and testing of the systems would be approximately $1,175,000.[140]

The Commission preliminarily estimates that the one-time, initial annualized burden for FINRA development, including re-programming and testing of the systems to comply with the proposed amendments to the Plans would be approximately 100 burden hours.[141]

The Commission preliminarily believes that the ongoing annualized expense for FINRA would not result in a burden for purposes of the PRA, as FINRA currently transmits trade report messages to the SIPs in the normal course of business.[142]

c. Burden on the SIPs

Currently, the SIPs do not receive an MPID from FINRA for the ATS trades. FINRA removes the MPID and an identifier is appended indicating the trade was executed OTC. Under the proposed Plan amendments, the SIPs would receive from FINRA a trade report identifying the specific ATS on which a trade was executed, unless the trade is a large size trade. The SIPs would need to re-program their systems to allow for the trade report message that carries the unique identifier for each ATS to be received by the SIPs and then later allow for the transmission of the information to the vendors.

The Commission preliminarily estimates that the one-time, initial annualized burden for the Securities Industry Automation Corporation (''SIAC''), which serves as a SIP for the CTA Participants, to comply with the proposed Plan amendments would be approximately 320 burden hours.[143] This figure is based on the estimated number of hours for SIAC to provide planning, development, implementation, testing, and quality assurance.

The Commission further preliminarily estimates that the one-time, initial annualized burden for the Nasdaq SIP, which serves as a SIP for the UTP Participants, to comply with the proposed Plan amendments would be approximately 800 burden hours.[144] This figure is based on the estimated number of hours for the Nasdaq SIP to develop and test the software and work with the UTP participants and vendors regarding the enhancement.

The Commission preliminarily believes that the ongoing annualized expense for the SIPs would not result in a burden for purposes of the PRA, as SIPs currently transmit trade report messages in the normal course of business.[145]

The Commission seeks comment on the reporting and recordkeeping collection of information burdens associated with the proposed amendments. In particular:

1. Would ATSs incur any collection of information burdens if the proposed Plan amendments were adopted by the Commission? How many ATSs would be required to obtain a new MPID under the proposed Plan amendments? What would be the costs, if any, to an ATS required to obtain a new MPID to substitute the new MPID for the one it currently uses in transmitting last sale price data to FINRA?

2. What are the burdens, both initial and annual, that FINRA (including the two TRFs and the FINRA ADF) and the SIPs would incur for programming, expanding systems capacity, and establishing compliance programs if the Commission were to adopt the proposed amendments? Would there be additional burdens associated with the collection of information under these proposed Plan amendments?

5. Retention Period of Recordkeeping Requirements

The proposed amendments to the Plans do not contain any new record retention requirements. As an SRO subject to Rule 17a–1 under the Exchange Act, FINRA is required to retain records of the collection of information for a period of not less than five years, the first two years in an easily accessible place.[146]

As registered broker-dealers, all ATSs that would be subject to the proposed amendments are currently required to retain records in accordance with Rule 17a–4 of the Exchange Act.[147]

6. Collection of Information is Mandatory

Any collection of information pursuant to the proposed amendments to the CTA Plan and the Nasdaq UTP Plan would be a mandatory collection of information.

7. Responses to Collection of Information Will Not Be Kept Confidential

The collection of information resulting from the proposed amendments to the CTA Plan and the Nasdaq UTP Plan would not be confidential and would be publicly available.

8. Request for Comment

Pursuant to 44 U.S.C. 3505(c)(2)(B), the Commission solicits comment to:

1. Evaluate whether the proposed collection of information is necessary for the performance of the functions of the agency, including whether the information shall have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

[139] *See* 5 CFR 1320.3(b)(2) (''The time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities * * * would be excluded from the 'burden' if the agency demonstrates that the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary.'').

[140] This figure is the total initial, one-time annualized expense to add unique ATS identifiers to trade report messages transmitted to the SIPs. This figure includes the development and testing expenses of the FINRA/NASDAQ TRF, FINRA/NYSE TRF, and the ADF, to which ATS trades are reported. The figure is based on discussions of Commission staff with FINRA staff.

[141] This figure is based on discussions of Commission staff with FINRA staff. This figure includes the FINRA development and testing. The Commission derived the total estimated one-time burden from the following: [(Programmer Analyst at 25 hours) × 2 + (Computer Operator at 25 hours) × 2] = 100 burden hours.

[142] *See supra* notes 104 and 139.

[143] This figure is based on discussions of Commission staff with SIAC.

[144] This figure is based on discussions of Commission staff with Nasdaq SIP.

[145] *See supra* note 86 and accompanying text; *see also* note 139.

[146] 17 CFR 240.17a–1.

[147] 17 CFR 240.17a–4.

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements should direct them to the following persons: (1) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, OMB, Room 3208, New Executive Office Building, Washington, DC 20503; and (2) Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090 with reference to File No. S7–27–09. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The Commission has submitted the proposed collection of information to OMB for approval. Requests for the materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–27–09, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 100 F Street, NE., Washington, DC 20549.

VI. Consideration of Costs and Benefits

A. Actionable IOIs

The Commission is sensitive to the costs and benefits associated with the proposed amendment to the definition of ''bid'' and ''offer'' in Rule 600(b)(8) of Regulation NMS to apply expressly to certain actionable IOIs. We request comment on the costs and benefits associated with the proposed amendment. The Commission has identified certain costs and benefits of the proposal and requests comment on all aspects of its preliminary cost-benefit analysis, including identification and assessments of any costs and benefits not discussed in this analysis. The Commission also seeks comments on the accuracy of any of the benefits identified and also welcomes comments on the accuracy of any of the costs estimates. Finally, the Commission encourages commenters to identify, discuss, analyze, and supply relevant data, information or statistics regarding any such costs or benefits.

1. Benefits

The Commission preliminarily believes that the proposed amendment would benefit market participants by increasing transparency and reducing the potential for a two-tiered market. The Commission also preliminarily believes that the proposed amendment would help encourage displayed liquidity in the form of publicly displayed limit orders.

As discussed above, a number of dark pools transmit IOIs to selected market participants that convey substantial information about their available trading interest.[148] These messages are not included in the consolidated quotation data, although, like displayed quotations, they can be significant inducements for the routing of orders to a particular trading venue. Indeed, some exchanges, when they do not have available trading interest to execute orders at the best displayed prices, give participants a choice of routing their orders to undisplayed venues in response to IOIs rather than to public markets in response to the best displayed quotations.[149]

Although these IOIs may not explicitly specify the price and size of available trading interest at the dark pool, the practical context in which they are transmitted may render them ''actionable.'' For example, an IOI would be actionable if it effectively alerted the recipient that the dark pool currently has trading interest in a particular symbol, side (buy or sell), size (minimum of a round lot of trading interest), and price (equal to or better than the national best bid for buying interest and the national best offer for selling interest).

This might occur if a dark pool sent an IOI to a group of market participants communicating an interest in buying a specific NMS stock. Given that Rule 611 of Regulation NMS generally prevents trading centers, including dark pools, from executing orders at prices inferior to the national best bid or offer (''NBBO''), the IOI recipient reasonably can assume that the price associated with the IOI is the NBBO or better. Moreover, the IOI may be part of a course of conduct in which the recipient has responded with orders to the sender and repeatedly received executions at the NBBO or better with a size of at least one round lot. With this information (both explicit and implicit), the recipient of the IOI can reasonably conclude that sending a contra-side marketable order responding to the IOI will result in an execution if the dark pool trading interest has not already been executed against or cancelled. In this respect, actionable IOIs are functionally quite similar to displayed quotations at the NBBO.

The order information communicated by actionable IOIs can be extremely valuable. Actionable IOIs with implicit prices better than the NBBO effectively narrow the quoted spread for an NMS stock. For example, if the NBBO for an NMS stock were $20.10 and $20.14, an actionable IOI to buy with an implicit price of $20.12 would, if included in the consolidated quotation data, create a new NBBO of $20.12 and $20.14 and thereby reduce the quoted spread by 50%. Reducing quoted spreads is important not only for those that trade with the displayed quotations, but also for other investors including those whose orders are routed to OTC market makers for executions that often are derived from NBBO prices. In addition, actionable IOIs with implicit prices equal to the NBBO can substantially improve the quoted depth at the best prices for an NMS stock. For example, an investor may wish to sell 500 shares of a stock when the size of the national best bid may be only 100 shares. The existence of multiple dark pools that contemporaneously had transmitted actionable IOIs to buy the stock would represent a substantial increase in the available size at NBBO prices or better.

The public, however, does not have access to this valuable information concerning the best prices for NMS stocks. Rather, dark pools transmit this information only to selected market participants. In this regard, actionable IOIs can create a two-tiered level of access to information about the best prices for NMS stocks that is contrary to the Exchange Act objectives for a national market system.[150] The consolidated quotation data is intended to provide a single source of information on the best prices for a listed security across all markets, rather than force the public to obtain data from many different exchanges and other markets to learn the best prices. This objective is not met if dark pools or other trading venues disseminate pricing information that is functionally quite similar to quotations, yet is not required to be included in the consolidated quotation data. The proposal is designed to promote transparency by requiring that the valuable pricing information provided to selected market participants through actionable IOIs is also made

[148] *See supra* note 20.

[149] *See supra* note 21.

[150] *See supra* note 59.

available to the public in the consolidated quotation data.

The Commission also is concerned that the private use of actionable IOIs may discourage the public display of trading interest and harm quote competition among markets. The Commission long has emphasized the need to encourage displayed liquidity in the form of publicly displayed limit orders.[151] Such orders establish the current ''market'' for a stock and thereby provide a critical reference point for investors. Actionable IOIs, however, often will be executed by dark pools at prices that match the best displayed prices for a stock at another market. In this respect, actionable IOIs at NBBO matching prices potentially deprive those who publicly display their interest at the best price from receiving a speedy execution at that price. The opportunity to obtain the fastest possible execution at a price is the primary incentive for the display of trading interest.[152] Particularly if actionable IOIs continue to expand in trading volume, they could significantly undermine the incentives to display limit orders and to quote competitively, and thereby detract from the efficiency and fairness of the national market system.

Moreover, for market participants that wish to supply liquidity in the form of non-marketable resting orders (such as those that match or improve NBBO prices), actionable IOIs provide a tool to achieve this result without displaying quotations publicly. The availability of these private messages as an alternative means to attract order flow may reduce the incentives of market participants to quote publicly. More generally, actionable IOIs divert a certain amount of order flow that otherwise might be routed directly to execute against displayed quotations in other markets. Given the importance of displayed quotations for market efficiency, the Commission is particularly concerned about additional marketable order flow that may be diverted from the public quoting markets and that could further reduce the incentives for the public display of quotations. The proposal is designed to promote the display of public quotations by eliminating a practice that diverts order flow to private markets and by requiring that actionable IOIs be included in the consolidated quotation data.

By excepting IOIs with a market value of at least $200,000 that are displayed only to those who are reasonably believed to represent current contra-side trading interest of at least $200,000, the proposal is also tailored to maintain the significant size discovery benefits offered by some trading venues such as block crossing networks. In particular, market participants such as institutional investors would be able to find contra-side trading interest for large size without causing price impact. In addition, the proposed exception for a targeted size discovery mechanism would provide an opportunity for block crossing networks and other trading venues to offer innovative ways for investors that need to trade in large size to find contra-side trading interest of equally large size.

The Commission seeks comment on the anticipated benefits of the proposed amendment. Would the proposal promote the transparency, fairness, and efficiency of the national market system? Would it promote fair competition among trading venues in NMS stocks? Do commenters believe that the Commission has provided sufficient information about the attributes of an actionable IOI for trading venues to comply with the proposed definition? What is the typical size of an actionable IOI? How many large orders use actionable IOIs? What is the amount of order flow that is diverted from displayed quotations due to actionable IOIs? Please quantify and provide supporting data if possible.

Comment also is requested on the proposed size discovery exclusion from the definition of bid or offer. Would the proposed exclusion promote more efficient trading for investors that need to trade in large size? Is the exclusion narrowly drafted to cover those trading mechanisms that offer valuable size discovery benefits without inappropriately excluding trading interest concerning the best prices and sizes for NMS stocks from the consolidated quotation data? Comment also is requested on whether market value is the appropriate criterion for size, and whether $200,000 is the appropriate figure. Should this figure be higher or lower? Please explain why. For example, is the $200,000 figure appropriate for high-priced stocks? Should the exclusion include a size criterion based on number of shares? If yes, should it be 10,000 shares, as in Rule 600(b)(9), or a larger or smaller number of shares? Finally, comment is requested on whether other criteria for size, such as percentage of average daily share volume in a security, would be more appropriate.

2. Costs

The Commission preliminarily anticipates that market participants could incur certain costs if the proposed amendment is adopted. The change in the definition of ''bid'' and ''offer'' would affect compliance with Rule 602 of Regulation NMS.[153] ''Bid'' and ''offer'' are key terms that determine the scope of Rule 602 of Regulation NMS. In general, Rule 602 requires exchange members and certain OTC market makers to provide their best-priced bids and offers to their respective exchanges and FINRA.[154] The exchanges and FINRA, in turn, are required to make their best bids and offers available in the consolidated quotation data. The Commission does not believe that the amendment to Rule 600(b)(8) would create significant new compliance burdens under Rule 602. Exchange members and OTC market makers would continue to be required to provide their best-priced bids and offers to their respective exchanges and FINRA. The proposed amendment to Rule 600(b)(8) may increase the number of ''bids'' and ''offers'' that exchange members and OTC market makers must review to determine their best-priced bids and offers. It is the Commission's understanding that all exchange members and OTC market makers have systems and procedures in place to make this determination today. As a result, the Commission believes that any increased burden in determining their best-priced bids and offers due to the inclusion of actionable IOIs in the definition of ''bid'' and ''offer'' would not be significant.

The Commission is aware that actionable IOIs may offer benefits to certain market participants. For example, some market participants choose to trade in dark pools in an effort to minimize the effect of their trading on quoted prices. The use of actionable IOIs to attract order flow may increase the amount of volume executed in dark pools and thereby further the trading strategies of these market participants. If actionable IOIs were included in the consolidated quotation data, these types of trading strategies would not be

[151] *See supra* note 26.

[152] *See supra* note 27.

[153] The proposed amendment to Rule 600(b)(8) of Regulation NMS also may affect the obligations imposed by Rule 301(b)(3) of Regulation ATS on ATSs that meet the specified trading volume threshold. Given the current threshold of 5%, the Commission does not believe that the proposed amendment of Rule 600(b)(8) would substantially affect the quoting requirements of ATSs. The proposal to lower the volume threshold contained in Rule 301(b)(3), however, could affect this view. The costs associated with the proposed amendment to Rule 301(b)(3) are discussed below.

[154] Under the definition of ''subject security'' in Rule 600(b)(73)(ii)(A) of Regulation NMS, an OTC market maker is not required to provide its best bids and offers for an NMS stock if the executed volume of the firm during the most recent calendar quarter comprised one percent or less of the aggregate trading volume for such NMS stock.

possible because the actionable IOIs themselves would be included in publicly quoted prices. In addition, some market participants may be willing to allow dark pools to transmit information about their actionable orders to selected recipients, but not be willing to provide this information in the consolidated quotation data that is widely disseminated to the public. If adopted, the proposal could cause these market participants to choose not to transmit this information to anyone and thereby reduce available pricing information for an NMS stock (albeit, information that was only privately available).

These potential costs of reduced trading in dark liquidity venues and reduced availability of liquidity information would be mitigated by the availability of the size discovery exception. The Commission recognizes that some trading venues, such as block crossing networks, may use actionable IOIs as part of a trading mechanism that offers significant size discovery benefits. These benefits may be particularly valuable for institutional investors that need to trade efficiently in sizes much larger than those that are typically available in the public quoting markets. These size discovery mechanisms could be rendered unworkable, however, if their IOIs for large size were required to be included in the consolidated quotation data. Accordingly, the Commission's proposed amendment would exclude certain IOIs with a market value of $200,000 or more communicated to those reasonably believed to represent equivalent contra-side trading interest from the current definition of ''bid'' and ''offer'' in Rule 600(b)(8). This would maintain the significant size discovery benefits offered by certain trading venues. Also, the Commission expects that the compliance costs to restrict communication to large size contra-side trading interest would be minimal because trading venues that offer size discovery mechanisms currently have systems in place to achieve this objective. In particular, these systems typically incorporate minimum trade size functionalities, as well as mechanisms to help assure that the valuable, actionable information concerning a participant's trading interest is transmitted only to those with whom there is a reasonable opportunity for obtaining an execution in large size.

In addition, the Commission expects that the negative effects of requiring actionable IOIs to be included in the consolidated quotation data would be mitigated by the ability of market participants to adapt their trading strategies to the new rules. Higher incentives to display liquidity and alternative forms of competition for order flow also could mitigate any negative effect of the proposal. Customers of dark pools would remain free, as they are entitled to do with quoting venues today, to control the release of their order information.[155] Customers could not, however, consent to the dissemination of order information sufficient for the transmission of an actionable IOI under $200,000, yet withhold information about their orders from the consolidated quotation data that is made available to the public.

The Commission generally requests comment on any direct or indirect costs of the proposed amendment and asks commenters to quantify those costs, where possible. In addition, the Commission requests specific comments on the following questions:

1. What are some of the trading strategies that employ actionable IOIs? Is the use of such actionable IOIs in the best interest of these traders and how would the inability to use those actionable IOIs impact traders, markets, or investors more generally? Could similar benefits be achieved through other means?

2. How are market participants likely to change their behavior if actionable IOIs must be included in the consolidated quotation data? What are the likely effects of these changes? For example, would a significant percentage of dark pools that currently use actionable IOIs go completely dark? What would be the effects on traders, markets, and investors were that to occur?

3. How would the proposal affect competition between trading venues?

4. Would the size discovery exception maintain the existing opportunities of block crossing networks and other trading venues to offer benefits to market participants that need to trade in large size? Do these venues currently have systems in place that would enable them to comply at minimal cost with the terms of the exception?

5. To what extent, if at all, would the proposed amendment to Rule 600(b)(8) increase the number of bids or offers that exchange members and OTC market makers would be required to review and report to their respective exchanges and FINRA for inclusion in the consolidated quotation data?

6. To what extent, if at all, would system changes or increases in system capacities be necessary for exchange members or OTC market makers to comply with the requirements of Rule 602, if the Commission were to adopt the proposed amendments to Rule 600(b)(8)?

B. ATS Display Obligations

The Commission is sensitive to the costs and benefits associated with the proposed amendments to Rule 301(b)(3) of Regulation ATS. The Commission requests comment on the costs and benefits associated with these proposed amendments. The Commission has identified certain costs and benefits of the proposal and requests comment on all aspects of its preliminary cost-benefit analysis, including identification and assessments of any costs and benefits not discussed in this analysis. The Commission also seeks comments on the accuracy of any of the benefits identified and also welcomes comments on the accuracy of any of the cost estimates. Finally, the Commission encourages commenters to identify, discuss, analyze, and supply relevant data, information, or statistics regarding any such costs or benefits.

1. Benefits

The emergence of dark pools as a significant source of liquidity for NMS stocks raises a variety of important policy issues that deserve consideration. Some dark pools transmit actionable IOIs to selected market participants for the purpose of attracting contra-side order flow to the ATS.[156] Such actionable IOIs function quite similarly to displayed quotations and, as a result, dark pools that distribute such actionable IOIs are no longer truly dark; rather they are ''lit'' to a select group of market participants but dark with respect to the rest of the public. The Commission preliminarily believes that this practice is creating a two-tiered market and an inequitable distribution of price information.[157]

It has been a longstanding Commission concern to avoid two-tiered markets, whereby certain market participants have access to information or order flow that others do not.[158] The public quote stream is intended to provide a single source of information on the best prices for NMS stocks across all markets, rather than force the public to obtain data from many different exchanges and other trading venues to learn the best prices.[159] This objective is not being met if dark pools or other markets disseminate pricing information

[155] *See supra* note 41 and accompanying text.

