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Contents

Federal Register

Vol. 74, No. 245

Wednesday, December 23, 2009

Agriculture Department
See Forest Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 68224–68225

Alcohol and Tobacco Tax and Trade Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 68325–68326

Civil Rights Commission
NOTICES
Membership of the USCCR Performance Review Board, 68226

Coast Guard
RULES
Federal Civil Penalties Inflation Adjustment Act—2009 Implementation, 68150–68155
Quarterly Listings:
Safety Zones, Security Zones, Special Local Regulations, and Drawbridge Operation Regulations; Correction, 68155–68159
Safety Zones:
Fireworks Displays in the Captain of the Port, Portland Zone, 68159–68161
PROPOSED RULES
Notification of Arrival in U.S. Ports; Certain Dangerous Cargoes, 68208–68214

Commerce Department
See Economic Development Administration
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Comptroller of the Currency
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 68314–68325

Copyright Royalty Board
PROPOSED RULES
Digital Performance Right in Sound Recordings and Ephemeral Recordings, 68214–68215

Defense Department
NOTICES
36(b)(1) Arms Sales Notification, 68254–68258
Meetings:
Military Leadership Diversity Commission; Correction, 68258

Economic Development Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 68226–68227

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 68258–68259

Employment Standards Administration
See Wage and Hour Division

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Meetings:
Energy Savings Performance Contract Process Improvement Working Group, 68259–68260

Environmental Protection Agency
RULES
Pesticide Tolerances:
Bifenazate, 68162–68168
Fenarimol, 68168–68173
PROPOSED RULES
Public Availability of Identities of Inert Ingredients in Pesticides, 68215–68223
NOTICES
National Lakes Assessment Draft Report, 68266–68267
Settlement:
East 23rd Battery Superfund Site, Tampa, FL, 68267
Transfers of Data:
Computer Science Corp. et al., 68267–68268

Federal Aviation Administration
RULES
Airworthiness Directives:
Boeing Model 737–300, –400, and –500 Series Airplanes Equipped with Digital Transient Suppression Device Installed, etc.; Correction, 68135–68136
Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes, 68132–68135
Special Conditions:
Cessna Aircraft Co., Model 525C; High Fuel Temperature, 68131–68132
PROPOSED RULES
Airworthiness Directives:
Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes, 68198–68200
Honeywell International Inc. Auxiliary Power Units Models GTCP36–150(R) and GTCP36–150(RR), 68196–68197
International Aero Engines, 68192–68194
Turbomeca ARRIEL 1B, 1D, 1D1, 2B, and 2B1 Turboshaft Engines, 68194–68196
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 68305–68306
Meetings:
Special Committee 213/EUROCAE WG 79; Enhanced Flight Vision Systems/Synthetic Vision Systems, 68307–68308

Federal Deposit Insurance Corporation
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 68314–68325
Deposit Insurance Assessments—2010 Designated Reserve Ratio, 68268

Federal Energy Regulatory Commission
NOTICES
Applications:
Bear Creek Storage Co., 68260–68261
Southern Star Central Gas Pipeline, Inc., 68260
Filings:
Algonquin Energy Services Inc., 68262
Carolina Power & Light Co., 68262–68263
Duke Energy Carolinas, LLC, 68263
Midwest Independent Transmission System Operator, Inc. and ALLETE, Inc., 68263
New York Independent System Operator, Inc., 68261
Southern Power Co., 68261–68262
Star Point Wind Project LLC, 68262–68264
Initial Market-Based Rate Filings:
Asset Energy Cost Savings Cooperative, L.L.C., 68264
Covanta Energy Marketing LLC, 68265
Covanta Power LLC, 68264
FPL Energy Illinois Wind, LLC, 68265
Request Under Blanket Authorization:
Gulf South Pipeline Co., LP, 68265–68266
Technical Conferences:
Electronic Tariff Filings, 68266

Federal Highway Administration
NOTICES
Surface Transportation Project Delivery Pilot Program; Caltrans Audit Report, 68308–68314

Federal Maritime Commission
NOTICES
Agreement Filed, 68268–68269
Ocean Transportation Intermediary License Applicants, 68269
Ocean Transportation Intermediary License Reissuance, 68269
Ocean Transportation Intermediary License Revocations, 68269–68270

Federal Railroad Administration
RULES
Qualification and Certification of Locomotive Engineers; Miscellaneous Revisions, 68173–68185

Federal Reserve System
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 68314–68325

Fiscal Service
RULES
Debt Collection Authorities Under the Debt Collection Improvement Act (of 1996), 68149–68150

Fish and Wildlife Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 68276–68278

Food and Drug Administration
NOTICES
International Conference on Harmonisation:
Guidance on Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the International Conference on Harmonisation Regions, 68270–68271
Meetings:
Gastrointestinal Drugs Advisory Committee, 68272

Forest Service
NOTICES
Meetings:
National Urban and Community Forestry Advisory Council, 68225
New Fee Site:
Bighorn National Forest, Sheridan, WY, 68225–68226

Health and Human Services Department
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Health Resources and Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 68270

Homeland Security Department
See Coast Guard
See U.S. Citizenship and Immigration Services

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 68273–68275

Indian Affairs Bureau
NOTICES
Application Deadline:
Tribal Self-Governance Program (Fiscal Year 2011 or Calendar Year 2011), 68278

Industry and Security Bureau
RULES
Amendments to the Export Administration Regulations:
Accession of Albania and Croatia to Formal Membership in the North Atlantic Treaty Organization, 68142–68146
Authorization Validated End-User:
Amendment to Existing Validated End-User Authorizations in the People's Republic of China and India, 68147–68149
Removal of Entry from the Entity List:
Person Removed Based on Removal Request, 68146–68147
Reporting of Offsets Agreements in Sales of Weapon Systems or Defense-Related Items to Foreign Countries or Foreign Firms, 68136–68142

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See National Indian Gaming Commission
See National Park Service
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Notice Requirements for Certain Pension Plan Amendments Significantly Reducing the Rate of Future Benefit Accrual; Correction, 68149
PROPOSED RULES
Information Reporting for Payments Made in Settlement of Payment Card and Third Party Network Transactions; Correction, 68208

International Trade Administration
NOTICES
Extension of Time for the Preliminary Results of the Antidumping Duty Administrative Review:
Magnesium Metal from the People's Republic of China, 68227–68228
Extension of Time Limit for Final Results of the New Shipper and Fifth Antidumping Duty Administrative Reviews:
Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68228
Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 68229–68232
Preliminary Determination of Sales at Less Than Fair Value:
Prestressed Concrete Steel Wire Strand from the People's Republic of China, 68232–68241
Preliminary Negative Countervailing Duty Determination:
Certain Magnesia Carbon Bricks from the People's Republic of China, 68241–68249
Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind, In Part:
Seventh Administrative Review of Honey from the People's Republic of China, 68249–68253
Rescission of Antidumping Duty Administrative Review:
Polyethylene Retail Carrier Bags from the People's Republic of China, 68253–68254

International Trade Commission
NOTICES
Investigation:
Certain Cast Railroad Wheels, Certain Processes for Manufacturing or Relating to Same, and Certain Products Containing Same, 68282–68283
Ethyl Alcohol for Fuel Use; Determination of the Base Quantity of Imports, 68282

Justice Department
NOTICES
Consent Decrees:
United States v. United Technologies Corp., 68283–68284

Labor Department
See Wage and Hour Division

Land Management Bureau
NOTICES
Intent to Collect Fees on Public Land:
Marion County, OR Under the Federal Lands Recreation Enhancement Act, 68279–68280
Realty Action:
Application for Recordable Disclaimer of Interest; Montana, 68280–68281
Reestablishment of the Steens Mountain Advisory Council, 68281
Solicitation of Nominations:
Steens Mountain Advisory Council, 68281–68282

Library of Congress
See Copyright Royalty Board

National Highway Traffic Safety Administration
RULES
Federal Motor Vehicle Safety Standards:
Designated Seating Positions, 68185–68190
NOTICES
Grant of Petition for Decision of Inconsequential Noncompliance:
Goodyear Tire and Rubber Co., 68306–68307

National Indian Gaming Commission
NOTICES
Fee Rate, 68279

National Institutes of Health
NOTICES
Meetings:
PubMed Central National Advisory Committee, 68272–68273

National Oceanic and Atmospheric Administration
RULES
Western and Central Pacific Fisheries for Highly Migratory Species:
Bigeye Tuna Longline Fishery Closure, 68190–68191
NOTICES
Federal Consistency Appeal:
Chicago Deer River Properties, LLC, d/b/a Theodore Industrial Port, 68228–68229

National Park Service
NOTICES
Environmental Impact Statements; Availability, etc.:
Roosevelt-Vanderbilt National Historical Site, Hyde Park, NY, 68278–68279

National Science Foundation
NOTICES
Meetings:
Proposal Review Panel for Materials Research, 68285

Nuclear Regulatory Commission
NOTICES
Call for Nominations:
Advisory Committee on the Medical Uses of Isotopes, 68285–68286
Exemption:
South Carolina Electric and Gas Co., 68286–68287
License Renewal Interim Staff Guidance LR–ISG–2007–02:
Changes To Generic Aging Lessons Learned Report Aging Management Program Xi.E6, et al., 68287–68288