[156] *See supra* section II (describing the use of actionable IOIs).

[157] *See id.*

[158] *See supra* section II (describing the purpose of the consolidated quotation data stream).

[159] *See id.*

that is functionally quite similar to quotations, yet is not required to be included in the public quote stream.[160]

Congress in 1975 endorsed the development of a national market system and granted the Commission broad authority to implement it.[161] Chief among the objectives of the national market system are coordinating markets, reducing fragmentation, and limiting the possibility of tiered markets where the best trading opportunities are available only to selected market participants.[162] As the Commission has long recognized, proper coordination of markets requires transparency and access across the national market system.[163] Market participants must be able to know where the best trading opportunities exist and have the ability to execute orders in response to those opportunities. The Commission has taken a number of actions designed to further these goals,[164] including by providing, through Regulation ATS, a regulatory framework that permits competition among and innovation by exchange and non-exchange trading centers while attempting to minimize detrimental market fragmentation. As the Commission observed in 1997, the failure ''to fully coordinate trading on alternative trading systems into national market systems mechanisms has impaired the quality and pricing efficiency of secondary equity markets. * * * Although these systems are available to some institutions, orders on these systems frequently are not available to the general investing public.''[165] The Commission noted that such ''hidden markets''—where superior quotations might be available to a subset of market participants—impeded the goals of the national market system.[166]

The proposed amendments to Rule 301(b)(3), together with the proposed changes to Rule 600(b)(8) of Regulation NMS, seek to inhibit the development of ''hidden'' or partially lit markets that result in a tiered market structure, and thus strengthen the national market system for the benefit of public investors. By more fully coordinating trading on ATSs into the national market system, the proposed amendments are designed to improve pricing efficiency and execution quality in NMS stocks.

As described above, the Commission is proposing to amend Rule 301(b)(3)(i)(B) of Regulation ATS[167] to reduce the average daily trading volume threshold that would trigger display obligations for an ATS from 5% to 0.25%. The Commission is also proposing to amend Rule 301(b)(3)(ii) of Regulation ATS[168] to clarify that an ATS must publicly display and provide execution access to its best-priced orders in NMS stocks when such orders are displayed to more than one person (other than ATS employees), regardless of whether such persons are subscribers of the ATS. In addition, the Commission is proposing to amend Rule 301(b)(3)(ii) to mirror the proposed exception in the definition of ''bid'' or ''offer'' in Rule 600(b)(8) for orders having a market value of at least $200,000 and which are communicated only to market participants who are reasonably believed to represent current contra-side trading interest of at least $200,000. Together with the proposal to amend the definition of ''bid'' or ''offer'' in Rule 600(b)(8) to explicitly include actionable IOIs, these proposed amendments to Rule 301(b)(3) of Regulation ATS are designed to increase the opportunity for all market participants to discover and interact with the best-priced orders, while offering certain large orders the opportunity for size discovery.

The Commission believes that broker-dealers operating ATSs should be subject to quoting requirements that broadly parallel those applicable to other market participants. Currently, the order display and execution access requirements in Regulation ATS do not apply unless an ATS has an average daily trading volume threshold in an NMS stock of 5% or more. Few if any ATSs exceed the 5% threshold for any NMS stocks although, as explained above,[169] ATSs collectively account for a significant share of trading volume. Many dark pool ATSs communicate order information via actionable IOIs that could, if appropriately integrated, contribute to the overall efficiency and quality of the national market system. Without any attendant change to Regulation ATS to lower the 5% threshold, the proposed amendments to the definitions of ''bid'' or ''offer'' in Rule 600(b)(8) of Regulation NMS would have less effect, because most ATSs could continue to communicate actionable IOIs only to selected market participants. Therefore, in conjunction with the proposed amendments to Rule 600(b)(8), the Commission is proposing to substantially lower the threshold at which an ATS incurs an obligation under Regulation ATS to provide orders to an SRO for inclusion in the public quote stream. The Commission preliminarily believes that such amendment would be consistent with the mandate set forth in Section 11A of the Exchange Act[170] to promote a national market system.

The Commission also preliminarily believes that, by expanding the pool of orders that would be required to be incorporated into the consolidated public quote stream, the proposed amendments to Rule 301(b)(3) would have the potential in many cases to narrow the NBBO or to increase the quoted size at the existing NBBO.[171] As noted above, requiring that actionable IOIs be incorporated into the public quote stream is particularly important now given their increasing prevalence.[172] Thus, although 0.25% is only a small portion of average daily trading volume, actionable IOIs sent by even small ATSs, when aggregated, may represent a significant percentage of the orders that would set the price of, or increase the size available at, the NBBO.[173] The Commission preliminarily believes that making most such orders visible and available to the market as a whole could represent a substantial benefit to investors. Furthermore, incorporating the best-priced orders from all but the smallest ATSs into the public quote stream

[160] *See id.*

[161] *See* Public Law 94–29, 89 Stat. 97 (1975) (adopting Section 11A of the Exchange Act).

[162] *See* 15 U.S.C. 78k–1(a)(1)(D) (''The linking of all markets for qualified securities through communication and data procession facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to best execution of such orders.'') *See also* Regulation ATS Proposing Release and Concept Release (citing *inter alia* SEC, Statement of the Securities and Exchange Commission on the Future Structure of the Securities Markets (February 2, 1972), 37 FR 5286 (March 14, 1972)); Securities Exchange Act Release No. 36310 (September 29, 1995), 60 FR 52792 (October 10, 1995).

[163] *See, e.g.,* Regulation ATS Proposing Release, *supra* note 53, 63 FR at 23511.

[164] *See supra* note 55.

[165] Concept Release, *supra* note 53, 63 FR at 30492. *See also* Regulation ATS Proposing Release, *supra* note 53, 63 FR at 23514.

[166] *See* Regulation ATS Proposing Release, 63 FR at 23514–15 (''The use of these systems to facilitate transactions in securities at prices not incorporated into the [national market system] has resulted in fragmented and incomplete dissemination of quotation information. Recent evidence suggests that the failure of the current regulatory approach to fully integrate trading on alternative trading systems into [the national market system] mechanisms has impaired the quality and pricing efficiency of secondary equity markets, particularly in light of the explosive growth in trading volume on such alternative trading systems'').

[167] 17 CFR 242.301(b)(3)(i)(B).

[168] 17 CFR 242.301(b)(3)(ii).

[169] *See supra* notes 9 and 10 and accompanying text.

[170] 15 U.S.C. 78k–1.

[171] *See supra* section II.

[172] *Id.*

[173] *See id.* (noting dark pools in the aggregate account for 7.2% of aggregate trading volume in the NMS).

would increase the value of the public quote stream.

The Commission is also proposing to amend Rule 301(b)(3) to include an exception from the order display and execution access requirements for certain large orders, which would mirror the proposed exception with respect to the definition of ''bid'' or ''offer'' in Rule 600(b)(8) of Regulation NMS. This exception would apply to orders with a market value of $200,000 or more that are communicated only to those who are reasonably believed to represent current contra-side trading interest of at least $200,000. Pursuant to the proposed exception, an ATS could display these large orders to potential counterparties reasonably believed to represent contra-side trading interest of at least $200,000 without triggering the order display and execution access requirements of Rule 301(b)(3).

As noted earlier, the Commission recognizes that some trading venues, such as block crossing networks, may use actionable IOIs as part of a trading mechanism that offers significant size discovery benefits.[174] These benefits may be particularly valuable for institutional investors that need to trade efficiently in sizes much larger than those that are typically available in the public quoting markets.[175] These size discovery mechanisms could be rendered unworkable, however, if their narrowly targeted IOIs for large size were required to be included in the public quote stream.[176] The Commission preliminarily believes that the proposed exception would facilitate greater opportunity for ATS subscribers to discover size without generating adverse market impact.

2. Costs

The Commission preliminarily anticipates that ATSs could incur certain costs if the proposed amendments were adopted. Under the proposed amendments, ATSs that display orders in NMS stocks (except for orders that have a market value of at least $200,000 and are communicated only to those who are reasonably believed to represent current contra-side trading interest of at least $200,000) to more than one person, whether by communicating actionable IOIs or otherwise, and meet the proposed average daily trading volume threshold of 0.25% would be subject to the order display and execution access requirements of Rule 301(b)(3) of Regulation ATS.[177]

The Commission does not preliminarily expect that the costs of monitoring daily trade volume associated with the proposed amendments to Rule 301(b)(3) would be significant. Each ATS is already required to monitor its trading volumes. However, ATSs might incur some costs to adjust their current monitoring programs to take account of the proposed reduction in the display threshold from 5% to 0.25%. In addition, as described above, the proposed amendments might impose certain costs, both initial and ongoing, on dark pool ATSs that currently transmit actionable IOIs and could be required to change their business models. Likewise, the proposed amendments could impose costs, both initial and ongoing, on any ATS that is currently displaying, or might in the future decide to display, order information and that might, if the Commission adopts the proposed amendments, decide instead to operate as a completely dark ATS. The Commission notes that each ATS could avoid any such costs by not displaying orders at all, or by selectively displaying only large orders that qualify for the proposed exception.

For an ATS that is impacted by the proposed amendment to Rule 301(b)(3), initial adjustment costs could include system re-programming to monitor the ATS's percentage of trading in NMS stocks,[178] establishing linkages to an SRO for the purpose of submitting orders to the SRO for public display and of providing access to market participants wishing to trade against such orders, and expanding systems capacity and internal controls, including establishing or modifying applicable compliance policies and procedures, to carry out these functions in a manner consistent with the SRO's rules. The Commission preliminarily believes that such adjustment costs could include ATS staff time to build new systems or re-program current systems, as well as ongoing ATS staff time to maintain such systems and carry out their associated functions.

For purposes of the PRA, the Commission preliminarily estimated that the initial annualized expense for all potential ATS respondents to establish connectivity to an SRO would be approximately $3,900,000.[179] In addition, the Commission preliminarily estimated that the initial annualized expense to comply with the proposed amendments to Rule 301(b)(3) would be approximately $3,815,520.[180] This figure is based on the estimated number of hours and hourly costs [181] for initial internal development and implementation by an ATS to re-program the system, expand the system capacity, and adjust internal controls, including costs to establish or modify applicable compliance policies and procedures for an initial implementation period of two months, plus the estimated costs associated with running compliance policies and procedures (including monitoring daily trading activity), ongoing system maintenance and development, and estimated internal costs associated with maintaining connectivity to an SRO,

[174] *See supra* Section VI.A.1.

[175] *See id.*

[176] *See id.*

[177] The Commission is not proposing to amend Rule 301(b)(3)(iii) of Regulation ATS. For an ATS that is required to display orders pursuant to Rule 301(b)(3)(ii), Rule 301(b)(3)(iii) requires such ATS to provide to any broker-dealer that has access to the SRO to which the ATS provides the prices and sizes of its best-priced orders the ability to effect a transaction with such orders that is: (a) equivalent to the ability of such broker-dealer to effect a transaction with other orders displayed on the SRO; and (b) at the price of the highest priced buy order or lowest priced sell order displayed for the lesser of the cumulative size of such priced orders entered therein at such price, or the size of the execution sought by such broker-dealer. *See* 17 CFR 242.301(b)(3)(iii).

[178] Currently, under Rule 301(b)(3) of Regulation ATS, an ATS that displays subscriber orders to any person (other than ATS employees) and has 5% or more of the aggregate daily share volume for an NMS stock is required to provide to an SRO its best-priced orders for such NMS stock for inclusion into the public quote stream. Thus, ATSs are already required to monitor trading levels in NMS stocks. As a result of the proposed amendments to Rule 301(b)(3), which would lower the average daily trading volume threshold from 5% to 0.25%, ATSs could be required to re-program their respective systems that monitor trading levels in NMS stocks to reflect the lower threshold. Based on discussions of Commission staff with certain potential ATS respondents and other market participants, the Commission preliminarily believes that costs of such re-programming would not be significant, although it requests comment on that point.

[179] *See supra* note 130.

[180] This figure is based on discussions of Commission staff with certain potential ATS respondents and other market participants. The Commission derived the total estimated initial annualized expense from the following: [((Sr. Programmer (320 hours) at $292 per hour) + (Compliance Manager (20 hours) at $258 per hour) + (Compliance Attorney (20 hours) at $270 per hour) + (Programmer Analyst (20 hours) at $193 per hour) + (Sr. Systems Analyst (30 hours) at $244 per hour)) × (2 months) + ((Sr. Programmer (2 hours) at $292 per hour) + (Compliance Manager (6 hours) at $258 per hour) + (Compliance Attorney (4 hours) at $270 per hour) + (Compliance Clerk (40 hours) at $63 per hour) + (Sr. Systems Analyst (2 hours) at $244 per hour) + (Director of Compliance (5 hours) at $388 per hour) + (Sr. Computer Operator (8 hours) at $75 per hour)) × (10 months)] × (12 potential ATS respondents) = $3,815,520.

[181] Hourly figures are from SIFMA's *Management & Professional Earnings in the Securities Industry 2008* and SIFMA's *Office Salaries in the Securities Industry 2008,* modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 or 2.93, as appropriate, to account for bonuses, firm size, employee benefits, and overhead.

and ensuring compliance for a period of ten months, multiplied by 12 (the Commission's estimate of the number of potentially impacted ATSs).

The Commission also preliminarily estimated the ongoing expenses of complying with the proposed amendments to Rule 301(b)(3), which could include, among other things, maintaining connectivity with an SRO, monitoring daily trade activity, and ensuring compliance. For purposes of the PRA, the Commission preliminarily estimated that the ongoing annualized expense for all potential ATS respondents to maintain connectivity to an SRO would be approximately $3,600,000.[182] In addition, the Commission preliminarily estimated that the ongoing annualized expense for all potential ATS respondents to comply with the proposed amendments to Rule 301(b)(3) would be approximately $1,261,440.[183] This figure is based on the estimated number of hours and hourly costs [184] for running compliance policies and procedures (including monitoring daily trading activity), ongoing system maintenance and development, and estimated internal costs associated with maintaining connectivity to an SRO, and ensuring compliance for a period of 12 months, multiplied by 12 (the Commission's estimate of the number of potentially impacted ATSs).

The Commission is also proposing a change to Rule 301(b)(3)(ii) that would add an exception to the order display and execution access requirements for orders that have a market value of at least $200,000 and are communicated only to those who are reasonably believed to represent current contra-side trading interest of at least $200,000. The Commission preliminarily believes that an ATS would not incur any costs relating to order display and execution access because of the proposed exception. An ATS would incur either the same costs as it would otherwise (because it communicated no orders that met the terms of the proposed exception) or fewer costs (because some or all of the orders that it communicated met the terms of the proposed exception, thus reducing the number of orders that would otherwise have to be publicly disseminated under the proposed amendments to Rule 301(b)(3)). Each ATS is already required under Rule 301(b)(3) to monitor its order flow; the Commission preliminarily believes that tracking which orders qualify for the proposed exception would require no additional costs beyond those otherwise required, although it requests comment on that point.

The proposed amendments to Rule 301(b)(3) of Regulation ATS are designed to balance the benefits of technology and flexible regulation with the need for appropriate coordination among trading centers. The Commission understands that linkage costs have fallen substantially since it adopted Regulation ATS. Nevertheless, the Commission is sensitive to the costs of its regulation and the proposed amendments on current and new ATSs, as well as the potential effect on their development. The Commission preliminarily believes that reducing the average daily trading volume threshold to 0.25% would provide an appropriate level under which ATSs could display subscriber orders to more than one person (whether by sending actionable IOIs or otherwise) without imposing substantial costs associated with linking to an SRO.

Consistent with the reasons enunciated in the Regulation ATS Adopting Release for establishing the 5% threshold and as discussed in this release, the Commission preliminarily believes that proposing a reduction of the ATS display threshold to 0.25% is warranted at this time. The Commission also preliminarily believes that the goals and objectives of lowering the threshold justify the costs associated with linking to an SRO. For ATSs that would be subject to the order display and execution requirements if the Commission were to adopt the 0.25% threshold, the Commission preliminarily believes that the current costs of linking to an SRO are not significant.[185] Communications and order-routing systems have improved significantly since Regulation ATS was originally adopted. Robust and extremely fast linkages that were not available at that time are now widely offered on commercially reasonable terms, and the market for these services is highly competitive, further reducing their cost.[186]

In addition, the Commission preliminarily believes that the proposed amendments to Rule 301(b)(3) of Regulation ATS would not, if adopted, impose any substantive or material costs on SROs under the requirements of Rule 602 of Regulation NMS. Under the proposal, order information that is communicated by ATSs to more than one person outside the public quote stream (whether via actionable IOIs or otherwise) could be required to be incorporated into the public quote stream. As described above, to accomplish this, the ATS would be required to send the order information to an SRO, and that SRO would be responsible under Rule 602 for the incorporation of the information in the consolidated public quote stream. The Commission preliminarily believes that any costs associated with including such ATS orders with the large volume of quotations that SROs already include in the public quote stream under Rule 602 would not be material.

As noted previously, an ATS that sends actionable IOIs or otherwise displays subscriber orders to more than one person (other than ATS employees) and exceeds the proposed 0.25% threshold for an NMS stock could avoid the direct costs of linking to an SRO by going completely dark. The Commission recognizes that such a choice could be viewed as a potential cost of the proposed amendments. An ATS that, under the existing 5% threshold, generates contra-side interest for its subscriber orders by communicating actionable IOIs might—if it ceased to do so—effect fewer executions, which could lead to a loss of revenue and market share for the ATS. The Commission is sensitive to this potential cost, but preliminarily believes that it would be mitigated by the proposed exception for size discovery orders and justified by the overall benefits of the proposal to the national market system.

The proposed amendment to Rule 301(b)(3) could also impose costs on ATS subscribers that currently receive executions arising from ATSs' use of actionable IOIs. If the proposal is adopted, such subscribers might incur costs to re-evaluate their order execution strategies. For example, if a subscriber currently uses an ATS that communicates actionable IOIs, and the ATS is above the proposed display threshold of 0.25% in one or more NMS stocks, the subscriber would have to evaluate whether it is better served by having its orders in displayed markets

[182] *See supra* note 132.

[183] This figure is based on discussions of Commission staff with certain potential ATS respondents and other market participants. The Commission derived the total estimated ongoing burdens from the following: ((Sr. Programmer (2 hours) at $292 per hour) + (Compliance Manager (6 hours) at $258 per hour) + (Compliance Attorney (4 hours) at $270 per hour) + (Compliance Clerk (40 hours) at $63 per hour) + (Sr. Systems Analyst (2 hours) at $244 per hour) + (Director of Compliance (5 hours) at $388 per hour) + (Sr. Computer Operator (8 hours) at $75 per hour)) × (12 months) × (12 potential ATS respondents) = $1,261,440.

[184] *See supra* note 181.

[185] This information is based on discussions of Commission staff with certain potential ATS respondents and other market participants.

[186] *See id.*

or in completely dark pools. The strategies that they adopt in response to the proposal might not be as profitable as those they are employing currently. In addition, market participants that currently receive actionable IOIs might no longer have access to such trading opportunities and could incur costs to adapt their strategies if the number of IOIs that they receive decreases.

Nevertheless, the Commission preliminarily believes that the costs to such subscribers and to recipients of actionable IOIs would be justified by the benefits to the national market system as a whole. For the reasons discussed in this release, the Commission preliminarily believes that the proposal would reduce the possibility of a tiered market structure and provide better access for all investors to the best-priced orders in NMS stocks. This outcome would benefit all market participants.

The Commission requests comment on the costs and benefits of the proposed amendments to Rule 301(b)(3) of Regulation ATS discussed above, as well as any costs and benefits not already described which could result from them. The Commission also requests data to quantify any potential costs or benefits. In addition, the Commission requests specific comment on the following questions:

1. Currently, ATSs can display orders in NMS stocks to more than one person without triggering the order display and execution access requirements in Rule 301(b)(3) if they do not exceed the 5% threshold. Under the proposed amendments to Rule 301(b)(3), many ATSs would lose the ability to display orders in this manner, and would have to either publicly display those orders or go completely dark. What are the costs and benefits of eliminating the ability of ATSs to communicate actionable IOIs to only a limited group?

2. Would the proposed amendments likely result in an increase in the number of ATSs that submit their best-priced orders to an SRO for inclusion in the public quote stream? Why or why not? What benefits would result from more ATSs submitting their best-priced orders in NMS stocks to an SRO for inclusion in the public quote stream? Can those benefits be quantified? If so, how? What are the potential adverse effects?

3. If ATSs respond to the proposed amendments by going completely dark, what costs or benefits would result for: (a) those ATSs, (b) market participants that currently receive actionable IOIs from those ATSs, and (c) the national market system as a whole?

4. For ATSs that would choose to respond to the proposed amendments by submitting their best-priced orders in NMS stocks to an SRO for inclusion in the public quote stream, what are the costs of establishing the necessary linkages to an SRO? To what extent do those ATSs already have the capability to submit orders to an SRO? Could existing systems and communications infrastructure be adapted for that purpose and, if so, at what cost? Please describe and quantify in terms of both initial and ongoing costs.

5. What would be the costs and benefits of setting the display threshold at 0.25%? Would this change achieve the Commission's goals of increasing price competition in the national market system? Why or why not? Would there be greater benefits to the market as a whole by eliminating the threshold altogether (*i.e.,* setting the threshold at 0%) and thereby requiring any ATS that displays a subscriber order to more than one person to include that order in the public quote stream?

6. What costs would be imposed on new ATSs if the Commission were to adopt the proposed 0.25% threshold or to eliminate it entirely? Would a low or no threshold create a barrier to entry for new ATSs? Why or why not?

7. Under the proposed amendments, an ATS could continue to communicate customer orders in NMS stocks outside the public quote stream if those orders had a market value of at least $200,000 and were displayed only to those who are reasonably believed to represent current contra-side trading interest of at least $200,000. What would be the benefits of allowing such display by ATSs of these orders? Would the execution quality of such orders decline if they instead had to be placed (either in full or in smaller pieces) in displayed markets or completely dark pools? What are the costs to the market of allowing such orders to be displayed by ATSs without requiring their inclusion in the public quote stream?

C. Post-Trade Transparency for ATSs

The Commission is sensitive to the costs and benefits associated with the proposed Plan amendments. The Commission has identified certain costs and benefits of the proposed Plan amendments and requests comment on all aspects of this cost-benefit analysis, including identification and assessment of any costs and benefits not discussed in the analysis. The Commission seeks comment and data on the value of the benefits identified. The Commission also requests those commenters to provide data so the Commission can improve the cost estimates, including identification of statistics relied on by commenters to reach conclusions on cost estimates.

1. Benefits

The proposed Plan amendments would require the disclosure of the identity of ATSs on their trade reports in the public data stream to improve post-trade transparency. The proposed Plan amendments would require that all ATSs subject to Regulation ATS use a unique identifier, and would require that the identity of the ATS that executed a trade be included in the public data stream. The Commission believes this proposal to improve post-trade transparency would enhance public confidence in the securities markets by providing accurate information regarding the volume of transactions effected by ATSs as trading venues. This disclosure of information would provide the marketplace with a more complete and accurate picture of trading activity in ATSs thereby improving the quality and pricing efficiency of the equity markets. The Commission preliminarily believes that such information would help investors to assess trading volume of ATSs (including ECNs and dark pools) and to evaluate which ATSs may have liquidity in particular stocks, enabling orders to be more efficiently routed to trading venues. ATSs with more liquidity may receive additional orders from investors. The proposed Plan amendments are intended to address the Commission's long held belief that transparency promotes efficient securities markets.[187]

Commenters should provide specific data and analysis to support any comments they submit with respect to these benefit estimates.

2. Costs

The Commission believes that ATSs would not incur significant costs in connection with the proposed Plan amendments in addition to those already created by the requirements of Rule 601 of the Exchange Act.[188] Currently FINRA rules require each trade to include an MPID. The Commission understands that some

[187] The Commission has held the view that transparency not only allows all market participants to assess overall supply and demand, but also counteracts the effects of fragmentation without forcing all executions into one market. In particular, transparency reduces the information gap between investors with differing degrees of sophistication because all investors can monitor the quality of executions they receive. Additionally, the Commission has held the view that transparency reduces the likelihood of transactions at non-competitive prices and provides more immediate and useful information for investigating questionable conduct. *See supra* note 108.

[188] *See supra,* note 84.

ATSs report their transactions using an MPID of their sponsoring broker-dealer, while other ATSs use a unique MPID. The Plan changes would require that each ATS have a unique MPID, necessitating some ATSs to acquire an MPID from FINRA. ATSs can obtain an additional MPID from FINRA at no cost.[189] Those ATSs that currently use an MPID of their sponsoring broker-dealer could incur a de minimis cost in re-programming their systems to substitute the new MPID for the one currently used in transmitting their transactions to FINRA.

FINRA, upon receipt of this unique indicator would retransmit the trade report to the SIP, after excluding the ATS identifier from trade reports for large size trades. For purposes of the PRA, the Commission preliminarily estimated that the initial annualized expense for the FINRA/NASDAQ TRF, FINRA/NYSE TRF, and the ADF would be approximately $1,175,000.[190] In addition, the Commission preliminarily estimated that the initial annualized expense for FINRA internal development and testing would be approximately $13,400.[191] Therefore, the grand total of the one-time, initial annualized expense for FINRA's development, re-programming, and testing of the systems to comply with the proposed Plan amendments would be approximately $1,188,400. The Commission preliminarily believes that the ongoing annualized expense for FINRA would be de minimis, as FINRA currently transmits trade report messages to the SIPs in the normal course of business.

The SIPs (SIAC and Nasdaq SIP) would need to modify their trade report message to carry the unique identifier for each ATS. Currently, when transactions are reported to the SIP by FINRA, the MPID is dropped and an identifier is appended indicating the trade was executed OTC. Under the proposed Plan amendments, each ATS trade report would carry an ATS indicator, in addition to the OTC indicator, unless the trade is a large size trade. The Commission preliminarily estimated that the initial annualized expense for SIAC and Nasdaq SIP would be approximately $175,000.[192] The Commission preliminarily believes that the ongoing annualized expense for the SIPs would be de minimis, as the SIPs currently transmit trade report messages in the normal course of business. The Commission notes that the proposed Plan amendments could affect order routing as investors may choose to change their routing strategies based on the additional disclosure under the proposed amendments of the ATS where the trade was executed.

The Commission generally requests comment on all aspects of these cost estimates for the proposed amendments to the Plans. Commenters should provide specific data and analysis to support any comments they submit with respect to these cost estimates.

VII. Consideration of Burden on Competition, and Promotion of Efficiency, Competition and Capital Formation

Section 3(f) of the Exchange Act[193] requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action would promote efficiency, competition, and capital formation. In addition, Section 23(a)(2) of the Exchange Act[194] requires the Commission, when making rules under the Exchange Act, to consider the impact of such rules on competition. Section 23(a)(2) also prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. As discussed below, the Commission's preliminary view is that the proposed amendments should promote efficiency and competition. It preliminarily believes that the proposals would have minimal impact, if any, on promotion of capital formation.

A. Actionable IOIs

The proposed amendment to the definition of ''bid'' or ''offer'' in Rule 600(b)(8) of Regulation NMS would expressly limit its exclusion of IOIs to those ''that are not actionable'' and those that are actionable but involve a market value of at least $200,000 that are communicated only to those who are reasonably believed to represent current contra-side trading interest of at least $200,000. The definition of bid or offer is a key element in determining the public quoting requirements of exchanges and OTC market makers. As discussed above, the proposed amendments are designed to help promote fair competition by providing a definition of ''bid'' or ''offer'' that would apply to all types of trading venues and, thereby, treat actionable IOIs similarly in those venues. The proposal is further designed to promote competition and enhance efficiency by including all actionable IOIs in the consolidated quotation stream, thereby eliminating the potential that IOIs create for two-tiered access to information on the best prices for NMS stocks. Given that actionable IOIs provide explicit or implicit information regarding symbol, side (buy or sell), size and price, there is little practical reason to treat actionable IOIs differently from displayed quotations at the NBBO.

Currently, dark pools' IOIs often are executed at prices that match the best displayed prices for a stock at another market, potentially depriving those who publicly display their interest at the best price from receiving a speedy execution at that price. The opportunity to obtain the fastest possible execution at a price is the primary incentive for the display of trading interest.[195] If adopted, the proposal could encourage the public display of trading interest and promote quote competition among markets by eliminating a practice that diverts order flow to private markets. Increasing the volume of order flow routed to public quoting markets could reward market participants for displaying their trading interest, thus leading to an increase in the display of trading interest. Such a result would be consistent with the Commission's emphasis on the need to encourage displayed liquidity—a critical reference point for investors.[196] Moreover, increasing the volume of order flow directed to public quotations could increase the incentives for markets to compete by displaying the quotations that would attract such order flow. The proposal thereby could promote competition for the displayed liquidity that is vital to the fairness and efficiency of the market for NMS stocks. Encouraging the use of displayed limit orders could help improve the price discovery process, and in turn,

[189] *See* FINRA Rules 6160 and 6170.

[190] This figure is the total initial, one-time annualized expense to add unique ATS identifiers to trade report messages transmitted to SIPs. This figure includes the development and testing expenses of the FINRA/NASDAQ TRF, FINRA/NYSE TRF, and the ADF, to which ATS trades are reported. The figure is based on discussions of Commission staff with FINRA staff. *See supra* section V.C.4.b.

[191] This figure is based on discussion of Commission staff with FINRA staff. This figure includes FINRA internal development and testing. The Commission derived the total estimated one-time burdens from the following: [(Programmer Analyst at 25 hours) × 2 at $193 per hour] + [(Computer Operator at 25 hours) × 2 at $75 per hour] = $13,400. *See supra* section V.C.4.b.

[192] This figure is the total initial, one-time annualized expense to provide planning, development, implementation, testing, and quality assurance for the SIPs. The figure is based on discussions of Commission staff with SIAC and Nasdaq SIP staff. *See supra* section V.C.4.c.

[193] 15 U.S.C. 78c(f).

[194] 15 U.S.C. 78w(a)(2).

[195] *See* NMS Release, supra note 26.

[196] *See supra* note 26.

contribute to increased liquidity and depth in the market.[197]

Further, the proposed amendment to the current definition of ''bid'' or ''offer'' would exclude any IOIs ''for a quantity of NMS stock having a market value of at least $200,000 that are communicated only to those who are reasonably believe to represent current contra-side trading interest of at least $200,000.'' This exception is designed to benefit investors trading in large sizes by allowing them to trade more efficiently than they could if these quotes were required to be included in the public quotation stream. As discussed above, some trading venues may use actionable IOIs as part of a trading mechanism that locates contra-side trading interest for large size orders without causing price impact on the markets. It also could promote competition by enabling trading venues to continue to offer existing size discovery mechanisms, as well as leaving room for trading venues to innovate and offer additional types of size discovery mechanisms.

Based on the analysis above, the Commission preliminarily believes that the proposed amendment to the definition of ''bid'' or ''offer'' in Rule 600(b)(8) to apply expressly to actionable IOIs would not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Commission also believes, as discussed above, that the proposed amendment would promote efficiency and competition, and would have minimal impact, if any, on promotion of capital formation.

The Commission requests comment on all aspects of this analysis and, in particular, on whether the proposed amendment would place a burden on competition, as well as the effect of the proposal on efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views if possible.

B. ATS Display Obligations

As discussed above, the proposed amendments to Rule 301(b)(3) are intended to reduce the potential for two-tiered markets and further integrate the best-priced orders available on ATSs into the national market system. By revising the order display and execution access requirements in Rule 301(b)(3) to reflect proposed revisions to the definition of ''bid'' or ''offer'' in Rule 600(b)(8) of Regulation NMS, the Commission aims to foster greater price transparency, more vigorous competition, and stronger, more integrated markets.[198]

ATSs that currently use actionable IOIs could respond to the proposed amendments to Regulation ATS by displaying some of these orders in the public quote stream. The proposed amendments to Rule 301(b)(3) are designed to incorporate more order information into the public quote stream and promote quote competition. Actionable IOIs communicated by ATSs to selected market participants often provide important pricing information and could improve the NBBO or add to the size available at the NBBO if they were included in the public quote stream. Both of these impacts could improve the pricing efficiency and overall execution quality available in the national market system. Requiring more such IOIs to be integrated into the public quote stream also could further competition among orders and among markets.

ATSs that currently use actionable IOIs could respond to the proposed amendments to Regulation ATS by going completely dark. This outcome could reduce the potential benefits to efficiency and quote competition. Nevertheless, this response would reduce the likelihood of two-tiered markets, where some market participants have information about and access to the best-priced orders that others do not. In addition, such a response would reduce the fraction of order flow that is diverted from market participants that publicly display their interest.

Moreover, the Commission preliminarily believes that the proposed amendments to Rule 301(b)(3) would strike an appropriate balance between encouraging competition among market centers and the need for appropriate coordination among them. The Commission's proposal to lower the trading volume threshold in Rule 301(b)(3) from 5% to 0.25% is designed to recognize significant changes in market structure and practice among market participants that have occurred since Regulation ATS was adopted, while at the same time not lowering the volume threshold to a level that would create an inappropriate barrier to entry for new ATSs.

The Commission also preliminarily believes that, by keeping barriers to entry reasonably low for new ATSs and strengthening the national market system, the proposed amendments to Rule 301(b)(3) would promote competition. A significant number of ATSs have been launched since the Commission adopted Regulation ATS in 1998. Competition between ATSs and exchanges, and between ATSs, has yielded numerous benefits for investors and the national market system as a whole, including faster and more robust trading technology, new trading strategies, and lower transaction costs, which in turn support highly liquid markets with wide investor participation. The Commission thus believes that reasonably low barriers to entry for ATSs has generally helped to promote competition and efficiency.

For these reasons, the Commission preliminarily believes that the changes to Rule 301(b) would likely have a positive impact on competition and efficiency, would have minimal impact, if any, on promotion of capital formation, and would not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Commission generally requests comment on the competitive effects of the proposed amendments to Rule 301(b)(3) on any market participant. The Commission also requests comment on what impact the proposed amendments to Rule 301(b)(3) would have on competition, efficiency, and capital formation. The Commission requests comment on all aspects of this analysis and, in particular, on whether the proposed amendments to Rule 301(b)(3) would place a burden on competition, as well as the effect of the proposal on efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views, if possible.

C. Post-Trade Transparency for ATSs

The Commission's preliminary view is that the proposed amendments to post-trade transparency requirements for ATSs should promote efficiency and competition. The Commission believes that the proposed amendments to the Plans would improve post-trade transparency as Plan Participants would be required to include identifying information, specifying the trading center that executed the trade in the consolidated data stream disseminated to the public. This information should lead to more efficient order routing, as investors would know on which ATS a particular security has been traded. This improved post-trade transparency should promote competition among trading venues as the public would be better able to assess where trading volume is being executed. Furthermore,

[197] *See* Order Handling Rules Release, *supra* note 26, at 48293 (''[T]he display of customer limit orders advances the national market system goal of the public availability of quotation information, as well as fair competition, market efficiency, best execution, and disintermediation.'').

[198] *See supra* section II.

such uniform and reliable reporting practices may promote efficiency by facilitating the flow of information among ATSs, broker-dealers, exchanges, investors, and other market participants. As discussed, the Commission preliminarily believes that this change would bring the trade reporting requirements for ATSs in line with the trade reporting requirements for exchanges. Requiring the public disclosure of which ATS executed a trade should enable the public to determine more accurately the volume of executions occurring on any particular ATS, as well as on ATSs in general. The Commission expects that investors would direct orders to ATSs that provided liquidity in a particular issue. Greater transparency should also enhance the ability of investors to receive best execution for their orders. Transparency should result in more efficient routing of orders to venues with liquidity. The Commission preliminarily believes that some ATSs could receive additional trading interest when investors are able to identify that the ATS has liquidity in a particular stock.

The Commission preliminarily believes the proposed Plan amendments would promote efficiency and competition and would have minimal impact, if any, on promotion of capital formation. In addition, the Commission preliminarily believes that the proposed Plan amendments would not impose any burden on competition not necessary or appropriate in the furtherance of the purposes of the Exchange Act.

The Commission requests comment on all aspects of this analysis and, in particular, on whether the proposed amendments would place a burden on competition, as well as the effect of the proposal on efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views if possible.

VIII. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or ''SBREFA,'' [199] the Commission must advise the OMB as to whether the proposed regulation constitutes a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results or is likely to result in: (1) An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease); (2) a major increase in costs or prices for consumers or individual industries; or (3) significant adverse effect on competition, investment or innovation. If a rule is ''major,'' its effectiveness will generally be delayed for 60 days pending Congressional review.

The Commission requests comment on the potential impact of the proposed rule amendments on the economy on an annual basis, on the costs or prices for consumers or individual industries, and on competition, investment or innovation. Commenters are requested to provide empirical data and other factual support for their view to the extent possible.

IX. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') [200] requires Federal agencies, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a) [201] of the Administrative Procedure Act,[202] as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules, or proposed rule amendments, to determine the impact of such rulemaking on ''small entities.'' [203] Section 605(b) of the RFA states that this requirement shall not apply to any proposed rule or proposed rule amendment, which if adopted, would not ''have a significant economic impact on a substantial number of small entities.'' [204]

A. Actionable IOIs

Pursuant to Rule 605(b) of the RFA, the Commission certifies that the proposed amendment of Rule 600(b)(8) of Regulation NMS, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed amendment of Rule 600(b)(8) of Regulation NMS would revise the definition of ''bid'' or ''offer'' by expressly limiting its exclusion of IOIs to those ''that are not actionable and indications of interest for a quantity of NMS stock having a market value of at least $200,000 that is communicated only to those who are reasonably believed to represent current contra-side trading interest of at least $200,000.'' The practical result of the amendment would be that actionable IOIs that do not meet the size discovery exclusion would be ''bids'' or ''offers.''

''Bid'' and ''offer'' are key terms that determine the scope of Rule 602 of Regulation NMS. In general, Rule 602 requires exchange members and OTC market makers to provide their best-priced bids and offers to their respective exchanges and FINRA. The exchanges and FINRA, in turn, are required to make their best bids and offers available in the consolidated quotation data. The exchanges subject to the requirements of Rule 602 are not small entities as defined by Commission rules,[205] and FINRA, a national securities association, is not a small entity.

The proposed amendment to Rule 600(b)(8) could increase the number of ''bids'' and ''offers'' exchange members and certain OTC market makers must review to determine their best-priced bids and offers. Some exchange members and OTC market makers may be small entities pursuant to Rule 0–10(c) under the Exchange Act.[206] It is the Commission's understanding that all exchange members and OTC market makers currently have systems and procedures in place to determine their best-priced bids and offers. As a result, the Commission believes that the proposed amendment would not result in a significant economic impact on a substantial number of exchange members and OTC market makers when determining their best-priced bids and offers due to the proposed inclusion of actionable IOIs in the definition of ''bid'' or ''offer.''

The Commission encourages written comments regarding this certification. The Commission requests that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

B. ATS Display Obligations

The Commission also certifies that the proposed amendments to Rule 301(b)(3) of Regulation ATS would not, if adopted, have a significant economic impact on a substantial number of small entities.

For purposes of Commission rulemaking in connection with the RFA, a small entity includes a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial

[199] Public Law 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

[200] 5 U.S.C. 601 *et seq.*

[201] 5 U.S.C. 603(a).