Public Debt Bureau
See Fiscal Service

Securities and Exchange Commission
RULES
Proxy Disclosure Enhancements, 68334–68367
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 68288–68290
Application and Temporary Order:
Investools Inc., et al., 68290–68291
Applications:
Cash Account Trust, et. al., 68291–68294
Order Granting Application for Extension of a Temporary Conditional Exemption:
International Securities Exchange, LLC, 68294–68297
Self-Regulatory Organizations; Proposed Rule Changes:
Chicago Stock Exchange, Inc., 68298–68300
One Chicago, LLC, 68297–68298

State Department
PROPOSED RULES
Exchange Visitor Program; Secondary School Students, 68200–68208

Surface Mining Reclamation and Enforcement Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 68275–68276

Surface Transportation Board
NOTICES
Abandonment Exemption:
Indiana Rail Road Co.; Martin and Lawrence Counties, IN, 68300–68301
Acquisition:
Massachusetts Coastal Railroad, LLC, CSXT Transportation, Inc., 68301–68305

Thrift Supervision Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 68326–68331

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board

Treasury Department
See Alcohol and Tobacco Tax and Trade Bureau
See Comptroller of the Currency
See Fiscal Service
See Internal Revenue Service
See Thrift Supervision Office

U.S. Citizenship and Immigration Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 68273

Wage and Hour Division
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 68284–68285

Separate Parts In This Issue

Part II
Securities and Exchange Commission, 68334–68367

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

14 CFR
23 68131
39 (2 documents) 68132, 68135

Proposed Rules:
39 (4 documents) 68192, 68194, 68196, 68198

15 CFR
701 68136
736 68142
738 68142
740 68142
742 68142
743 68142
744 68146
748 68147
772 68142

17 CFR
229 68334
239 68334
240 68334
249 68334
274 68334

22 CFR

Proposed Rules:
62 68200

26 CFR
1 68149
54 68149

Proposed Rules:
1 68208
31 68208

31 CFR
285 68149

33 CFR
27 68150
100 68155
117 68155
147 68155
165 (2 documents) 68155, 68159

Proposed Rules:
104 68208
105 68208
160 68208

37 CFR

Proposed Rules:
380 68214

40 CFR
180 (2 documents) 68162, 68168

Proposed Rules:
156 68215

49 CFR
240 68173
571 68185

50 CFR
300 68190

Rules and Regulations

Federal Register
Vol. 74, No. 245
Wednesday, December 23, 2009

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE299; Special Conditions No. 23–239–SC]

Special Conditions: Cessna Aircraft Company, Model 525C; High Fuel Temperature

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Cessna Aircraft Company, model 525C airplane. This airplane will have a novel or unusual design feature(s) associated with high fuel temperature. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: *Effective Date:* December 16, 2009.

FOR FURTHER INFORMATION CONTACT: Peter L. Rouse, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Kansas City, Missouri, 816–329–4135, fax 816–329 4090.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 2006, Cessna Aircraft Company applied for an amendment to Type Certificate Number A1WI to include the new model 525C (CJ4). The model 525C (CJ4), which is a derivative of the model 525B (CJ3), currently approved under Type Certificate Number A1WI, is a commuter category, low-winged monoplane with ''T'' tailed vertical and horizontal stabilizers, retractable tricycle type landing gear and twin turbofan engines mounted on the aircraft fuselage. The maximum takeoff weight is 16,950 pounds, the V_{MO}/M_{MO} is 305 KIAS/M 0.77 and the maximum altitude is 45,000 feet.

The Cessna model 525C (CJ4) fuel tank system is similar to other Cessna model 525 designs which use the Williams FJ44 series of engine. The fuel tank system is configured to reject engine heat through the airplane fuel tank system by using an engine oil/fuel heat exchanger. Certified as part of the engine, the engine oil/fuel heat exchanger cools the oil and heats the fuel. Over time, the engine manufacturers have optimized the design, size, placement, and space management of the oil/fuel heat exchanger such that today's engines now reject more heat back into the airplane fuel tank system than has existed in the past. As can be seen by the chart below, we are now exposing the fuel tank system and airplane to temperatures above the critical temperature test requirements of §§ 23.961 and 23.965(d), which has been the universal FAA standard for fuel system hot weather operations and fuel tank test and evaluation since 1950.