[202] 5 U.S.C. 551 *et seq.*

[203] Although Section 601(b) of the RFA defines the term ''small entity,'' the statute permits agencies to formulate their own definitions. The Commission has adopted definitions for the term small entity for the purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this proposed rulemaking, are set forth in Rule 0–10, 17 CFR 240.0–10. *See* Securities Exchange Act Release No. 18451 (January 28, 1982), 47 FR 5215 (February 4, 1982) (File No. AS–305).

[204] *See* 5 U.S.C. 605(b).

[205] *See* 17 CFR 240.0–10(e).

[206] *See* 17 CFR 240.0–10(c).

statements were prepared pursuant to Rule 17a–5(d) under the Exchange Act,[207] or, if not required to file such statements, a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and is not affiliated with any person (other than a natural person) that is not a small business or small organization.[208] An entity that complies with Regulation ATS must, among other things, register as a broker-dealer.[209] Thus, the Commission's definition of small entity as it relates to broker-dealers also applies to ATSs.

The proposed amendments to Rule 301(b)(3) would lower the average daily trading volume threshold that triggers the order display and execution access requirements applicable to ATSs. Accordingly, the proposed amendments to Rule 301(b)(3) could result in more ATSs being subject to these requirements.

The Commission notes that there are approximately 73 ATSs that are subject to Regulation ATS. Of these, approximately 11 communicate actionable IOIs in NMS stocks to more than one person and approximately one other ATS displays subscriber orders in NMS stocks on a limited basis in some other fashion. Therefore, the Commission preliminarily believes that approximately 12 respondents could be impacted by the proposed amendments to Rule 301(b)(3).[210] The Commission preliminarily does not believe that any of these 12 ATSs would be a ''small entity'' as defined above.[211] Therefore, the Commission certifies that the proposed amendments to Rule 301(b)(3), if adopted, would not have a significant economic impact on a substantial number of small entities for purposes of the RFA.

The Commission encourages written comments regarding this certification. The Commission requests that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

C. Post-Trade Transparency for ATSs

The Commission also certifies that the proposed amendments to the CTA Plan and Nasdaq UTP Plan, would not, if adopted, have a significant economic impact on a substantial number of small entities.

Rule 608,[212] adopted by the Commission under Section 11A, establishes procedures for proposing amendments to national market system plans such as the CTA Plan and the Nasdaq UTP Plan. Paragraph (b)(2) states that the Commission may propose amendments to an effective national market system plan by publishing the text of the amendment together with a statement of purpose of the amendments.

The CTA Plan and the Nasdaq UTP Plan amendments apply to the twelve Plan Participants, none of which is a small entity. The requirement for trade reports to now include a unique identifier for ATS transactions, which would be included on the trade reports in the public data stream, would require FINRA, for trades effected by ATSs, to include an additional data element in the trade report that is submitted to the SIPs. FINRA, a national securities association, and the SIPs are not small entities.

The Commission's definition of small entity as it relates to broker-dealers also applies to ATSs.[213] The Commission preliminarily believes that there would be no significant economic impact on any of the 73 ATSs that are subject to Regulation ATS that meet the definition of small entity as defined above. Currently, the identity of an ATS transaction is not disseminated with the trade information they report to the public data stream. The CTA Plan and the Nasdaq UTP Plan amendments would require that each ATS use a unique MPID to report its transactions to FINRA, rather than report its transactions using the MPID of its sponsoring broker-dealer. The ATSs that do not already use a unique MPID would need to replace the MPID for their sponsoring broker-dealer with a unique MPID at no significant economic cost to the ATS. Therefore, the Commission certifies that the proposed amendments to the Plans, if adopted, would not have a significant economic impact on a substantial number of small entities for purposes of the RFA.

The Commission encourages written comments regarding this certification. The Commission requests that commenters describe the nature of any effect on small entities and provide empirical data to support the extent of the impact.

X. Statutory Authority

Pursuant to the Exchange Act and particularly, Sections 2, 3(b), 5, 6, 11, 11A, 15, 15A, 17(a) and (b), 19, 23(a), and 36 thereof, 15 U.S.C. 78b, 78c(b), 78e, 78f, 78k, 78k–1, 78o, 78o–3, 78q(a) and (b), 78s, 78w(a), and 78mm, the Commission proposes to amend Rule 600 of Regulation NMS, Rule 301 of Regulation ATS, and the CTA Plan and Nasdaq UTP Plan.

XI. Text of Proposed Amendments to the CTA Plan and Nasdaq UTP Plan

A. The CTA Plan

The Commission hereby proposes to amend the CTA Plan to amend the definition of trade report to provide for a unique identifier on each trade report of a trade effected by an Alternative Trading System.

Set forth below are the changes the Commission is proposing to the language of the CTA Plan. Additions are italicized and deletions are in brackets.

I. Definitions

(m) ''Last sale price information'' means (i) the last sale prices reflecting completed transactions in Eligible Securities, (ii) the volume and other information related to those transactions, (iii) the identifier of the Participant furnishing the prices, *(iv) the identifier of the Alternative Trading System furnishing the prices to FINRA,* and [iv] *(v)* other related information.

VI. Consolidated Tape

(f) Market Identifiers. Each such last sale price when made available by means of the high speed line shall be accompanied by the appropriate alphabetic symbol identifying the market of execution; provided, however, that all last sale prices collected by FINRA and reported to the Processor shall, when so made available by the Processor, be accompanied by a distinctive alphabetic symbol distinguishing such last sale prices from those reported by any exchange or other reporting party, and all last sale prices reported by brokers or dealers required to file a plan with the SEC pursuant to the Rule shall, when so made available by the Processor, be accompanied by a distinctive alphabetic symbol distinguishing such last sale prices from

[207] *See* 17 CFR 240.17a–5(d).

[208] *See* 17 CFR 240.0–10(c).

[209] *See* 17 CFR 242.301(b)(1).

[210] The Commission preliminarily believes that the remaining 61 ATSs would not be affected by the proposed amendments because they: (a) do not display subscriber orders in NMS stocks to more than one person (whether by communicating actionable IOIs or otherwise), (b) are ECNs and already publicly display subscriber orders, or (c) do not effect transactions in NMS stocks.

[211] This preliminary estimate is based on discussions with industry participants, including ATSs that could be impacted by the proposed changes to Rule 301(b)(3) and information provided in Forms ATS and ATS–R, as filed with the Commission. The Commission notes that most of the 12 potential ATS respondents are affiliated with large broker-dealer firms, none of which is a ''small entity'' under the RFA.

[212] 17 CFR 242.608.

[213] *See supra* notes 207–209 and accompanying text.

those reported by FINRA or any exchange.

All last sale prices collected by FINRA from Alternative Trading Systems that are subject to Regulation ATS shall be accompanied by a unique identifier identifying the Alternative Trading System that executed the trade (''ATS Identifier''). All last sale prices collected by FINRA from Alternative Trading Systems that are subject to Regulation ATS shall, when reported to the Processor by FINRA and when made available by the Processor, be accompanied by a unique ATS Identifier, unless the last sale price is for a transaction with a market value of at least $200,000.

VIII. Collection and Reporting of Last Sale Data

(a) Responsibility of Exchange Participants. The AMEX, BATS, the BSE, the CBOE, the CHX, the ISE, Nasdaq, the NSX, the NYSE, NYSE Arca and the PHLX will each collect and report to the Processor all last sale price information to be reported by it relating to transactions in Eligible Securities taking place on its floor. In addition, FINRA shall collect from its members all last sale price information to be included in the consolidated tape relating to transactions in Eligible Securities not taking place on the floor of an exchange and shall report all such last sale price information to the Processor in accordance with the provisions of Section VIII(b) hereof*, unless the last sale price is collected by FINRA from an Alternative Trading System subject to Regulation ATS for a transaction with a market value of at least $200,000, in which case FINRA shall not report an ATS Identifier as part of the last sale price.* It will be the responsibility of each Participant and each other reporting party, as defined in Section III(d) hereof, to (i) report all last sale prices relating to transactions in Eligible Securities as promptly as possible*, unless the last sale price is collected by FINRA from an Alternative Trading System subject to Regulation ATS for a transaction with a market value of at least $200,000, in which case FINRA shall not report an ATS Identifier as part of the last sale price,* (ii) establish and maintain collection and reporting procedures and facilities such as to assure that under normal conditions not less than 90% of such last sale prices will be reported within that period of time (not in excess of one and one-half minutes) after the time of execution as may be determined by CTA from time to time in light of experience, and (iii) designate as ''late'' any last sale price not collected and reported in accordance with the above-referenced procedures or as to which the reporting party has knowledge that the time interval after the time of execution is significantly greater than the time period referred to above. CTA shall seek to reduce the time period for reporting last sale prices to the Processor as conditions warrant.

B. The Nasdaq UTP Plan

The Commission hereby proposes to amend the Nasdaq UTP Plan to amend the definition of trade report to provide for a unique identifier on each trade report of a trade effected by an Alternative Trading System.

Set forth below are the changes the Commission is proposing to the language of the Nasdaq UTP Plan. Additions are italicized and deletions are in brackets.

III. Definitions

U. ''Transaction Reports'' means reports required to be collected and made available pursuant to this Plan containing the stock symbol, price, and size of the transaction executed, the Market in which the transaction was executed, and related information, including a buy/sell/cross indicator and trade modifiers, reflecting completed transactions in Eligible Securities *and, in the case of FINRA, the FINRA member that entered the report, if such member is an alternative trading system subject to Regulation ATS.*

VI. Functions of the Processor

C. Dissemination of Information

3. Transaction Reports

The Processor shall disseminate on the UTP Trade Data Feed a data stream of all Transaction Reports in Eligible Securities received from Participants. Each transaction report shall be designated with a symbol identifying the Participant in whose Market the transaction took place*, and in the case of FINRA, with the identity of the FINRA member reporting the transaction if such member is an alternative trading system subject to Regulation ATS, unless the last sale price is for a transaction with a market value of at least $200,000.*

VIII. Transmission of Information to Processor by Participants

B. Transaction Reports

Each Participant shall, during the time it is open for trading, be responsible promptly to collect and transmit to the Processor Transaction Reports in Eligible Securities executed in its Market by means prescribed herein. With respect to orders sent by one Participant Market to another Participant Market for execution, each Participant shall adopt procedures governing the reporting of transactions in Eligible Securities specifying that the transaction will be reported by the Participant whose member sold the security. This provision shall apply only to transactions between Plan Participants.

Transaction Reports shall include:

1. Identification of the Eligible Security, using the Nasdaq Symbol;
2. The number of shares in the transaction;
3. The price at which the shares were purchased or sold;
4. The buy/sell/cross indicator;
5. The Market of execution; [and,]
6. Through appropriate codes and messages, late or out-of-sequence trades, corrections and similar matters[.]; *and,*
7. In the case of FINRA, the identity of the FINRA member reporting the transaction if such member is an alternative trading system subject to Regulation ATS, unless the last sale price is for a transaction with a market value of at least $200,000.

XII. Text of Proposed Rule Amendments

List of Subjects in 17 CFR Part 242

Brokers, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the text of Title 17, Chapter II, of the Code of Federal Regulations is proposed to be amended as follows.

PART 242—REGULATIONS M, SHO, ATS, AC, AND NMS AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

1. The authority citation for Part 242 continues to read in part as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k–1(c), 78l, 78m, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd–1, 78mm, 80a–23, 80a–29, and 80a–37.

2. Revise § 242.301(b)(3)(i) and (ii) to read as follows:

§ 242.301 Requirements for alternative trading systems.

* * * * *

(b) * * *

(3) * * *

(i) An alternative trading system shall comply with the requirements set forth in paragraph (b)(3)(ii) of this section, with respect to any NMS stock in which the alternative trading system:

(A) Displays subscriber orders to any person (other than alternative trading system employees); and

(B) During at least 4 of the preceding 6 calendar months, had an average daily

trading volume of 0.25 percent or more of the aggregate average daily share volume for such NMS stock as reported by an effective transaction reporting plan.

(ii) Such alternative trading system shall provide to a national securities exchange or national securities association the prices and sizes of the orders (other than orders having a market value of at least $200,000 that are displayed only to those who are reasonably believed to represent current contra-side trading interest of at least $200,000) at the highest buy price and the lowest sell price for such NMS stock, displayed to more than one person (other than alternative trading system employees), for inclusion in the quotation data made available by the national securities exchange or national securities association to vendors pursuant to § 242.602.

* * * * *

3. Section 242.600 is amended by revising paragraph (b)(8) to read as follows:

§ 242.600 NMS security designation and definitions.

* * * * *

(b) * * *

(8) *Bid* or *offer* means the bid price or the offer price communicated by a member of a national securities exchange or member of a national securities association to any broker or dealer, or to any customer, at which it is willing to buy or sell one or more round lots of an NMS security, as either principal or agent, but shall not include indications of interest that are not actionable and indications of interest for a quantity of NMS stock having a market value of at least $200,000 that are communicated only to those who are reasonably believed to represent current contra-side trading interest of at least $200,000.

* * * * *

By the Commission.

Dated: November 13, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–27951 Filed 11–20–09; 8:45 am]

BILLING CODE 8011–01–P

Federal Register

Monday,
November 23, 2009

Part III

Department of Education

34 CFR Parts 668, 686, 690, and 691

Student Assistance General Provisions; Teacher Education Assistance for College and Higher Education (TEACH) Grant Program; Federal Pell Grant Program; Academic Competitiveness Grant Program and National Science and Mathematics Access To Retain Talent Grant Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 668, 686, 690, and 691

RIN 1840–AC96

[Docket ID ED–2009–OPE–0001]

Student Assistance General Provisions; Teacher Education Assistance for College and Higher Education (TEACH) Grant Program; Federal Pell Grant Program; Academic Competitiveness Grant Program and National Science and Mathematics Access To Retain Talent Grant Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary is adopting as final, with changes, interim final regulations for the Academic Competitiveness (ACG) and National Science and Mathematics to Retain Talent Grant (National SMART Grant) programs; Student Assistance General Provisions; Federal Pell Grant Program; and Teacher Education Assistance for College and Higher Education (TEACH) Grant Program. These final regulations are needed to implement provisions of the Higher Education Act of 1965 (HEA), as amended by the Ensuring Continued Access to Student Loans Act of 2008 (ECASLA) and the Higher Education Opportunity Act of 2008 (HEOA). The new statutory provisions became effective July 1, 2009.

DATES: These regulations are effective January 22, 2010.

FOR FURTHER INFORMATION CONTACT:

Topic	Contact person and information
General information and information related to rigorous secondary school programs and eligible majors.	Sophia McArdle. Telephone: (202) 219–7078 or via the Internet: *sophia.mcardle@ed.gov.*
Information related to grade level progression	Fred Sellers. Telephone: (202) 502–7502 or via the Internet: *fred.sellers@ed.gov.*
Information related to payments for part-time students	Jacquelyn Butler. Telephone: (202) 502–7890 or via the Internet: *jacquelyn.butler@ed.gov.*
Information related to prior enrollment	Carney McCullough. Telephone: (202) 502–7639 or via the Internet: *carney.mccullough@ed.gov.*

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the first contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: On May 1, 2009, the Secretary published interim final regulations for the ACG and National SMART Grant Programs in the **Federal Register** (74 FR 20210). The interim final regulations became effective July 1, 2009. At the time the interim final regulations were published, the Secretary requested public comment on whether changes to the regulations were warranted.

In the preamble to the interim final regulations, the Secretary discussed, on pages 20210 through 20218, the major issues covered by the regulations. The following paragraphs summarize those issues and identify the relevant sections of the interim final regulations:

The Secretary amended the definition of the term *ACG Scheduled Award* to be the maximum amount of an ACG that would be paid to a full-time first-year student or a full-time second-year student for the applicable year. A *National SMART Grant Scheduled Award* was defined as the maximum amount of a National SMART Grant that would be paid to a full-time third-year, fourth-year, or fifth-year student for the applicable year (see § 691.2(d)).

In § 691.2(d), the Secretary defined the term *annual award* to be the maximum ACG or National SMART Grant amount a student would receive for enrolling as a full-time, three-quarter-time, or half-time student and remaining in that enrollment status for one year.

The Secretary amended the definition of the term *eligible major* in § 691.2(d) to include, in addition to majors in physical, life, or computer sciences, mathematics, technology, engineering or a critical foreign language, a qualifying liberal arts curriculum as determined by the Secretary.

The Secretary amended the definition of the term *eligible program* to include, for the ACG program, an undergraduate certificate program of at least one academic year in length and, for the National SMART Grant program, a degree program with at least five full undergraduate years of coursework at a degree-granting institution of higher education (see § 691.2(d)).

In § 691.2(e), the Secretary defined the terms *first-year, second-year, third-year fourth-year,* and *fifth-year* as a student's grade level in the student's eligible program as determined by the institution for all students in the eligible program.

The Secretary amended the method by which the duration of student eligibility was determined, by basing eligibility on a student's grade level, rather than on the student's academic year (see §§ 691.2(d) and 691.6). In § 691.6(b)(2), the Secretary provided that a fourth-year student enrolled in a National SMART Grant-eligible program with less than five full years of coursework continues to be considered a fourth-year student for purposes of the National SMART Grant program until he or she completes his or her first undergraduate baccalaureate course of study, and that a fifth-year student, enrolled in a National SMART Grant-eligible program with a least five full years of coursework, continues to be considered a fifth-year student until he or she completes his or her first undergraduate baccalaureate course of study.

In § 691.8, the Secretary detailed how correspondence courses would be applied toward a student's enrollment status (i.e., as a half-time, three-quarter-time, and full-time student) in an eligible program.

The Secretary removed the provisions from § 691.15(a) that stated that eligibility for ACGs and National SMART Grants is limited to U.S. citizens and students who are enrolled full-time.

With respect to eligibility for a first-year ACG, the Secretary provided that the restriction on prior enrollment does not apply to students who were enrolled as regular students in an eligible program of undergraduate education that was also part of a secondary school program of study, and clarified that transfer students who are first-year students are not considered to have been previously enrolled and, therefore, are not subject to the prior enrollment restriction (§ 691.15(b)(1)(ii)(C)).

The Secretary amended § 691.16 to provide that starting with the 2009–2010 award year, a designated official, consistent with State law, may recognize and report to the Secretary any secondary school programs of study that prepare students for college and that the designated official deems rigorous. These programs supplement the secondary school programs previously recognized by the Secretary as rigorous. It is no longer the Secretary's role to recognize secondary school programs of study as rigorous.

The Secretary exempted a student enrolled in a qualifying liberal arts curriculum from the requirement that the student must declare an eligible major to receive a National SMART Grant and provided that an institution need only document a student's progress in completing the program in the intended or declared National SMART Grant-eligible program (§§ 691.15(d)(3) and 691.15(e)).

The Secretary amended the regulations to provide that an eligible major includes any ''critical foreign language'' found in section 103(3) of the HEA, rather than critical foreign languages identified by the Secretary after consulting with the Director of National Intelligence. The Secretary also amended the regulations to provide that an eligible major includes qualifying liberal arts curricula and to describe the process by which an institution requests designation of a liberal arts curriculum as an eligible major.

In § 691.62, the Secretary set the ACG and National SMART Grant annual award amounts for full-time, three-quarter-time, and half-time students. The annual award for a full-time student is the same amount as the student's Scheduled Award.

The Secretary described in §§ 691.63 and 691.66 how ACG and National SMART Grant payments for a payment period must be calculated for full-time, three-quarter-time, and half-time students as well as for students in a program of study offered by correspondence.

The Secretary amended § 691.63(h) to provide that a student may not progress to the next year in a grade level (rather than next academic year) during a payment period.

Analysis of Comments and Changes

The final regulations in this document were developed through the analysis of the two comments we received on the interim final regulations published on May 1, 2009. An analysis of the comments and of the changes to the regulations since publication of the interim final regulations follows. We group major issues according to subject, with appropriate sections of the regulations referenced in parentheses. Generally, we do not address technical and other minor changes.