Aircraft model	Engine model	Motive flow (°F)	Fuel tank (°F)	Fuel pump inlet (°F)	IM Max. fuel pump inlet temp. (sea level)
525, CJ1+	FJ44–1AP	205	115	165	255 °F
525A, CJ2	FJ44–2C	230	140	188	200 °F
525B, CJ3	FJ44–3A	202	117	155	200 °F

14 CFR part 23 certification experience to date has shown that fuel system hot weather certification testing with 110 °F fuel temperatures is adequate for fuel system operations for fuel tank temperatures characterized by ambient air temperatures, including cooling, as a result of the atmospheric temperature lapse rate. Heating of the fuel that increases the airplane fuel tank system operational temperatures introduces a number of fuel tank system and airplane concerns. Each must be shown to be acceptable. Compliance by design (*i.e.,* lack of ability to shutoff the engine motive flow) may be utilized although associated type certificate data sheet information may also be necessary to assure future system changes are compliant. The following are those concerns:

○ Evaluation of engine, fuel tank system and airplane performance and engine compatibility with elevated fuel tank system temperatures. [§ 23.901, paragraphs (e)(1) and (e)(2); and §§ 23.939(a) and 23.951(a)]

○ Evaluation of fuel tank system and airplane performance due to fuel degradation and resultant by-products at elevated fuel tank system temperatures. [§§ 23.961, 23.939(a), 23.993(e), 23.1301, and 23.1529)]

○ Evaluation of fuel tank system and airplane performance and engine compatibility due to the higher vapor/liquid ratios with elevated fuel tank system temperatures. [§§ 23.903(f) and 23.951(a); § 23.955, paragraphs (a) and (f); and §§ 23.961 and 23.1301]

○ Evaluation of fuel tank system and airplane performance and engine compatibility, due to the solubility of water and potential for greater microbial growth with elevated fuel tank system temperatures. [§§ 23.951(c) and 23.971]

○ Evaluation of fuel tank system and airplane performance due to elevated fuel tank system material temperatures and surrounding structure compatibility. [§§ 23.613(c), 23.963(a), 23.965(d), and 23.993(e)]

○ Evaluation of fuel tank system component qualification as a result of elevated fuel tank system temperatures. [§§ 23.1301, and 23.1309]

○ Evaluation of service/maintenance instructions, activities, and personnel due to elevated fuel tank system temperatures. [§ 23.1529].

Type Certification Basis

Under the provisions of § 21.101, Cessna Aircraft Company must show that the model 525C meets the applicable provisions of the regulations incorporated by reference in Type Certificate Number A1WI or the applicable regulations in effect on the date of application for the change to the model 525C. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' In addition, the certification basis includes exemptions, if any; equivalent level of safety findings, if any; and the special condition adopted by this rulemaking action.

If the Administrator finds that the applicable airworthiness regulations in 14 CFR part 23 do not contain adequate or appropriate safety standards for the model 525C because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the model 525C must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The model 525C will incorporate the following novel or unusual design features:

High Fuel Temperatures.

Discussion of Comments

A notice of proposed special conditions No. 23–09–03–SC for the Cessna Aircraft Company, model 525C airplanes was published on September 1, 2009, 74 FR 45133. No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the model 525C. Should Cessna Aircraft Company apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the certification date for the Cessna Aircraft Company, model 525C is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

Conclusion

This action affects only certain novel or unusual design features on one model of airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.38 and 11.19.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Cessna Aircraft Company, model 525C airplanes.

1. *SC § 23.961:*

Instead of compliance with § 23.961, the following apply:

Each fuel system must be free from vapor lock when using fuel at its critical temperature, with respect to vapor formation, when operating the airplane in all critical operating and environmental conditions for which approval is requested. For turbine fuel, the initial temperature must be 110 °F, −0°, +5 °F or the maximum outside air temperature for which approval is requested or the fuel tank system temperature that is determined to be more critical.

Issued in Kansas City, Missouri on December 16, 2009.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–30436 Filed 12–22–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1196; Directorate Identifier 2009–NM–170–AD; Amendment 39–16146; AD 2008–09–12 R1]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) 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:

Bombardier Aerospace has completed a system safety review of the aircraft fuel system against fuel tank safety standards introduced in Chapter 525 of the Airworthiness Manual through Notice of Proposed Amendment (NPA) 2002–043. The identified non-compliances were then assessed using Transport Canada Policy Letter No. 525–001, to determine if mandatory corrective action is required.

The assessment showed that it is necessary to introduce Critical Design Configuration Control Limitations (CDCCL), in order to preserve critical fuel tank system ignition source prevention features during configuration changes such as modifications and repairs, or during maintenance actions. Failure to preserve critical fuel tank system ignition source prevention features could result in a fuel tank explosion. * * *

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

DATES: This AD becomes effective January 7, 2010.

On June 6, 2008 (73 FR 24147, May 2, 2008), the Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD.

We must receive comments on this AD by February 8, 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 Bombardier, Inc., 400 Côte Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com*; Internet *http://www.bombardier.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: James Delisio, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7321; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

On April 18, 2008, we issued AD 2008–09–12, Amendment 39–15493 (73 FR 24147, May 2, 2008). That AD applied to all Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. That AD required revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to include the critical design configuration control limitations (CDCCL) data.

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. But once the CDCCLs are incorporated into the ALS, 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 Changes Made to This AD

We have revised this AD to identify the correct legal name of the manufacturer as published in the most recent type certificate data sheet for the affected airplane models.

Explanation of Additional Change to AD

AD 2008–09–12 allowed the use of alternative CDCCLs that are a part of ''a later revision'' of Appendix D, ''Fuel System Limitations,'' of Part 2, ''Airworthiness Requirements,'' Revision 7, dated May 10, 2007, of the Bombardier CL–600–2B19 Maintenance Requirements Manual CSP A–053. That provision has been removed from this AD. Allowing the use of ''a later revision'' of specific service documents violates Office of the Federal Register regulations 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) 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 about 700 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 $56,000, 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–2009–1196; Directorate Identifier 2009–NM–170–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 39–15493 (73 FR 24147, May 2, 2008) and adding the following new AD:

2008–09–12 R1 Bombardier, Inc. (Type Certificate previously held by Canadair): Amendment 39–16146. Docket No. FAA–2009–1196; Directorate Identifier 2009–NM–170–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 7, 2010.

Affected ADs

(b) This AD revises AD 2008–09–12, Amendment 39–15493.

Applicability

(c) This AD applies to all Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category, all serial numbers.

Subject

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

Reason

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

Bombardier Aerospace has completed a system safety review of the aircraft fuel system against fuel tank safety standards introduced in Chapter 525 of the Airworthiness Manual through Notice of Proposed Amendment (NPA) 2002–043. The identified non-compliances were then assessed using Transport Canada Policy Letter No. 525–001, to determine if mandatory corrective action is required.

The assessment showed that it is necessary to introduce Critical Design Configuration Control Limitations (CDCCL), in order to preserve critical fuel tank system ignition source prevention features during configuration changes such as modifications and repairs, or during maintenance actions. Failure to preserve critical fuel tank system ignition source prevention features could result in a fuel tank explosion. Revision has been made to Canadair Regional Jet Model CL–600–2B19 Maintenance Requirements Manual, CSP A–053, Part 2, Appendix D, ''Fuel System Limitations'' to introduce the required CDCCL.

The corrective action is revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to include the CDCCL data.

Restatement of Requirements of AD 2008–09–12, With Revised Compliance Method Actions and Compliance

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

(1) Within 60 days after June 6, 2008 (the effective date AD 2008–09–12), revise the ALS of the Instructions for Continued Airworthiness to include the CDCCLs specified in Canadair Temporary Revision (TR) 2D–2, dated March 31, 2006, to Appendix D, ''Fuel System Limitations,'' of Part 2, ''Airworthiness Requirements,'' of the Bombardier CL–600–2B19 Maintenance Requirements Manual CSP A–053.

Note 1: The revision required by paragraph (f)(1) of this AD may be done by inserting a copy of the TR into the maintenance requirements manual. When the TR has been included in the general revision of the maintenance program, the general revision may be inserted into the maintenance requirements manual, provided the relevant information in the general revision is identical to that in the TR, and the temporary revision may be removed.

(2) After accomplishing the action specified in paragraph (f)(1) of this AD, no alternative CDCCLs may be used unless the CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (g)(1) of this AD.

New Information: Explanation of CDCCL Requirements

Note 2: 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, as required by paragraph (f) of this AD, do not need to be reworked in accordance with the CDCCLs. However, once the ALS has been revised, future maintenance actions on these components must be done in accordance with the CDCCLs.

FAA AD Differences

Note 3: 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, New York Aircraft Certification Office, 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: Program Manager, Continuing Operational Safety, 1600 Stewart Avenue, Suite 41, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. 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 Canadian Airworthiness Directive CF–2007–35, dated December 21, 2007, Canadair Temporary Revision (TR) 2D–2, dated March 31, 2006, and TR 2D–2, dated May 10, 2007, for related information.