General Comment

Comment: One commenter supported the interim final regulations, citing in particular its approval of the definitions of *annual award, first-year, second-year, third-year, fourth-year,* and *fifth-year,* the requirement that the grade level used for purposes of awarding ACG and National SMART Grant funds be the same grade level used for determining annual loan limits under the Federal Family Education Loan (FFEL) Program and the William D. Ford Federal Direct Loan (Direct Loan) Program, and the provisions governing enrollment status and student eligibility that allow students enrolled less than full-time but at least half-time to be eligible for ACG and National SMART Grants.

Discussion: The Secretary appreciates the support of the commenter.

Changes: None.

Definitions (§ 691.2)

Eligible Program (§ 691.2(d))

Comment: One commenter was concerned that, under the definition of the term *eligible program* in § 691.2(d), a five-year program that is a qualifying liberal arts curriculum identified as an eligible major under § 691.17(b) would not qualify as a National SMART Grant-eligible program. The commenter believed that the HEA does not disqualify a five-year program from eligibility and that a student in such a program would be eligible for a third- and fourth-year National SMART Grant.

Discussion: We do not agree with the commenter. Section 401A(c)(3)(E) of the HEA specifies that a student can receive a fifth-year National SMART Grant if he or she is enrolled in a program requiring five full years of coursework for which a baccalaureate degree is awarded in the physical, life, or computer sciences, mathematics, technology, engineering, or a critical foreign language. Section 401A(c)(3)(D) of the HEA contains National SMART Grant eligibility requirements for students enrolled in a liberal arts curriculum, providing that such curriculum must consist of at least four years of study in mathematics and three years of study in the sciences, with a laboratory requirement in each of those years or that the student study a subject that is at least equal to the requirements for an academic major at an institution that offers a baccalaureate degree in that subject. While section 401A(c)(3)(D) of the HEA does not explicitly state that a qualified liberal arts curriculum may not be a five year program, we find it to be implicit, based on the structure of section 401(c)(3) and because section 401A(c)(3)(E) of the HEA, covering fifth-year National SMART Grant eligibility, does not include liberal arts curricula as a major for which a student may earn a fifth-year grant.

Changes: None.

Comments: One commenter noted that the definition of the term *eligible program* for purposes of the ACG Program incorporates certificate programs but does not specify that certificate programs must be offered by degree-granting institutions of higher education.

Discussion: We agree with the commenter that a certificate program is an eligible program only if it is offered at a two-year or four-year degree-granting institution. Section 401A(c)(3)(A) of the HEA provides that an eligible student that receives a first-year ACG award must be enrolled or accepted for enrollment in the first year of a program of undergraduate education at a two- or four-year degree-granting institution of higher education, ''including a program of not less than one year for which the institution awards a certificate.'' To receive a second year ACG in accordance with section 401A(c)(3)(B) of the HEA, an eligible student must be enrolled or accepted for enrollment in the second year of a program of undergraduate education at a two- or four-year degree-granting institution of higher education, ''including a program of not less than two years for which the institution awards a certificate.''

Changes: We have amended the definition of the term *eligible program* in § 691.2(d) to provide that, for purposes of the ACG Program, an undergraduate program of at least one academic year in length that leads to a certificate must be offered by a two-year or four-year degree-granting institution of higher education for a first-year ACG. Also, we have clarified in this definition that, for a second-year ACG, an eligible program is an undergraduate program of

at least two academic years in length that leads to a certificate or associate degree and is offered by a two-year or four-year degree-granting institution of higher education.

Duration of Student Eligibility—Undergraduate Course of Study (§ 691.6)

Comment: One commenter supported the provisions in § 691.6(b) that extend the National SMART Grant eligibility of a student in the final year of a student's four- or five-year program until the student graduates. Under these provisions, a student enrolled in a National SMART Grant-eligible program with less than five full years of coursework in the case of a fourth-year student, or with at least five full years of coursework in the case of a fifth-year student, remains a fourth- or fifth-year student respectively until the completion of his or her undergraduate baccalaureate course of study. The commenter encouraged the Department to adopt the same policy for students enrolled in associate degree programs and questioned whether the policy would also apply to certificate programs.

The commenter also believed that under § 691.6 a student enrolled in a certificate program that is longer than one academic year in length would be eligible for a second-year ACG. For example, an eligible student enrolled in a program that is 45 credit hours and 45 weeks of instructional time in length would receive the maximum first-year ACG as well as half of a second-year ACG. The commenter further questioned whether that student could ever be eligible to receive more than half of a second-year ACG.

The commenter also stated that in the loan programs, a student enrolled in a program that is one academic year in length could never receive funds at second-year loan limits regardless of how long it took the student to complete the program. The commenter questioned whether a student who took more than one academic year to complete a one-year certificate program would ever be eligible to receive any portion of a second-year ACG for the extra time it took to complete the program.

Discussion: We appreciate the commenter's support of the change in the regulations that extends a student's eligibility for a National SMART Grant award for a fourth- and fifth-year student until the student completes his or her first undergraduate baccalaureate course of study. We also appreciate the commenter's recommendation that the regulations should extend the final year of eligibility to students enrolled in one-academic-year certificate programs or two-academic-year certificate or associate degree programs. However, to provide the extensions for shorter educational programs would result in an estimated increase in program costs of $16 million over the final two years of the ACG and National SMART Grant programs. To make the changes, we would need to identify savings to offset the cost increase. We have been unable to identify any offsetting savings.

We do not agree with the commenter's assessment that a student enrolled in a program that is 45 credit hours and 45 weeks of instructional time in length would be eligible for half of a second-year ACG. The student in that example would only qualify for a full first-year ACG. Section 401A(c)(3)(D) of the HEA provides that a student may be eligible for a second-year ACG if he or she is enrolled in a certificate program of not less than two years. Although the program in the example is longer than one-academic year in length, the student would not qualify for any portion of the second-year ACG because the program is less than two academic years in length. The program is an eligible program only for a first-year ACG.

We note that in some cases, under the FFEL and Direct Loan programs, a student in a certificate or associate degree program that extends to a third-year grade level may receive funds at the third-year annual loan limits. For purposes of ACG, as a third-year student, the student would not qualify for funds from a second-year ACG.

Changes: None.

Eligibility To Receive a Grant (§ 691.15)

Comments: One commenter noted that a student who enters college with a full year of credit from Advanced Placement (AP) or International Baccalaureate (IB) coursework will not have a grade point average (GPA), and therefore cannot qualify for a second-year ACG because he or she cannot meet the minimum 3.0 GPA required to receive an ACG. The commenter suggested that the Department allow the AP or IB exam scores to satisfy the GPA requirement, or allow the final high school GPA to be used, or provide some other method by which an equivalency for the GPA could be determined.

Discussion: Section 401A(c)(3)(B)(ii) of the HEA specifies that to receive a second-year ACG, a student must obtain a cumulative GPA of at least 3.0 (or the equivalent as determined under regulations prescribed by the Secretary) at the end of the first year of the program of undergraduate education. The statute does not allow for any other GPA, such as a final high school GPA, to satisfy the 3.0 GPA requirement. With respect to AP or IB exam scores, there is no standardized methodology for equating AP or IB exam scores with undergraduate grades. Regulations for determining the numeric equivalent at institutions of higher education that assess GPA on a numeric scale other than a 4.0 scale were previously published. In the case of credits that are awarded when no postsecondary coursework has been completed, the Secretary believes that it is not possible to determine a numeric equivalent, and therefore agrees with the commenter that a student in this circumstance cannot qualify for a second-year ACG because he or she cannot meet the minimum 3.0 GPA required to receive an ACG.

Changes: None.

Comment: One commenter commended the Secretary for eliminating from § 691.15(e) the requirement that the institution document a student's progress in his or her major each term. The same commenter stated that any requirement to document progress in the student's program outside of normal satisfactory academic progress is unnecessary and meaningless and recommended deleting all of § 691.15(e).

Discussion: The commenter misunderstood the interim final regulations. The Secretary did not eliminate the requirement to document progress in the major for each term. Rather, the interim final regulations removed the requirement in § 691.15(c)(2)(ii) that a student enroll in courses necessary both to complete the degree program and fulfill the requirements of the eligible major each payment period, and that the institution document that enrollment. Section 691.15(e) continues to require an institution to document a student's progress in taking the courses necessary to complete the National SMART Grant-eligible program in the intended or declared major. The Secretary does not agree that documenting progress in the student's program beyond that required to show a student's satisfactory academic progress under § 668.34(e) is unnecessary or meaningless. National SMART Grant eligibility is determined each payment period, and institutions must document that a student achieved at least a 3.0 cumulative GPA for each payment period. Under the satisfactory academic progress regulations in § 668.34(e), an institution is required to review a student's academic progress only at the end of each year. Because eligibility for a National SMART Grant is determined each payment period, an annual review would be insufficient to

ensure that a student continues to make the necessary progress in his or her National SMART Grant-eligible program for every payment period.

Changes: None.

Calculation of a Grant for a Payment Period (§ 691.63(h))

Comment: One commenter questioned whether it was appropriate to provide that a student may not progress to the next grade level during a payment period, as was previously required when progression was based on a student's academic year. The commenter noted various reasons why a student's grade level may change during a payment period, including error, late grade submission, or late arriving transcripts from other institutions. The commenter believed that we should treat a student's grade level change made during a payment period similarly to the way we treat grade level changes for purposes of determining annual loan limits under the FFEL and Direct Loan programs.

Discussion: While a student's grade level may change during a payment period for a variety of reasons, a student can only be eligible for payment from one Scheduled Award during the payment period. This circumstance is fundamentally different from the application of annual loan limits that are not applied on the same basis as determining Scheduled Awards for ACG and National SMART Grants. Except in the case of an institutional error, we believe that a Scheduled Award based on a student's grade level at the outset of the payment period is the most appropriate Scheduled Award for determining the student's eligibility for payment. If, due to an institutional error, an incorrect grade level was the basis for determining the student's award, the institution must correct the error and adjust the student's award based on the correct grade level.

Changes: None.

Calculation of a Federal Pell Grant for a Payment Period (§ 690.63(d))

Comment: None.

Discussion: In reviewing the interim final regulations, we identified an error in the amendatory language related to § 690.63(d). Specifically, we inadvertently amended § 690.63(d)(1)(i) instead of § 690.63(d)(1).

Changes: We are correcting the error by amending § 690.63(d)(1), so that it is consistent with § 691.63(d)(1), which governs calculation of an ACG or National SMART Grant for a payment period.

Executive Order 12866

1. Regulatory Impact Analysis

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

Pursuant to the terms of the Executive order, it has been determined that this final regulatory action will have an annual effect on the economy of more than $100 million. Therefore, this action is ''economically significant'' and subject to OMB review under section 3(f)(1) of Executive Order 12866.

Need for Federal Regulatory Action

As discussed in the interim final regulations, these regulations address a range of issues affecting students and institutions of higher education participating in the ACG and National SMART Grant programs. They are needed to implement statutory changes enacted through the ECASLA and the HEOA.

Regulatory Alternatives Considered

Alternatives to the regulations were considered as part of the rulemaking process. These alternatives were reviewed in detail in the preamble to the interim final regulations under both the *Regulatory Impact Analysis* and the *Reasons* sections accompanying the discussion of each proposed regulatory provision. To the extent that they were addressed in response to comments received on the interim final regulations, alternatives are also considered elsewhere in the preamble to these final regulations under the *Discussion* sections related to each provision. No comments were received related to the *Regulatory Impact Analysis* discussion of these alternatives.

As discussed above in the *Analysis of Comments and Changes* section, the final regulations reflect statutory amendments included in the HEOA and minor revisions in response to public comments. None of these changes result in revisions to cost estimates prepared for and discussed in the *Regulatory Impact Analysis* of the interim final regulations.

One alternative suggested by a commenter that was considered involved extending the final year of eligibility for students enrolled in one-academic-year certificate programs or two-academic-year certificate or associate degree programs. A commenter argued that such an extension would be more equitable and would maximize the amount of ACG funds awarded to students who did not receive or were ineligible for some portion of his or her first- or second-year award. The Department considered providing that a first-year student, enrolled in an ACG-eligible certificate program of at least one academic year, but less than two academic years, in length would continue to be considered a first-year student until he or she completes the certificate program. Similarly, the Department also considered providing that a second-year student, enrolled in an ACG-eligible certificate or associate's degree program of at least two academic years in length, would continue to be considered a second-year student until he or she completes the program. An analysis of this alternative indicated it would increase program costs by $16 million over award years 2009–10 and 2010–11. Given the lack of an offset for these increased costs, the Department decided to make no change to the interim final regulations to adopt this alternative.

Transfers

These final regulations broaden access to the ACG and National SMART Grant programs by implementing statutory changes that extend eligibility to part-time students who are enrolled at their institution on at least a half-time basis, eligible noncitizens, and students enrolled in certain certificate programs. The final regulations also allow eligible degree programs with at least five full undergraduate years to award National SMART Grant awards in the third, fourth, and fifth years of the program. Mandatory funding for the ACG and National SMART Grant programs is provided through fiscal year 2010, after which the program will sunset. Funds for fiscal year 2010 will be used to

support the 2010–2011 award year. As noted in the *Regulatory Impact Analysis* in the interim final regulations, the Department estimates changes implemented through these regulations will result in 538,000 additional awards totaling $448 million over award years 2009–2010 and 2010–2011. More specifically, under current estimates, expanding eligibility to less-than-full-time students, eligible noncitizens, and students at certificate programs will increase ACG awards by 209,000 in 2009–2010 and 241,000 in 2010–2011 and increase National SMART Grant awards by 43,000 in 2009–2010 and 45,000 in 2010–2011.

As noted in the *Regulatory Impact Analysis* in the interim final regulations, those changes, which are adopted as final through this notice, implement statutory changes replacing the term ''academic year'' with the term ''year'' for the purposes of determining a student's period of eligibility for an ACG or a National SMART Grant. These changes are expected to significantly simplify the process of determining eligibility for participating institutions of higher education and students.

As noted, statutory changes in program eligibility criteria implemented by these final regulations will increase the dollar amount of grant awards under the ACG and National SMART Grant programs by $448 million over award years 2009–2010 and 2010–2011. These changes will increase Federal costs by the same amount.

Because institutions of higher education affected by these final regulations already participate in the ACG and National SMART Grant programs, these schools must have already established systems and procedures to meet program eligibility requirements. These final regulations reflect discrete changes in specific parameters associated with the Department's current regulations for these programs, rather than entirely new requirements. Some of these changes, such as those replacing ''academic year'' with ''year'' for the purposes of determining program eligibility, are expected to significantly simplify program administration. Overall, the Department believes entities continuing to participate in the Pell Grant, ACG, and National SMART Grant programs have already absorbed virtually all of the administrative costs related to implementing these final regulations. Marginal costs over this baseline are primarily related to one-time changes that are not expected to be significant.

Elsewhere in this **SUPPLEMENTARY INFORMATION** section, we identify and explain burdens specifically associated with information collection requirements. See the heading *Paperwork Reduction Act of 1995.*

Accounting Statement

As required by OMB Circular A–4 (available at *http://www.Whitehouse.gov/omb/Circulars/a004/a-4.pdf*), in Table 1, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these final regulations. As previously noted, the Department estimates changes implemented through these regulations will result in 538,000 additional awards totaling $448 million over award years 2009–2010 and 2010–2011. Thus, the Department estimates that the annualized monetized transfers from Federal grant payments to students will be $224 million for 2009–2011.

TABLE 1—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED SAVINGS

[In millions]

Category	Transfers
Annualized Monetized Transfers	$224

Regulatory Flexibility Act Certification

The Secretary certifies that these final regulations will not have a significant economic impact on a substantial number of small entities. These final regulations affect institutions of higher education, States, State agencies, and individual students. The U.S. Small Business Administration (SBA) Size Standards define these institutions as ''small entities'' if they are for-profit or nonprofit institutions with total annual revenue below $5,000,000 or if they are institutions controlled by governmental entities with populations below 50,000. Individuals are not defined as ''small entities'' under the Regulatory Flexibility Act.

Based on revenue data from the Integrated Postsecondary Education Data System, less than 10 percent of the schools participating in the ACG and National SMART Grant programs meet the definition of ''small entities'' (279 out of 3,036). A primary factor limiting the number of small institutions in these programs is the requirement that only degree-granting institutions may offer ACG or SMART Grants. A disproportionate number of Title IV schools meeting the SBA definition are vocational institutions that do not offer degrees.

The Department estimates these regulations will result in a net reduction in overall burden; most individual institutions are expected to see burden reduced as well. Due to data limitations, however, the Department was unable to develop burden estimates tailored specifically for small institutions. These institutions may be more likely to have unique problems, such as limited staff or technical resources, which could lead to greater than normal difficulties in implementing these regulations. In general, however, the Department believes that even for most small institutions, the impact of regulations that simplify program requirements or otherwise reduce burden will more than offset any additional burden associated with changes expected to increase the number of applicants. Given that, and the small number of affected entities meeting the SBA guidelines, the Department has determined that these final regulations do not impose significant new costs on a substantial number of entities.

Specific burden concerns are discussed in more detail elsewhere in this preamble, primarily in the *Paperwork Reduction Act of 1995* section.

Paperwork Reduction Act of 1995

Sections 691.15 and 691.16 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department has submitted a copy of these sections to OMB for its review.

Section 691.15(a)—Eligibility To Receive a Grant

The final regulations amend the eligibility requirements to receive an ACG or a National SMART Grant by removing several restrictive criteria. Prior to July 1, 2009, which was the effective date of this provision in the HEOA, only students who were U.S. citizens were eligible to receive an ACG or a National SMART Grant. Under these final regulations, and consistent with other Title IV, HEA programs, in addition to U.S. citizens, students who can provide evidence from the United States Citizenship and Immigration Service, an office of the United States Department of Homeland Security, that they are in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident, may qualify as eligible noncitizens for the ACG and National SMART Grant programs.

The requirement that a student be enrolled on a full-time basis is also removed. Under these final regulations, students enrolled on at least a half-time or greater basis may be eligible to

receive an ACG or a National SMART Grant.

The final regulations provide that the restriction on prior postsecondary enrollment does not apply to students who were enrolled as regular students in an eligible program of undergraduate education that was also part of a secondary school program of study. We also clarify that transfer students who are first-year students are not considered to have been previously enrolled and, therefore, are not subject to the prior enrollment restriction.

It is estimated that these changes regarding student eligibility will result in an increase in the burden hours associated with the programs through the Common Origination and Disbursement (COD) System. We estimate that the final regulations will increase burden for institutions of higher education by 12,412 hours, under OMB Control Number 1845–0039.

Section 691.16—Rigorous Secondary School Program of Study

The final regulations amend the current regulations to provide that, starting with the 2009–2010 award year, a designated official, consistent with State law, may recognize and report any information to the Secretary about rigorous secondary school programs of study that prepare students for college. These rigorous programs provide an option by which a student could meet the rigorous secondary school program of study requirement for receipt of an ACG.

Consistent with the amendments to section 401A of the HEA, rigorous programs submitted by States and recognized by the Secretary as rigorous after January 1, 2005, but before July 1, 2009, will continue to be listed in the document published annually by the Secretary listing rigorous secondary school programs of study. This listing also includes the new rigorous secondary programs of study as reported to the Department for students graduating during the current award year and for students graduating during award years subsequent to the current award year. In addition to any new programs of study, the information that designated officials report to the Department about rigorous secondary school programs of study also includes changes to previously reported rigorous programs of study or any deleted rigorous programs of study. Consistent with the deadline set by the Secretary for reporting rigorous high school programs to the Department, we expect that 56 SEAs reporting for the State (and/or on behalf of the State's LEAs) will be reporting to the Department annually. In addition, designated officials will report information regarding the rigorous programs offered by private and home schools for an estimated 36,000 high school students who attend private high schools and home schools for the year of the students' secondary school graduation or completion.

It is estimated that these changes regarding reporting of rigorous secondary school programs of study will result in an increase in burden hours. We estimate that the final regulations will increase burden for States, private high schools, home schools, and individuals by 18,280 hours, under new OMB Control Number 1845–0092.