Material Incorporated by Reference

(i) You must use Canadair Temporary Revision 2D–2, dated March 31, 2006, to Appendix D, ''Fuel System Limitations,'' of Part 2, ''Airworthiness Requirements,'' of the Bombardier CL–600–2B19 Maintenance Requirements Manual CSP A–053, 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 Canadair Temporary Revision 2D–2, dated March 31, 2006, to Appendix D, ''Fuel System Limitations,'' of Part 2, ''Airworthiness Requirements,'' of the Bombardier CL–600–2B19 Maintenance Requirements Manual CSP A–053 on June 6, 2008 (73 FR 24147, May 2, 2008).

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com*; Internet *http://www.bombardier.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 December 11, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–30417 Filed 12–22–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0521; Directorate Identifier 2008–NM–187–AD; Amendment 39–16034; AD 2009–20–11]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes Equipped With a Digital Transient Suppression Device (DTSD) Installed in Accordance With Supplemental Type Certificate (STC) ST00127BO

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

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting information in an existing airworthiness directive (AD) that was published in the **Federal Register** on October 1, 2009. The error resulted in use of an outdated division name and e-mail address in the vendor contact information. This AD applies to certain Boeing Model 737–300, –400, and –500 series airplanes. This AD requires revising the maintenance program to include new fuel system limitations for airplanes modified in accordance with STC ST00127BO. This AD also requires inspections and checks of the DTSDs and corrective actions, if necessary.

DATES: Effective November 5, 2009.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility 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 address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Marc Ronell, Aerospace Engineer, ANE–150, FAA, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (781) 238–7776; fax (781) 238–7170.

SUPPLEMENTARY INFORMATION: On September 18, 2009, the FAA issued AD 2009–20–11, Amendment 39–16034 (74 FR 50683, October 1, 2009), for certain Boeing Model 737–300, –400, and –500 series airplanes. The AD requires revising the maintenance program to include new fuel system limitations for airplanes modified in accordance with Supplemental Type Certificate ST00127BO. This AD also requires inspections and checks of the digital transient suppression device and corrective actions, if necessary.

As published, the vendor contact information specified in the Addresses section of the preamble and paragraph (n)(2) of the regulatory text of AD 2009–20–11 contained an outdated division name and e-mail address. Since that AD was published, the vendor has provided us with the recently updated contact information.

No other part of the regulatory information has been changed; therefore, the final rule is not republished in the **Federal Register**.

The effective date of this AD remains November 5, 2009.

■ Correction of non-regulatory text:

In the **Federal Register** of October 1, 2009, on page 50683, in the second column, the **ADDRESSES** section of AD 2009–20–11 is corrected to read as follows:

''**ADDRESSES:** For service information identified in this AD, contact Goodrich Corporation, Sensors and Integrated Systems (Formerly Fuel and Utility Systems), 100 Panton Road, Vergennes, Vermont 05491–1008; telephone 802–877–4476; e-mail *SIS.TechPubs-VT@Goodrich.com*; Internet *http://www.goodrich.com/TechPubs*.''

■ Correction of regulatory text:

§ 39.13 [Corrected]

■ In the **Federal Register** of October 1, 2009, on page 50685, in the second column, paragraph (n)(2) of AD 2009–20–11 is corrected to read as follows:

* * * * *

(2) For service information identified in this AD, contact Goodrich Corporation, Sensors and Integrated Systems (Formerly Fuel and Utility Systems), 100 Panton Road, Vergennes, Vermont 05491–1008; telephone 802–

877–4476; e-mail *SIS.TechPubs-VT@Goodrich.com*; Internet *http://www.goodrich.com/TechPubs.*

* * * * *

Issued in Renton, Washington, on December 11, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–30418 Filed 12–22–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 701

[Docket No. 080722875–91412–02]

RIN 0694–AE40

Reporting of Offsets Agreements in Sales of Weapon Systems or Defense-Related Items to Foreign Countries or Foreign Firms

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends title 15 of the Code of Federal Regulations, part 701, which implements Section 309 of the Defense Production Act of 1950 (''Section 309''), as amended. The Bureau of Industry and Security (''BIS'') is amending part 701 to update and provide clarification with regard to the information U.S. firms are required to submit each year to BIS to support BIS's preparation of the annual report to Congress on offsets in defense trade.

DATES: *Effective date:* This rule is effective January 22, 2010.