Intergovernmental Review

These programs are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Assessment of Educational Impact

We have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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(Catalog of Federal Domestic Assistance Numbers: 84.063 Federal Pell Grants; 84.375 Academic Competitiveness Grants; 84.376 National SMART Grants; 84.379 TEACH Grants)

List of Subjects in 34 CFR Parts 668, 686, 690, and 691

Colleges and universities, Elementary and secondary education, Grant programs—education, Student aid.

Dated: November 18, 2009.

Arne Duncan,

Secretary of Education.

■ For the reasons discussed in the preamble, the interim final regulations amending parts 668, 686, 690, and 691 of title 34 of the Code of Federal Regulations that were published in the **Federal Register** on May 1, 2009 (74 FR 20210) are adopted as final with the following changes:

PART 690—FEDERAL PELL GRANT PROGRAM

■ 1. The authority citation for part 690 continues to read as follows:

Authority: 20 U.S.C. 1070a, unless otherwise noted.

■ 2. Section 690.63 is amended by revising paragraph (d)(1) to read as follows:

§ 690.63 Calculation of a Federal Pell Grant for a payment period.

* * * * *

(d) * * *

(1) Determining his or her enrollment status for the term;

* * * * *

PART 691—ACADEMIC COMPETITIVENESS GRANT (ACG) AND NATIONAL SCIENCE AND MATHEMATICS ACCESS TO RETAIN TALENT GRANT (NATIONAL SMART GRANT) PROGRAMS

■ 3. The authority citation for part 691 continues to read as follows:

Authority: 20 U.S.C. 1070a–1, unless otherwise noted.

■ 4. Section 691.2(d) is amended by revising paragraph (1) of the definition of ''Eligible program'' to read as follows:

§ 691.2 Definitions.

* * * * *

(d) * * *

Eligible program: * * *

(1) For purposes of the ACG Program—

(i) Is an undergraduate program of at least one academic year, but less than two academic years, in length that leads to a certificate at a two- or four-year degree-granting institution of higher education;

(ii) Is an undergraduate program of at least two academic years in length that leads to a certificate at a two- or four-year degree-granting institution of higher education;

(iii) Leads to an associate's degree or a bachelor's degree;

(iv) Is at least a two-academic-year program acceptable for full credit toward a bachelor's degree; or

(v) Is a graduate degree program that includes at least three years of undergraduate education; or

* * * * *

[FR Doc. E9–28050 Filed 11–20–09; 8:45 am]

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Federal Register

Monday,
November 23, 2009

Part IV

Pension Benefit Guaranty Corporation

29 CFR Parts 4000, 4001, 4043, et al. Pension Protection Act of 2006; Conforming Amendments; Reportable Events and Certain Other Notification Requirements; Proposed Rule

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4000, 4001, 4043, 4204, 4206, 4211, and 4231

RIN 1212–AB06

Pension Protection Act of 2006; Conforming Amendments; Reportable Events and Certain Other Notification Requirements

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: This is a proposed rule to conform PBGC's reportable events regulation under section 4043 of ERISA and a number of other PBGC regulations to statutory changes made by the Pension Protection Act of 2006 (PPA 2006) and to revisions of other PBGC regulations that implement the statutory changes. The rule would also eliminate most of the automatic waivers and filing extensions currently provided under the reportable events regulation and make other amendments to the regulation. For example, the rule would create two new reportable events based on provisions in PPA 2006 dealing with funding-based benefit limits and with asset transfers to retiree health benefits accounts.

DATES: Comments must be submitted on or before January 22, 2010.

ADDRESSES: Comments, identified by Regulation Identifier Number (RIN) 1212–AB06, may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the web site instructions for submitting comments.
- *E-mail: reg.comments@pbgc.gov.*
- *Fax:* 202–326–4224.
- *Mail or Hand Delivery:* Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

All submissions must include the Regulation Identifier Number for this rulemaking (RIN 1212–AB06). Comments received, including personal information provided, will be posted to *http://www.pbgc.gov.* Copies of comments may also be obtained by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

FOR FURTHER INFORMATION CONTACT: John H. Hanley, Director, Legislative and Regulatory Department; or Catherine B. Klion, Manager, or Deborah C. Murphy, Attorney, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Background

Pension Benefit Guaranty Corporation (PBGC) administers the pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974 (ERISA). Under section 4007 of ERISA, pension plans covered by Title IV must pay premiums to PBGC. Section 4006 of ERISA establishes the premium rates and includes provisions for determining the variable-rate premium (VRP), which is based on plan funding rules. PBGC has regulations on Premium Rates (29 CFR part 4006) and Payment of Premiums (29 CFR part 4007) that implement the premium rules. A number of other provisions of ERISA, and of PBGC's other regulations, refer to funding and premium rules. Thus, changes in the funding and premium rules may require changes in some other PBGC regulations, such as PBGC's regulation on Reportable Events and Certain Other Notification Requirements (29 CFR part 4043), which implements section 4043 of ERISA (requiring that PBGC be notified of the occurrence of certain ''reportable events'').

On August 17, 2006, the Pension Protection Act of 2006 (PPA 2006), Public Law 109–280, was signed into law. PPA 2006 makes changes to the plan funding rules in Title I of ERISA and in the Internal Revenue Code of 1986 (Code) and amends the VRP provisions of section 4006 of ERISA to conform to the changes in the funding rules. On March 21, 2008, PBGC published in the **Federal Register** (at 73 FR 15065) a final rule amending its premium rates regulation and its premium payment regulation to implement the changes to ERISA and the Code made by PPA 2006. The changes to the funding and premium rules are effective for plan years beginning after 2007.

On November 28, 2007, PBGC issued Technical Update 07–2 (revised December 7, 2007 (corrected December 15, 2007)) (*http://www.pbgc.gov/practitioners/law-regulations-informal-guidance/content/tu16267.html*), providing transitional guidance on the applicability of the changes made by PPA 2006, and the corresponding changes proposed for PBGC premium regulations, to the determination of funding-related amounts for purposes of the reportable events regulation. On March 24, 2008, PBGC issued Technical Update 08–2 (*http://www.pbgc.gov/practitioners/law-regulations-informal-guidance/content/tu16372.html*), providing a waiver for reporting of missed quarterly contributions by certain small employers in 2008. On January 9, 2009, PBGC issued Technical Update 09–1 (*http://www.pbgc.gov/practitioners/law-regulations-informal-guidance/content/tu16637.html*), providing interim guidance on compliance with reportable events requirements for plan years beginning in 2009. On April 30, 2009, PBGC issued Technical Update 09–3 (*http://www.pbgc.gov/practitioners/law-regulations-informal-guidance/content/tu16725.html*), providing a waiver or alternative compliance method (depending on plan size) for reporting of missed quarterly contributions by certain small employers in 2009.

Overview of Proposed Regulatory Changes

This proposed rule would amend PBGC's reportable events regulation to make the advance reporting threshold test consistent with the PPA 2006 funding rules and PBGC's new variable-rate premium rules; eliminate most automatic waivers and filing extensions; create two new reportable events based on provisions in PPA 2006 dealing with funding-based benefit limits and with asset transfers to retiree health benefits accounts; reduce reporting of active participant reductions; clarify the provisions dealing with missed contributions and inability to pay benefits when due; clarify the benefit liability transfer event; remove from the regulation the lists of information items to be submitted (which are listed in the filing instructions); require filers to use PBGC forms to file reportable events notices; and eliminate the special ''partial electronic filing'' provision.

The rule would also amend six other PBGC regulations to revise statutory cross-references and otherwise accommodate the statutory and regulatory changes in the premium rules: the regulations on Filing, Issuance, Computation of Time, and Record Retention (29 CFR part 4000); Terminology (29 CFR part 4001); Variances for Sale of Assets (29 CFR part 4204); Adjustment of Liability for a Withdrawal Subsequent to a Partial Withdrawal (29 CFR part 4206); Allocating Unfunded Vested Benefits to Withdrawing Employers (29 CFR part

4211); and Mergers and Transfers Between Multiemployer Plans (29 CFR part 4231).

Reportable Events

PBGC proposes to amend the reportable events regulation to accommodate the changes to the funding and premium rules, to eliminate most automatic waivers and filing extensions, to add two new reportable events, and to make other modifications.

Advance Reporting Test

Under section 4043(a) of ERISA, plan administrators and contributing sponsors must notify PBGC of certain ''reportable events'' within 30 days after they occur. Section 4043(b) of ERISA requires advance reporting by a contributing sponsor for certain reportable events if a ''threshold test'' is met, unless the contributing sponsor or controlled group member to which an event relates is a public company. The advance reporting threshold test is based on the aggregate funding level of plans maintained by the contributing sponsor and members of the contributing sponsor's controlled group. The funding level criteria are expressed by reference to calculated values that are used to determine VRPs under section 4006 of ERISA. The reportable events regulation ties the statutory threshold test to the related provisions of the premium rates regulation.

The advance reporting threshold test in ERISA section 4043(b)(1) says: ''The [advance reporting] requirements of this subsection shall be applicable to a contributing sponsor if, as of the close of the preceding plan year—

- The aggregate unfunded vested benefits [(UVBs)] (as determined under [ERISA] section 4006(a)(3)(E)(iii)) of plans subject to this title which are maintained by such sponsor and members of such sponsor's controlled groups (disregarding plans with no unfunded vested benefits) exceed $50,000,000, and
- The funded vested benefit percentage for such plans is less than 90 percent.

—For purposes of the second bullet above, the funded vested benefit percentage means the percentage which the aggregate value of the assets of such plans bears to the aggregate vested benefits of such plans (determined in accordance with [ERISA] section 4006(a)(3)(E)(iii)).''

PPA 2006 revised ERISA section 4006(a)(3)(E)(iii) to say that UVBs—''means, for a plan year, the excess (if any) of * * * the funding target of the plan as determined under [ERISA] section 303(d) for the plan year by only taking into account vested benefits and by using the interest rate described in [ERISA section 4006(a)(3)(E)(iv)], over * * * the fair market value of plan assets for the plan year which are held by the plan on the valuation date.''

The section 303 of ERISA referred to here is a completely new section added by PPA 2006. Under new ERISA section 303(g)(1), the value of plan assets and the funding target of a plan for a plan year are determined as of the valuation date of the plan for the plan year. Under new ERISA section 303(g)(2), the valuation date for virtually all plans subject to advance reporting under ERISA section 4043 will be the first day of the plan year. Thus, while ERISA section 4043(b)(1) refers to UVBs, assets, and vested benefits ''as of the close of the preceding plan year,'' in nearly all cases these quantities must, with respect to plan years beginning after 2007, be calculated as of the beginning of a plan year. This creates an ambiguity with regard to the date as of which the advance reporting threshold test is to be applied.

The proposed rule would resolve this ambiguity by requiring that the advance reporting threshold test be applied as of the valuation date for ''the preceding plan year.'' That is the same date as of which UVBs, assets, and vested benefits must be determined for premium purposes for the preceding plan year under the premium rates regulation as amended by PBGC's final rule on VRPs under PPA 2006. Measuring these quantities as of that date for purposes of the advanced reporting threshold test will thus be less burdensome than requiring that separate computations be made as of the close of that year. It will also enable a plan to determine before a reportable event occurs (and before an advance report is due) whether it is subject to the advance reporting requirement.

The proposed rule would make a number of editorial changes to the advance reporting threshold provisions with a view to improving clarity and simplicity as well as accommodating the changes discussed above. It would also provide that the plans whose funding status is taken into account in applying the threshold test are determined as of the due date for the report, and that the ''public company'' status of a contributing sponsor or controlled group member to which the event relates is also determined as of that date. Although the existing regulation does not explicitly address this issue, PBGC believes it is implicit that these determinations be current. Requiring that they be made as of the due date for the report ensures currency.

Automatic Waivers and Extensions

Section 4043.4 of the reportable events regulation provides that PBGC may grant waivers and extensions case by case. In addition, the existing regulation provides automatic waivers and extensions for most of the reportable events. For example, waivers are provided for small plans, for well-funded plans, and for events affecting *de minimis* segments of controlled groups or foreign entities. In many cases, where it may be impossible to know by the filing due date whether criteria for a particular waiver are met, an extension gives a potential filer an opportunity to determine whether the waiver applies.

PBGC proposes to eliminate most of these automatic waivers and extensions, as indicated in the following tables. The complete waivers provided for certain statutory events in §§ 4043.21 (disqualification or noncompliance), 4043.22 (amendment decreasing benefits), 4043.24 (termination), and 4043.28 (merger, consolidation, or transfer) would be retained.

POST-EVENT NOTICES

Event	Current waivers	Proposed waivers	Current extensions	Proposed extensions
Active participant reduction (§ 4043.23).	• Small plan ..... • Well-funded plan.	• Prior event reported within 1 year.	• 30 days after current VRP due date. • 30 days after next 5500 due date. • Following year flat-rate premium due date.	None.

POST-EVENT NOTICES—Continued

Event	Current waivers	Proposed waivers	Current extensions	Proposed extensions
Missed contribution (§ 4043.25).	• Payment within 30 days of due date.	None	None	None.
Inability to pay benefits when due (§ 4043.26).	• Large plan	• Large plan	None	None.
Distribution to substantial owner (§ 4043.27).	• Distribution up to § 415 limit. • Distribution up to 1% of assets. • Well-funded plan.	None	• 30 days after current VRP due date.	None.
Change in contributing sponsor or controlled group (§ 4043.29).	• *De minimis* transaction	• *De minimis* transaction	• 30 days after current VRP due date.	None.
	• Foreign entity		• 30 days after next 5500 due date.	
	• Well-funded plan		• 30 days after Form 10Q or press release.	
Liquidation (§ 4043.30)	• De minimis transaction	None	• 30 days after current VRP due date.	None.
	• Foreign entity		• 30 days after next 5500 due date.	
	• Well-funded plan		• 30 days after Form 10Q or press release.	
Extraordinary distribution or stock redemption (§ 4043.31).	• Statutory event • *De minimis* transaction	• Statutory event	• 30 days after current VRP due date.	None.
	• Foreign entity	• *De minimis* transaction	• 30 days after next 5500 due date.	
	• Well-funded plan		• 30 days after Form 10Q or press release.	
Transfer of benefit liabilities (§ 4043.32).	• Transfer of all assets and liabilities. • *De minimis* transfer. • § 414(*l*) safe harbor. • Plans fully funded.	None	None	None.
Funding waiver application (§ 4043.33).	None	None	None	None.
Loan default (§ 4043.34)	• Cure or waiver	• Cure or waiver	• 30 days after current VRP due date.	• 1 day after cure period, acceleration, or default notice.
	• Foreign entity		• 30 days after next 5500 due date.	
	• Well-funded plan		• 1 day after cure period, acceleration, or default notice.	
Bankruptcy (§ 4043.35)	• Foreign entity	None	• 30 days after filer has actual knowledge.	None.

ADVANCE NOTICES

Event	Current waivers	Proposed waivers	Current extensions	Proposed extensions
Change in contributing sponsor or controlled group (§ 4043.62).	• Change in sponsor of small plan. • *De minimis* transaction.	• *De minimis* transaction	None	None.
Liquidation (§ 4043.63)	• *De minimis* transaction	None	None	None.
Extraordinary distributions or stock redemption (§ 4043.64).	• *De minimis* transaction	• *De minimis* transaction	None	None.
Transfer of benefit liabilities (§ 4043.65).	• Transfer of all assets and liabilities. • *De minimis* transfer. • § 414(*l*) safe harbor. • Plans fully funded.	None	None	None.
Funding waiver application (§ 4043.66).	None	None	10 days after event	Same day as event.
Loan default (§ 4043.67)	• Cure or waiver	• Cure or waiver	• 10 days after default • 1 day after cure period, acceleration, or default notice.	• 10 days after default. • 1 day after cure period, acceleration, or default notice.

ADVANCE NOTICES—Continued

Event	Current waivers	Proposed waivers	Current extensions	Proposed extensions
Bankruptcy (§ 4043.68)	.....	.....	• 10 days after event	• 10 days after event.

Reportable events often signal financial distress and possible plan termination. When PBGC has timely information about a reportable event, it can take steps to encourage plan continuation—for example, by exploring alternative funding options with the plan sponsor—or, if plan termination is called for, to minimize the plan's potential funding shortfall through involuntary termination and maximize recovery of the shortfall from all possible sources. Without such timely information, PBGC typically learns that a plan is in danger only when most opportunities for protecting participants and the pension insurance system may have been lost.

PBGC believes that many of the automatic waivers and extensions in the existing reportable events regulation are depriving it of early warnings that would enable it to mitigate distress situations. For example, of the 88 small plans terminated in 2007, 21 involved situations where, but for an automatic waiver, an active participant reduction reportable event notice would have been required an average of three years before termination. Had those notices been filed, the need for some of those terminations might have been avoided, and PBGC might have been able to reduce the impact of other terminations on the pension insurance system.

PBGC believes that the increased reporting burden stemming from the elimination of most of the automatic waivers and extensions is justified by PBGC's need for timely information that may contribute to plan continuation or the minimizing of funding shortfalls. However, PBGC plans to monitor reportable events filings to determine whether some automatic waivers and extensions can be restored (or newly crafted waivers or extensions provided) without jeopardizing efforts to protect the benefits of participants in troubled plans and the pension insurance program. For each waiver and extension eliminated, PBGC solicits public comment on whether it has struck the correct balance between ensuring relevant information is received timely and increased reporting burden on the regulated community.

Active Participant Reduction—Facility Closings

An active participant reduction may occur as the result of a substantial cessation of operations under ERISA section 4062(e) or a substantial employer withdrawal under ERISA section 4063(a). Events covered by section 4062(e) or 4063(a) must be reported to PBGC under section 4063(a). With a view to avoiding duplicative reporting, PBGC proposes to limit the active participant reduction event by excluding from consideration—in determining whether a reportable active-participant-reduction event has occurred—active participant reductions to the extent that they (1) fall within the provisions of section 4062(e) or 4063(a) and (2) are timely reported to PBGC as required under ERISA section 4063(a).

Active Participant Reduction—Frequency of Reporting

The description of the active participant reduction event in the statute and the existing regulation suggests that reporting could be required multiple times in the course of a year if multiple reductions occurred. In fact, any such report leads PBGC to monitor the situation for an extended period of time; while that monitoring continues, additional formal reports of active participant reductions are unnecessary. Accordingly, the proposed rule would waive reporting for this event if another active participant reduction was reported within the past year.

Failure To Contribute—Clarification

PBGC proposes to clarify the language in § 4043.25, dealing with the reportable event of failure to make required contributions. This reportable event does not apply only to contributions required by statute (including quarterly contributions under ERISA section 303(j)(3) and Code section 430(j)(3), liquidity shortfall contributions under ERISA section 303(j)(4) and Code section 430(j)(4), and contributions to amortize funding waivers under ERISA section 303(e) and Code section 430(e)). It also applies to contributions required as a condition of a funding waiver that do not fall within the statutory provisions on waiver amortization charges. The proposed revision would make this point clearer. (Note that such ''non-statutory'' contributions are not considered under § 4043.81, dealing with missed contributions that give rise to liens under ERISA section 303(k) and Code section 430(k).)

Inability To Pay Benefits When Due—Clarification

PBGC proposes to clarify the language in the provision dealing with automatic waiver of the reporting requirement for inability to pay benefits when due. This provision reflects PBGC's judgment that it need not require reporting of this event by larger plans that are subject to the ''liquidity shortfall'' rules imposing more stringent contribution requirements where liquid assets are insufficient to cover anticipated disbursement requirements. For these larger plans, (1) if the contributions required by the liquidity shortfall rules are made, the inability to pay benefits when due is resolved, and (2) if the required contributions are not made, that fact is reportable to PBGC as a failure to make required contributions. Accordingly, this provision waives reporting unless the plan is a small plan that is exempt from the liquidity shortfall provisions.