FOR FURTHER INFORMATION CONTACT: Ronald DeMarines, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 3876, Washington, DC 20230, *telephone:* (202) 482–3755, *e-mail: redemarin@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Defense Production Act Amendments of 1992 required the Secretary of Commerce to promulgate regulations for U.S. firms to furnish information on sales of defense articles or defense services to foreign countries or foreign firms when such sales are made pursuant to a contract subject to an offset agreement exceeding $5,000,000 in value. The Secretary of Commerce designated BIS as the organization responsible for promulgating such regulations. In 1994, BIS published the Reporting of Offsets Agreements in Sales of Weapon Systems or Defense-Related Items to Foreign Countries or Foreign Firms regulation (15 CFR part 701) (the ''Offset Reporting Regulation''). BIS aggregates and uses the information provided by U.S. firms pursuant to the Offset Reporting Regulation to determine the impact of offset transactions on the defense preparedness, industrial competitiveness, employment, and trade of the United States. Pursuant to Section 309, BIS submits reports annually to Congress.

On April 29, 2009, BIS published a proposed rule (74 FR 19466) requesting comments on proposed amendments to the Offset Reporting Regulation. This final rule implements the amendments to the Offset Reporting Regulation.

II. Reasons for This Rule

This rule will allow BIS to improve its assessment of the economic effects of offsets in defense trade. The amendments in this rule clarify the information BIS is seeking to receive from industry. BIS believes that these amendments will lead to less ambiguity and more consistency in industry submissions. BIS is also making these amendments to update its instructions to industry specific to the means of submission and the format of submitted data.

This final rule also responds to a recommendation made by the Government Accountability Office (''GAO'') in its June 26, 2008 report entitled *Defense Production Act: Agencies Lack Policies and Guidance for Use of Key Authorities (GAO–08–854).* In its report, the GAO stated that Commerce provides useful summaries of offsets issues in its annual report to Congress, but the type of data collected from prime contractors limits BIS's ability to effectively analyze the impact of offsets on the U.S. economy.

Consequently, the GAO recommended that Commerce update its Offset Reporting Regulation to require more precise information on the industry sectors in which offset activity occurs.

III. Comments on the Proposed Rule

The comment period for the proposed rule ended on June 29, 2009. BIS received a total of three written submissions. The written submissions comprised nine distinct comments from two defense contractors and one industry association. BIS posted all comments received by the end of the comment period for public viewing at *http://www.regulations.gov* and on the BIS Web site at *http://efoia.bis.doc.gov.*

The comments focused on the following topics: the proposed requirement to classify products and services involved in offset agreements and transactions using the North American Industry Classification System (''NAICS'') codes and the added burden created by this requirement; the proposed linking of offset transactions to offset agreements; the proposed increase in data specificity for performance measures and non-performance penalties associated with offset agreements; and the importance of protecting the business proprietary information submitted by U.S. firms.

Comments on the Classification of Offset Agreements and Transactions Products and Services

BIS received three comments regarding the proposed requirement that certain information reported to BIS be classified using NAICS codes. All three commentators indicated that the NAICS reporting requirement was burdensome and time consuming. One commenter noted that BIS estimated that the requirement to classify offset agreements and transactions would add 33 percent to the total time required to prepare an annual submission pursuant to the Offset Reporting Regulation. Another commenter stated that the defense contractor industry does not track NAICS codes during sales and that many offset transactions would require more than one NAICS code. The third commenter stated that it would require at least an 18-month lead time to implement the changes to its database and to train users.

BIS determined that the requirement to classify offset agreements and transactions would not result in an undue burden on the defense industry for several reasons. First, all companies conducting business with the U.S. Government, including those regularly involved in military export sales reported to Commerce, are required to classify their products and services, in accordance with the NAICS (See Central Contractor Registration Handbook, *http://www.ccr.gov*). The U.S. Census Bureau (''Census'') posts instructions on its Web site on how to properly classify products and services in accordance with the NAICS. The Census web site also contains a search feature that allows users to find the proper NAICS codes for their products based upon a keyword search.

Moreover, Census requires the reporting of industrial activity using NAICS codes for all U.S. companies for the economic census it conducts every five years. Further, Census collects NAICS-based data monthly from the

aerospace industry for its *Current Industrial Report on the Civil Aircraft and Aircraft Engines* report. According to Census, pursuant to Title 13 of the U.S. Code, U.S. companies are required to report multiple NAICS codes for individual economic transactions to Census for both of these reports.

In BIS's 15-year history of compiling offset data pursuant to the Offset Reporting Regulation, approximately 80 percent of offset activity involves products and services of the aerospace industry, which has a limited number of NAICS codes. The limited number of NAICS codes applicable to military export sales in general should also limit this burden. Given that companies are already required to report information including multiple NAICS codes for individual transactions to a U.S. Government agency other than BIS, and noting the limited number of applicable NAICS codes in the military export sales sector, BIS has determined that identifying military export sales and offset transactions by multiple NAICS codes, as applicable, would not cause an undue burden on industry.