Transfer of Benefit Liabilities—Cashouts and Annuitizations

Section 4043(c)(12) of ERISA requires reporting to PBGC when, in any 12-month period, three percent or more of a plan's benefit liabilities are transferred to a person outside the transferor plan's controlled group or to a plan or plans maintained by a person or persons outside the transferor plan's controlled group. Transfers of benefit liabilities are of concern to PBGC because they may reduce the transferor plan's funded percentage and because the transferee may not be as financially healthy as the transferor.

The existing text of the reportable events regulation does not make clear whether the satisfaction of benefit liabilities through the payment of a lump sum or the purchase of an irrevocable commitment to provide an annuity constitutes a transfer of benefit liabilities for purposes of this reporting requirement. PBGC has received inquiries seeking clarification of this point. PBGC proposes to provide that such cashouts and annuitizations do not constitute transfers of benefit liabilities that must be reported under the regulation.

Section 436 of the Code and section 206(g) of ERISA (as added by PPA 2006) prohibit or limit cashouts and annuitizations by significantly

underfunded plans. These provisions thus tend to prevent cashouts and annuitizations that would most seriously reduce a transferor plan's funded percentage. And since cashouts and annuitizations satisfy benefit liabilities (rather than transferring them to another plan), there is no concern about a transferee plan's financial health.

Transfer of Benefit Liabilities—Plans of Other Controlled Group Members

Section 4043.32(a) of the existing reportable events regulation requires post-event reporting not only for the plan that transfers benefit liabilities, but also for every other plan maintained by a member of the transferor plan's controlled group. However, existing § 4043.32(d) provides a waiver that in effect limits the post-event reporting obligation to the transferor plan. Existing § 4043.65 (dealing with advance reporting of benefit liability transfers) does not provide a similar waiver.

PBGC has concluded that it is unnecessary to extend the advance reporting requirement for benefit liability transfers beyond the transferor plan. Accordingly, PBGC proposes to revise § 4043.32(a) to narrow the reporting requirement to the transferor plan; to remove § 4043.32(d) (which would be redundant); and to revise § 4043.65(a) to remove the provision requiring that § 4043.32(d) be disregarded. The effect of these changes would be to leave the post-event notice requirement unchanged and to limit the advance notice requirement to the transferor plan.

New Reportable Event—Low Adjusted Funding Target Attainment Percentage

Section 436 of the Code and section 206(g) of ERISA (as added by PPA 2006) provide that if a plan's ''adjusted funding target attainment percentage'' is less than 60 percent, the plan in general must cease benefit accruals; may not be amended to increase benefits, establish new benefits, or increase accrual or vesting rates; and may not pay unpredictable contingent event benefits (such as shut-down benefits) or lump sums, or annuitize benefits. ''Adjusted funding target attainment percentage'' (a variant of the funding target attainment percentage) is defined in Code section 436(j)(2) and ERISA section 206(g)(9)(B). Code section 436(h) and ERISA section 206(g)(7) provide a number of rules under which the adjusted funding target attainment percentage (AFTAP) is presumed in specified circumstances to have specified values.

PBGC shares Congress's concern about the financial health of plans with AFTAPs below 60 percent and believes that a funding percentage that low may (depending on the financial condition of the contributing sponsor and controlled group members) be indicative of a need to terminate the plan. Accordingly, PBGC proposes to create a new reportable event under ERISA section 4043(c)(13) that would occur when an enrolled actuary certifies that a plan's AFTAP is less than 60 percent or when the AFTAP is presumed to be less than 60 percent under one of the rules in Code section 436(h) and ERISA section 206(g)(7). This would be both a post-event notice event and an advance notice event (although the due date for the advance notice would be extended until ten days after the event occurs).

New Reportable Event—Transfer to Retiree Health Account

Section 420(f) of the Internal Revenue Code (as added by PPA 2006) permits a pension plan to transfer ''excess pension assets'' to a health benefits account under the plan to fund health benefits for a ''transfer period'' of up to 10 years. The term ''excess pension assets'' is defined for this purpose as the amount by which plan assets exceed 120 percent of plan liabilities for benefits (including benefits accruing during the year). If the ratio of assets to liabilities falls below 120 percent at any valuation date during the transfer period, additional contributions must be made to the pension plan, or assets must be transferred back from the health benefits account to the pension plan, to restore the funding ratio to 120 percent.

The 120-percent required funding ratio in this new provision is less than the 125-percent ratio previously required under Code section 420, and the transfer period can be much longer, entailing potentially the transfer of significantly greater amounts of plan assets. Furthermore, because the actuarial assumptions used to apply the 120-percent test under Code section 420 may differ significantly from the assumptions that would be used to value plan liabilities if a plan termination were to occur during the transfer period, a plan could be underfunded for termination purposes even if it could pass the 120-percent funding test in Code section 420. PBGC is accordingly concerned that large transfers under Code section 420(f), especially if the funded ratio falls below 120 percent during the transfer period, may indicate a need to terminate the plan.

PBGC therefore proposes to create a new reportable event that would occur if a section 420(f) transfer of $10 million or more is made or if, following such a transfer, the funded ratio falls below 120 percent during the transfer period. This would be a post-event notice event only. (Even with advance notice, PBGC could not prevent such a transfer if it complied with the law; post-event reporting would give PBGC an opportunity to monitor the plan going forward.)

Requiring Use of Forms; Putting Data Submission Requirements in Instructions

PBGC issues three reporting forms for use under the reportable events regulation. Form 10 is for post-event reporting under subpart B of the regulation; Form 10–Advance is for advance reporting under subpart C of the regulation; and Form 200 is for reporting under subpart D of the regulation.

Under the existing regulation, use of PBGC forms for reporting events under subparts B and C of the regulation is optional. The data items in the forms do not correspond exactly with those in the regulation, and the regulation recognizes that filers that use the forms may report different information from those that do not use the forms. With a view to greater uniformity in the reporting process and attendant administrative simplicity for PBGC, PBGC proposes to make use of prescribed reportable events forms mandatory. PBGC also proposes to revise the forms and instructions (see the discussion of Paperwork Reduction Act requirements infra).

Consistent with this change, PBGC proposes to eliminate from the regulation the lists of information items that must be reported, so that the information to be reported would be described in the filing instructions only (rather than in both the filing instructions and the regulation). PBGC anticipates that as uncertainties about the operation of new PPA 2006 provisions are resolved, it may be appropriate to make changes in the information required to be submitted with reportable events notices, particularly those for failures to make required contributions timely.

''Partial Electronic Filing'' Rule

The existing regulation contains a ''partial electronic filing'' provision under which a filing is considered timely made if certain basic information (specified in PBGC's reporting instructions) is submitted on time electronically and followed up within one or two business days (depending on the type of report) with the remaining

required information. This provision has facilitated last-minute filing where some required information consisted of documents that could not conveniently be sent electronically. But in the years since the regulation was issued, it has become common for documents to be created electronically and easy to create electronic images of documents that do not exist in electronic form. Thus PBGC believes that the ''partial electronic filing'' provision is no longer needed and that it is reasonable to require that all the information required for a filing be submitted on time, either electronically or on paper. Accordingly, PBGC proposes to eliminate the ''partial electronic filing'' provision. In the case of Form 200 filings, PBGC will accept an imaged signature, so that Form 200 filers need not submit a paper filing with ink signatures. (Forms 10 and 10–Advance do not require signatures.)

Other Changes

The proposed rule would make a number of editorial and clarifying changes to part 4043 and would add definitional cross-references, change statutory cross-references to track changes made by PPA 2006, and update language to conform to usage in PPA 2006 and regulations and reporting requirements thereunder. Some definitions of terms used in only one section of the regulation would be moved to the sections where they are used.

The proposed changes to the reportable events regulation make it unnecessary to define a number of terms at the beginning of the regulation. Accordingly, the definitions of ''de minimis 10-percent segment,'' ''fair market value of the plan's assets,'' ''foreign entity,'' ''foreign-linked entity,'' ''foreign parent,'' ''Form 5500 due date,'' ''public company,'' ''testing date,'' ''ultimate parent,'' ''unfunded vested benefits,'' ''variable-rate premium,'' and ''vested benefits amount'' would be removed from § 4043.2. The definition of ''*de minimis* 5-percent segment'' (a term that in the existing regulation is defined by reference to the definition of ''*de minimis* 10-percent segment'') would be made self-contained.

PBGC recognizes that the changes made by PPA 2006 in the statutory provisions dealing with missed contributions—which are reportable under §§ 4043.25 and 4043.81—affect the computation of interest on missed contributions, which in turn affects the reporting requirements. This proposed rule includes no amendment to the reportable events regulation dealing with such issues, but PBGC may provide further guidance on this subject, taking into account as appropriate any relevant guidance from the Internal Revenue Service.

Other Regulations

Several other PBGC regulations also refer to plan funding concepts: The regulations on Filing, Issuance, Computation of Time, and Record Retention (29 CFR part 4000); Terminology (29 CFR part 4001); Variances for Sale of Assets (29 CFR part 4204); Adjustment of Liability for a Withdrawal Subsequent to a Partial Withdrawal (29 CFR part 4206); Allocating Unfunded Vested Benefits to Withdrawing Employers (29 CFR part 4211); and Mergers and Transfers Between Multiemployer Plans (29 CFR part 4231). Thus, these regulations must also be revised to be consistent with ERISA and the Code as amended by PPA 2006 and with the revised premium regulations. This proposed rule would make the necessary conforming revisions.

Applicability

In general, the changes to the reportable events regulation made by this rule would apply to post-event reports for reportable events occurring on or after the effective date of this rule and to advance reports due on or after the effective date of this rule. Technical Updates 07–2, 08–2, 09–1, and 09–3 would be superseded by this rule with respect to any circumstances to which this rule would apply.

Compliance With Rulemaking Guidelines

E.O. 12866

The PBGC has determined, in consultation with the Office of Management and Budget, that this rule is a ''significant regulatory action'' under Executive Order 12866. The Office of Management and Budget has therefore reviewed this notice under E.O. 12866.

Regulatory Flexibility Act

PBGC certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the amendments in this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, as provided in section 605 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), sections 603 and 604 do not apply. This certification is based on the fact that the reportable events regulation requires only the filing of notices and that the economic impact of filing is not significant.

Paperwork Reduction Act

PBGC is submitting the information requirements under this proposed rule to the Office of Management and Budget for review and approval under the Paperwork Reduction Act. There are two information collections under the reportable events regulation, approved under OMB control number 1212–0013 (covering subparts B and C) and OMB control number 1212–0041 (covering subpart D), both of which expire March 31, 2012. Copies of PBGC's requests may be obtained free of charge by contacting the Disclosure Division of the Office of the General Counsel of PBGC, 1200 K Street, NW., Washington, DC 20005, 202–326–4040.

PBGC is proposing the following changes to these information requirements:

- PBGC's experience is that in order to assess the significance of virtually every reportable events filing, it must obtain from the filer the most recent month-end statement of the market value of plan assets, the most recent adjusted funding target attainment percentage (AFTAP) certification, and the most recent actuarial valuation report that contains or is supplemented with all the items of information described in § 4010.8(a)(11) of PBGC's regulation on Annual Financial and Actuarial Information Reporting (29 CFR part 4010). Accordingly, PBGC proposes to require that every reportable events filing include these items.
- To provide better identification of controlled group members, PBGC proposes to require that lists of controlled group members include addresses as well as names.
- PBGC has found that some filers that should file Form 200 under § 4043.81 of the reportable events regulation (missed contributions totaling over $1 million) file only Form 10 under § 4043.25 (missed contributions of any amount). This has led to delays in enforcing liens under ERISA section 302(f) and Code section 412(n) (corresponding to ERISA section 303(k) and Code section 430(k) as amended by PPA 2006). To address this issue, PBGC proposes that the information collections under the reportable events regulation include a requirement to report the aggregate outstanding balance (with interest) of all prior contributions not timely made.
- In missed contribution cases, there is sometimes a credit balance that is available for application to a contribution that is due. PBGC needs to be able to determine whether all or a portion of the credit balance has been properly applied toward payment of the

contribution. Accordingly, PBGC proposes to require filers of both Form 10 and Form 200 to indicate how much (if any) of the carryover balance or prefunding balance was used for partial payment of the missed contribution and submit copies of election letters relating to application of the carryover balance and prefunding balance to the contribution.

• To assist PBGC in assessing the impact of a change in contributing sponsor or controlled group, PBGC proposes to require submission of ''before-and-after'' financial statements for post-event as well as advance reporting. Where the event is the loss of one or more controlled group members, financial statements would be required for the controlled group before and after the loss of the departing member(s). Where the event is a transfer of a plan to another controlled group, financial statements would be required for the old and new controlled groups. (Filers would not be penalized if they were unable to obtain financial statements from controlled groups other than their own.)

• To help PBGC assess the significance of a loan default or an extraordinary distribution or stock redemption, PBGC proposes to require filings for these events to include financial statements for all controlled group members to the extent not publicly available.

• PBGC Form 10–Advance (used for advance reporting under subpart C of the reportable events regulation) currently includes a requirement for the benefit liability transfer event that both the transferor and the transferee (and contributing sponsors) be identified. Form 10 (used for post-event reporting under subpart B) calls only for the identity of the transferee. PBGC proposes to change the Form 10 requirement to correspond to the requirement of Form 10–Advance.

• To assist PBGC in assessing the impact of a transfer of benefit liabilities, PBGC proposes to require submission of financial statements for both the transferor controlled group and the transferee controlled group. (Filers would not be penalized if they were unable to obtain financial statements from controlled groups other than their own.)

• PBGC Form 10 currently requires for the bankruptcy event that the bankruptcy petition and docket (or similar documents) be submitted. Form 10–Advance requires that all documents filed in the relevant proceeding be submitted. Both forms require that the last date for filing claims be reported if known. PBGC proposes to replace these requirements with a requirement that filers simply identify the judicial district where the bankruptcy petition was filed and the docket number of the filing.

• When an advance report of an extraordinary dividend or stock redemption is made, PBGC has a 30-day window in which to determine whether there is a basis for taking action before the dividend is paid and, if so, to act. In order to do so, PBGC needs information about contributing sponsors' financial health. Accordingly, PBGC proposes to add a requirement for contributing sponsor financial statements to the information submission requirements for advance reporting of extraordinary dividends and stock redemptions.

• PBGC proposes to require that the notice of a low adjusted funding target attainment percentage certified by an enrolled actuary include a copy of the enrolled actuary's certification.

• If a section 420(f) transfer of $10 million or more is made, PBGC proposes to require that the notice to PBGC include a calculation demonstrating that the transfer does not reduce pension assets below 120 percent of liabilities for pension benefits.

• If, following a section 420(f) transfer of $10 million or more, the funded ratio falls below 120 percent during the transfer period, PBGC proposes to require that the notice to PBGC include a calculation demonstrating how (by making additional pension plan contributions or by transferring assets back from the health benefits account to the pension plan) pension assets were restored to an amount not less than 120 percent of liabilities for pension benefits.

PBGC needs the information in reportable events filings under subparts B and C of part 4043 (Forms 10 and 10-Advance) to determine whether it should terminate plans that experience events that indicate plan or contributing sponsor financial problems. PBGC estimates that it will receive such filings from about 1,615 respondents each year and that the total annual burden of the collection of information will be about 6,890 hours and $2,411,500.

PBGC needs the information in missed contribution filings under subpart D of part 4043 (Form 200) to determine the amounts of statutory liens arising under ERISA section 303(k) and Code section 430(k) and to evaluate the funding status of plans with respect to which such liens arise and the financial condition of the persons responsible for their funding. PBGC estimates that it will receive such filings from about 797 respondents each year and that the total annual burden of the collection of information will be about 1,636 hours and $572,600.

Comments on the paperwork provisions under this proposed rule should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, via electronic mail at *OIRA_DOCKET@omb.eop.gov* or by fax to (202) 395–6974. Although comments may be submitted through January 22, 2010, the Office of Management and Budget requests that comments be received on or before December 23, 2009 to ensure their consideration. Comments may address (among other things)—

• Whether each proposed collection of information is needed for the proper performance of PBGC's functions and will have practical utility;

• The accuracy of PBGC's estimate of the burden of each proposed collection of information, including the validity of the methodology and assumptions used;

• Enhancement of the quality, utility, and clarity of the information to be collected; and

• Minimizing the burden of each 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.

List of Subjects

29 CFR Part 4000

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4001

Employee benefit plans, Pension insurance.

29 CFR Part 4043

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4204

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4206

Employee benefit plans, Pension insurance.

29 CFR Part 4211

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4231

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

For the reasons given above, PBGC proposes to amend 29 CFR parts 4000, 4001, 4043, 4204, 4206, 4211, and 4231 as follows.

PART 4000—FILING, ISSUANCE, COMPUTATION OF TIME, AND RECORD RETENTION

1. The authority citation for part 4000 is revised to read as follows:

Authority: 29 U.S.C. 1083(k), 1302(b)(3).

§ 4000.53 [Amended]

2. In § 4000.53, paragraphs (c) and (d) are amended by removing the words ''section 302(f)(4), section 307(e), and'' where they occur in each paragraph and adding in their place the words ''section 101(f), section 303(k)(4), and''.

PART 4001—TERMINOLOGY

3. The authority citation for part 4001 continues to read as follows:

Authority: 29 U.S.C. 1301, 1302(b)(3).

§ 4001.2 [Amended]

4. In § 4001.2:

a. The definition of ''controlled group'' is amended by removing the words ''section 412(c)(11)(B) of the Code or section 302(c)(11)(B) of ERISA'' and adding in their place the words ''section 412(b)(2) of the Code or section 302(b)(2) of ERISA''.

b. The definition of ''funding standard account'' is amended by removing the words ''section 302(b) of ERISA or section 412(b) of the Code'' and adding in their place the words ''section 304(b) of ERISA or section 431(b) of the Code''.

c. The definition of ''substantial owner'' is amended by removing the words ''section 4022(b)(5)(A)'' and adding in their place the words ''section 4021(d)''.

PART 4043—REPORTABLE EVENTS AND CERTAIN OTHER NOTIFICATION REQUIREMENTS

5. The authority citation for part 4043 is revised to read as follows:

Authority: 29 U.S.C. 1083(k), 1302(b)(3), 1343.

§ 4043.1 [Amended]

6. Section 4043.1 is amended by removing the reference ''302(f)(4)'' and adding in its place the reference ''303(k)(4)''; and by removing the reference ''412(n)(4)'' and adding in its place the reference ''430(k)(4)''.

7. In § 4043.2:

a. The introductory text is amended by removing the word ''Code'' and adding in its place the words ''benefit liabilities, Code''; and by removing the words ''plan administrator, proposed termination date'' and adding in their place the words ''plan administrator, plan year, proposed termination date''.

b. The definitions of *de minimis 10-percent segment, fair market value of the plan's assets, foreign entity, foreign-linked entity, foreign parent, Form 5500 due date, public company, testing date, ultimate parent, unfunded vested benefits, variable-rate premium,* and *vested benefits* are removed.

c. The definitions of *event year* and *notice date* are amended by removing the words ''the reportable event'' and adding in their place the words ''a reportable event'' in each of the two definitions.

d. The definition of *de minimis 5-percent segment* is revised to read as follows:

§ 4043.2 Definitions.

* * * * *

De minimis 5-percent segment means, in connection with a plan's controlled group, one or more entities that in the aggregate have for a fiscal year—

(1) Revenue not exceeding 5 percent of the controlled group's revenue;

(2) Annual operating income not exceeding the greatest of—

(i) 5 percent of the controlled group's annual operating income;

(ii) 5 percent of the controlled group's first $200 million in net tangible assets at the end of the fiscal year(s); or

(iii) $5 million; and

(3) Net tangible assets at the end of the fiscal year(s) not exceeding the greater of—

(i) 5 percent of the controlled group's net tangible assets at the end of the fiscal year(s); or

(ii) $5 million.

* * * * *

8. In § 4043.3:

a. Paragraph (a)(1) is amended by removing the words ''by this part'' and adding in their place the words ''under this part''.

b. Paragraph (d) is amended by removing the words ''submission of additional information'' and adding in their place the words ''submission of additional information not specified in its forms and instructions''.

c. Paragraphs (b) and (c) are revised to read as follows:

§ 4043.3 Requirement of notice.

* * * * *

(b) *Contents of reportable event notice.* A person required to file a reportable event notice under subpart B or C of this part shall file, by the notice date, the form specified by PBGC for that purpose, with the information specified in PBGC's reportable events instructions.

(c) *Reportable event forms and instructions.* The PBGC shall issue reportable events forms and instructions and make them available on its Web site.

* * * * *

9. In § 4043.4:

a. Paragraphs (a), (b), (c), and (d) are redesignated as paragraphs (b), (c), (d), and (a) respectively.

b. Newly redesignated paragraph (a) is amended by removing the heading ''*Other waivers and extensions.*'' and adding in its place the heading ''*Waivers and extensions—in general.*''.

c. Newly redesignated paragraph (b) is revised to read as follows:

§ 4043.4 Waivers and extensions.

* * * * *

(b) *Waivers and extensions—specific events.* For some reportable events, automatic waivers from reporting and information requirements and extensions of time are provided in subparts B and C of this part. If an occurrence constitutes two or more reportable events, reporting requirements for each event are determined independently. For example, reporting is automatically waived for an occurrence that constitutes a reportable event under more than one section only if the requirements for an automatic waiver under each section are satisfied.

* * * * *

10. Section 4043.5 is amended by adding the following sentence at the beginning of the text of the section:

§ 4043.5 How and where to file.

Reportable event notices required under this part must be filed using the forms and in accordance with the instructions promulgated by PBGC, which are posted on PBGC's Web site.

* * *

§ 4043.6 [Amended]

11. In § 4043.6:

a. Paragraph (a) is amended by removing the heading ''*Post-Event notice filings.*'' and adding in its place the heading ''*Post-event notice filings.*''.

b. Paragraph (b) is amended by removing the heading ''*Advance notice and Form 200 Filings.*'' and adding in its place the heading ''*Advance notice and Form 200 filings.*''.

c. Paragraph (c) is removed.

12. In § 4043.23:

a. The text of paragraph (a) is designated as paragraph (a)(1) and a paragraph heading is added.

b. New paragraph (a)(2) is added.

c. Paragraphs (b) and (d) are removed.

d. Paragraph (e) is redesignated as paragraph (b).

e. And paragraph (c) is revised.

The addition and revision read as follows:

§ 4043.23 Active participant reduction.

(a) *Reportable event*—(1) *In general.* * * *.

(2) *Certain participant reductions disregarded.* For purposes of paragraph (a)(1) of this section, a reduction in the number of active participants is to be disregarded to the extent that the reduction—

(i) Is attributable to a substantial cessation of operations under ERISA section 4062(e) or to the withdrawal of a substantial employer under ERISA section 4063(a), and

(ii) Is timely reported to PBGC under ERISA section 4063(a).

* * * * *

(c) *Waiver.* Notice is waived for an event (the ''current event'') if the notice date for another event (the ''prior event'') under paragraph (a) of this section was not more than 12 months before the notice date for the current event and the prior event was reported to PBGC in accordance with the requirements of this part.

13. Section 4043.25 is revised to read as follows:

§ 4043.25 Failure to make required funding payment.

(a) *Reportable event.* A reportable event occurs when—

(1) A contribution required under sections 302 and 303 of ERISA or sections 412 and 430 of the Code is not made by the due date for the payment under ERISA section 303(j) or Code section 430(j), or

(2) Any other contribution required as a condition of a funding waiver is not made when due.

(b) *Alternative method of compliance—Form 200 filed.* If, with respect to the same failure, a filing is made in accordance with § 4043.81, that filing satisfies the requirements of this section.

14. In § 4043.26:

a. Paragraph (a)(2) is amended in the second sentence by removing the words ''Liquid assets and disbursements from the plan'' and adding in their place the words '' 'Liquid assets' and 'disbursements from the plan' ''; by removing the reference ''302(e)(5)(E)'' and adding in its place the reference ''303(j)(4)(E)''; and by removing the reference ''412(m)(5)(E)'' and adding in its place the reference ''430(j)(4)(E)''.

b. Paragraph (c) is removed.

c. Paragraph (b) is revised to read as follows:

§ 4043.26 Inability to pay benefits when due.

* * * * *

(b) *Waiver.* Notice is waived unless the reportable event occurs during a plan year for which the plan is exempt from the liquidity shortfall rules in section 303(j)(4) of ERISA and section 430(j)(4) of the Code because it is described in section 303(g)(2)(B) of ERISA and section 430(g)(2)(B) of the Code.

§ 4043.27 [Amended]

15. In § 4043.27:

a. Paragraph (a)(4) is amended by removing the words ''as provided in § 4022.5'' and adding in their place the words ''as provided in § 4022.5 of this chapter''.

b. Paragraphs (b), (c), and (d) are removed, and paragraph (e) is redesignated as paragraph (b).

16. In § 4043.29:

a. Paragraphs (c) and (d) are removed, and paragraph (e) is redesignated as paragraph (c).

b. The introductory text of newly redesignated paragraph (c) is amended by removing the words ''waivers apply'' and adding in their place the words ''waiver applies''.

c. Paragraph (b) is revised to read as follows:

§ 4043.29 Change in contributing sponsor or controlled group.

* * * * *

(b) *Waiver; de minimis 10-percent segment.* Notice is waived if the person or persons that will cease to be members of the plan's controlled group represent a *de minimis* 10-percent segment of the plan's old controlled group for the most recent fiscal year(s) ending on or before the date the reportable event occurs. For this purpose, ''*de minimis* 10-percent segment'' means, in connection with a plan's controlled group, one or more entities that in the aggregate have for a fiscal year—

(1) Revenue not exceeding 10 percent of the controlled group's revenue;

(2) Annual operating income not exceeding the greatest of—

(i) 10 percent of the controlled group's annual operating income;

(ii) 5 percent of the controlled group's first $200 million in net tangible assets at the end of the fiscal year(s); or

(iii) $5 million; and

(3) Net tangible assets at the end of the fiscal year(s) not exceeding the greater of—

(i) 10 percent of the controlled group's net tangible assets at the end of the fiscal year(s); or

(ii) $5 million.

* * * * *

§ 4043.30 [Amended]

17. In § 4043.30:

a. The heading of paragraph (a) is removed, and the introductory text of paragraph (a) is redesignated as the introductory text of § 4043.30.

b. Paragraphs (b), (c), and (d) are removed.

c. Paragraphs (a)(1), (a)(2), and (a)(3) are redesignated as paragraphs (a), (b), and (c).

§ 4043.31 [Amended]

18. In § 4043.31:

a. Paragraphs (b), (c)(3), (c)(4), (c)(5), and (d) are removed.

b. Paragraph (c) is redesignated as paragraph (b).

c. Paragraph (e) is redesignated as paragraph (c).

d. The reference ''(e)'' is removed and the reference ''(c)'' is added in its place once in paragraph (a) introductory text, once in paragraph (a)(1)(i), once in paragraph (a)(1)(ii), twice in paragraph (a)(2), twice in paragraph (a)(3), once in newly redesignated paragraph (c)(2)(i), once in newly redesignated paragraph (c)(2)(ii), once in newly redesignated paragraph (c)(5), and once in newly redesignated paragraph (c)(6)(iii).

19. In § 4043.32:

a. Paragraphs (b) and (d) are removed.

b. Paragraph (a)(2) is redesignated as paragraph (b).

c. The heading of paragraph (a)(1) is removed, and the introductory text of paragraph (a)(1) is redesignated as the introductory text of paragraph (a).

d. Paragraphs (a)(1)(i) and (a)(1)(ii) are redesignated as paragraphs (a)(1) and (a)(2).

e. Redesignated paragraph (a)(1) is amended by removing the words ''or any other plan maintained by a person in the plan's controlled group''.

f. Paragraph (c) is revised to read as follows:

§ 4043.32 Transfer of benefit liabilities.

* * * * *

(c) *Distributions of lump sums and annuities.* For purposes of paragraph (a) of this section, the payment of a lump sum, or purchase of an irrevocable commitment to provide an annuity, in satisfaction of benefit liabilities is not a transfer of benefit liabilities.

§ 4043.33 [Amended]

20. In § 4043.33:

a. Paragraph (b) is removed.

b. The heading of paragraph (a) is removed, and the text of paragraph (a) is redesignated as the text of § 4043.33.

c. The figures ''303'' are removed and the figures ''302(c)'' are added in their

place; and the figures ''412(d)'' are removed and the figures ''412(c)'' are added in their place.

§ 4043.34 [Amended]

21. In § 4043.34:

a. Paragraph (a) introductory text is amended by removing the words ''default by'' and adding in their place the words ''default under a loan agreement by''.

b. Paragraph (a)(3) introductory text is amended by removing the colon and adding in its place a dash.

c. Paragraphs (b), (c)(2), (c)(3), (d)(3), and (d)(4) are removed.

d. The heading of paragraph (c) introductory text is removed.

e. Paragraph (c)(1) is redesignated as paragraph (b).

f. Newly redesignated paragraph (b) is amended by removing the heading ''*Default cured.*'' and adding in its place the heading ''*Waiver for cure of default.*''.

g. Paragraph (d)(5) is redesignated as paragraph (d)(3), and paragraph (d) is redesignated as paragraph (c).

h. Redesignated paragraph (c)(1) is amended by removing the words ''(d)(2) or (d)(3)'' and adding in their place the figures ''(c)(2)''.

i. Redesignated paragraph (c)(2) is amended by removing the heading ''*Cure period extensions.*'' and adding in its place the heading ''*Extensions.*''.

§ 4043.35 [Amended]

22. In § 4043.35:

a. Paragraphs (b), (c), and (d) are removed.

b. The heading of paragraph (a) introductory text is removed, and the introductory text of paragraph (a) is redesignated as the introductory text of § 4043.35.

c. Paragraphs (a)(1), (a)(2), (a)(3), (a)(4), and (a)(5) are redesignated as paragraphs (a), (b), (c), (d), and (e).

23. New §§ 4043.36 and 4043.37 are added to subpart B to read as follows:

§ 4043.36 Adjusted funding target attainment percentage under 60 percent.

A reportable event occurs for a plan when the plan's adjusted funding target attainment percentage under Code section 436(j)(2) and ERISA section 206(g)(9)(B) either—

(a) Is certified by an enrolled actuary to be less than 60 percent, or

(b) Is presumed under Code section 436(h) and ERISA section 206(g)(7) to be less than 60 percent.

§ 4043.37 Transfer of assets to retiree health account or subsequent reduction in funding ratio.

A reportable event occurs for a plan when either—

(a) The plan makes a qualified future transfer or a collectively bargained transfer under Code section 420(f) of $10 million dollars or more, or

(b) On any valuation date of the plan during the transfer period described in Code section 420(f)(5) following any transfer described in paragraph (a) of this section, 120 percent of the sum of the funding target and the target normal cost determined under Code section 430 for the plan year exceeds the lesser of—

(1) The fair market value of the plan's assets (reduced by the prefunding balance and funding standard account carryover balance determined under Code section 430(f)), or

(2) The value of plan assets as determined under Code section 430(g)(3) after reduction under Code section 430(f).

24. In § 4043.61, paragraphs (a), (b), and (c) are revised to read as follows:

§ 4043.61 Advance reporting filing obligation.

(a) *In general.* Unless a waiver or extension applies with respect to the plan, each contributing sponsor of a plan is required to notify the PBGC no later than 30 days before the effective date of a reportable event described in this subpart C if the contributing sponsor is subject to advance reporting for the reportable event. If there is a change in contributing sponsor, the reporting obligation applies to the person who is the contributing sponsor of the plan on the notice date.

(b) *Persons subject to advance reporting.* A contributing sponsor of a plan is subject to the advance reporting requirement under paragraph (a) of this section for a reportable event if—

(1) On the notice date, neither the contributing sponsor nor any member of the plan's controlled group to which the event relates is a person subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 or a subsidiary (as defined for purposes of the Securities Exchange Act of 1934) of a person subject to such reporting requirements; and

(2) The aggregate unfunded vested benefits, determined in accordance with paragraph (c) of this section, are more than $50 million; and

(3) The aggregate value of plan assets, determined in accordance with paragraph (c) of this section, is less than 90 percent of the aggregate premium funding target, determined in accordance with paragraph (c) of this section.

(c) *Funding determinations.* For purposes of paragraph (b) of this section, the aggregate unfunded vested benefits, aggregate value of plan assets, and aggregate premium funding target are determined by aggregating the unfunded vested benefits, values of plan assets, and premium funding targets (respectively), as determined for premium purposes in accordance with part 4006 of this chapter for the plan year preceding the effective date of the event, of plans maintained (on the notice date) by the contributing sponsor and any members of the contributing sponsor's controlled group, disregarding plans with no unfunded vested benefits (as so determined).

* * * * *

§ 4043.62 [Amended]

25. In § 4043.62:

a. Paragraph (a) is amended by removing the words ''*and information required*'' from the paragraph heading; and by removing the words ''§ 4043.29(a), and the notice shall include the information described in § 4043.29(b) and, if known, the expected effective date of the reportable event'' and adding in their place the figures ''§ 4043.29(a)''.

b. Paragraph (b) is amended by removing the heading.

c. Paragraph (b)(1) is removed.

d. Paragraph (b)(2) is amended by removing the heading ''*De minimis 5-percent segment.*'' and adding in its place the heading ''*Waiver; de minimis 5-percent segment.*''.

e. Paragraph (b)(2) is redesignated as paragraph (b).

§ 4043.63 [Amended]

26. In § 4043.63:

a. Paragraph (a) is amended by removing the paragraph heading; and by removing the words ''§ 4043.30(a), and the notice shall include the information described in § 4043.30(b) and, if known, the expected effective date of the reportable event'' and adding in their place the reference ''§ 4043.30''.

b. Paragraph (b) is removed.

c. The text of paragraph (a) is redesignated as the text of § 4043.63.

§ 4043.64 [Amended]

27. In § 4043.64:

a. Paragraph (a) is amended by removing the words ''*and information required*'' from the paragraph heading; and by removing the last sentence of the paragraph.

b. Paragraph (b) is amended by removing the word ''*Waiver*'' from the paragraph heading and adding in its place the words ''*Waiver; de minimis 5-percent segment*''.

§ 4043.65 [Amended]

28. In § 4043.65:

a. Paragraph (a) is amended by removing the paragraph heading; and by

removing the words ''§ 4043.32(a) (determined without regard to § 4043.32(d)), and the notice shall include the information described in § 4043.32(b)'' and adding in their place the reference ''4043.32(a)''.

b. Paragraph (b) is removed.

c. The text of paragraph (a) is redesignated as the text of § 4043.65.

§ 4043.66 [Amended]

29. In 4043.66:

a. Paragraph (a) is amended by removing the words ''*and information required*'' from the heading; and by removing the words ''§ 4043.33(a), and the notice shall include the information described in § 4043.33(b)'' and adding in their place the reference ''§ 4043.33''.

b. Paragraph (b) is amended by removing the words ''10 days after'' and adding in their place the words ''the day''; and by removing the words ''has occurred'' and adding in their place the word ''occurs''.

§ 4043.67 [Amended]

30. In § 4043.67, paragraph (a) is amended by removing the words ''*and information required*'' from the heading; and by removing the last sentence of the paragraph.

§ 4043.68 [Amended]

31. In § 4043.68, paragraph (a) is amended by removing the words ''*and information required*'' from the heading; and by removing the words ''§ 4043.35(a), and the notice shall include the information described in § 4043.35(b)'' and adding in their place the reference ''§ 4043.35''.

32. New §§ 4043.69 and 4043.70 are added to subpart C to read as follows:

§ 4043.69 Adjusted funding target attainment percentage under 60 percent.

(a) *Reportable event.* Advance notice is required when a plan's adjusted funding target attainment percentage is certified or presumed to be less than 60 percent, as described in § 4043.36.

(b) *Extension.* The notice date is extended until 10 days after the reportable event has occurred.

§ 4043.70 Transfer of assets to retiree health account or subsequent reduction in funding ratio.

Advance notice is waived for a reportable event described in § 4043.37.

33. In § 4043.81:

a. Paragraph (a) introductory text is amended by removing the reference ''302(f)(4)'' and adding in its place the reference ''303(k)(4)''; by removing the reference ''412(n)(4)'' and adding in its place the reference ''430(k)(4)''; by removing the words ''required installment or any other'' and adding in their place the word ''contribution''; by removing the words ''section 302 of ERISA and section 412 of the Code'' and adding in their place the words ''sections 302 and 303 of ERISA and sections 412 and 430 of the Code''; and by removing the words ''installments or other''.

b. Paragraph (a)(2) is amended by removing the reference ''302(f)(4)'' and adding in its place the reference ''303(k)(4)''; and by removing the reference ''412(n)(4)'' and adding in its place the reference ''430(k)(4)''.

c. Paragraph (b) is amended by removing the reference ''302(f)'' and adding in its place the reference ''303(k)''; and by removing the reference ''412(n)'' and adding in its place the reference ''430(k)''.

d. Paragraph (c) is added to read as follows:

§ 4043.81 PBGC Form 200, notice of failure to make required contributions; supplementary information.

* * * * *

(c) *Ultimate parent.* For purposes of this section, the term ''ultimate parent'' means the parent at the highest level in the chain of corporations and/or other organizations constituting a parent-subsidiary controlled group.

PART 4204—VARIANCES FOR SALE OF ASSETS

34. The authority citation for part 4204 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1384(c).

§ 4204.12 [Amended]

35. Section 4204.12 is amended by removing the reference ''412(b)(3)(A)'' and adding in its place the reference ''431(b)(3)(A)''.

PART 4206—ADJUSTMENT OF LIABILITY FOR A WITHDRAWAL SUBSEQUENT TO A PARTIAL WITHDRAWAL

36. The authority citation for part 4206 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3) and 1386(b).

§ 4206.7 [Amended]

37. Section 4206.7 is amended by removing the reference ''412(b)(4)'' and adding in its place the reference ''431(b)(5)''.

PART 4211—ALLOCATING UNFUNDED VESTED BENEFITS TO WITHDRAWING EMPLOYERS

38. The authority citation for part 4211 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3); 1391(c)(1), (c)(2)(D), (c)(5)(A), (c)(5)(B), (c)(5)(D), and (f).

PART 4231—MERGERS AND TRANSFERS BETWEEN MULTIEMPLOYER PLANS

39. The authority citation for part 4231 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1411.

§ 4231.2 [Amended]

40. In § 4231.2, the definitions of ''actuarial valuation'' and ''fair market value of assets'' are amended by removing the words ''section 302 of ERISA and section 412 of the Code'' wherever they appear in each definition and adding in their place the words ''section 304 of ERISA and section 431 of the Code''.

§ 4231.6 [Amended]

41. In § 4231.6:

a. Paragraph (b)(4)(ii) is amended by removing the reference ''412(b)(4)'' and adding in its place the reference ''431(b)(5)''.

b. Paragraph (c)(2) is amended by removing the words ''section 412 of the Code (which requires that such assumptions be reasonable in the aggregate)'' and adding in their place the words ''section 431 of the Code (which requires that each such assumption be reasonable)''.

c. Paragraph (c)(5) is amended by removing the figure ''412'' and adding in their place the figure ''431''.

Issued in Washington, DC, this 18th day of November, 2009.

Vincent K. Snowbarger,

Acting Director, Pension Benefit Guaranty Corporation.

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S. 475/P.L. 111–97
Military Spouses Residency Relief Act (Nov. 11, 2009; 123 Stat. 3007)

S. 509/P.L. 111–98
To authorize a major medical facility project at the Department of Veterans Affairs Medical Center, Walla Walla, Washington, and for other purposes. (Nov. 11, 2009; 123 Stat. 3010)

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