BIS is implementing this change in part as a response to the GAO's June 26, 2008 report entitled *Defense Production Act: Agencies Lack Policies and Guidance for Use of Key Authorities* (GAO–08–854) in which the GAO recommended that Commerce update its Offset Reporting Regulation to require more precise information on the industry sectors in which offset activity occurs. Further, this requirement will permit BIS to better utilize the NAICS-based Benchmark Input-Output Accounts (Input-Output) of the United States published by the U.S. Department of Commerce's Bureau of Economic Analysis in the preparation of its annual report to Congress. The Input-Output account is a representation of the United States economy used to predict how changes in one industry affect other U.S. industries and is a much more accurate economic model than the methodologies BIS used to analyze the impact of offsets in the past. BIS began using this model to calculate the economic impact of offset agreements and offset transactions for its 13th Annual Report to Congress in December 2008. The inclusion of data that includes six-digit NAICS codes provided by industry will allow BIS to better utilize this model to provide a more accurate assessment of the economic impact of offsets in defense trade. This will allow BIS to better fulfill its mandate under Section 309 in its annual reports to Congress.

With regard to the comment that reporting NAICS codes for offset agreements and transactions would add as much as 33 percent to the hourly burden incurred by firms in compiling information for its submissions to BIS, BIS notes that the 33 percent increase amounts to the addition of three hours to the existing nine hour burden. The commenter stated that for a larger company, this increase would be more substantial than for a small company because the compilation of data is more time consuming in a large company with many offset obligations. BIS notes that the nine hour burden estimate for the collection of the existing information under the Offset Reporting Regulation and the three additional hours estimated for the burden of reporting on NAICS codes is based upon an average for all U.S. firms subject to reporting under this regulation. BIS does not believe that this additional burden outweighs the long term benefits to both BIS and industry of abandoning use of the outdated Standard Industrial Classification codes and instead using the NAICS codes.

In response to the request that BIS wait 18 months after publishing this final rule to make its changes effective, BIS has chosen to make this rule effective 30 days after publication because this rule contains only one significant additional requirement. U.S. firms reporting under the Offset Reporting Regulation should incorporate the new requirements in this rule in their submissions to BIS for calendar year 2009 (reportable to BIS by June 15, 2010). Although BIS recognizes that the changes included in the final rule will require adjustments to the internal tracking and filing systems used by U.S. firms reporting under this rule, given the existing reporting requirements administered by another U.S. Government agency and the limited number of significant changes included in this rule, BIS has determined that firms will be able to make these changes in time to comply with the final rule in their June 2010 submission. Note that this rule's requirements specific to the use of NAICS codes are only applicable to offset agreements and transactions reported to BIS beginning with calendar year 2009.

BIS made one change in this final rule on the basis of comments specific to the NAICS requirement. In the proposed rule, BIS included a requirement for U.S. firms to assign NAICS codes to the credit value of each offset transaction. BIS has determined that it does not need this information to complete the analysis provided in the annual report and has thus removed the requirement in this final rule, easing some of the reporting burden for industry. In making this determination, BIS recognized that because credit value is generally assigned by foreign offset authorities and can involve multipliers, it would be difficult for U.S. firms to determine how to assign NAICS codes to credit values, given that the transaction could involve multiple codes and the credit value could be different than the actual value of the transaction.

Comments on Linking Offset Transactions to Offset Agreements

BIS received one comment on the new requirement to link offset transactions to a particular offset agreement. The commenter stated that properly assigning each transaction to its agreement will be time consuming for U.S. companies because many companies have multiple offset agreements for the same product in the same country. The commenter noted that it may take some companies as much as a week of additional staff time to comply with this requirement.

BIS reviewed this comment and notes that U.S. firms that report to BIS under the Offset Reporting Regulation are required by their foreign government customers to keep records of each offset transaction for which offset credit is claimed. The firms are also required to report their offset activities to the foreign government customers in order to account for their fulfillment of offset obligations. Both U.S. firms and their foreign government customers must track how much of a U.S. firm's offset obligation has been satisfied and what offset transactions are counted toward that obligation. Given this practice, BIS believes that the information BIS is requesting should be available to U.S. firms.

Comments on Increasing the Specificity of Performance Measures and Non-Performance Penalties

BIS received one comment regarding the proposed increase in the level of specificity required to be reported related to Performance Measures and Non-Performance Penalties. The commenter stated that providing more specific information on these topics could be cumbersome and would disadvantage U.S. companies in the global market place because such information, if released, would ''exacerbate U.S. industry's ability to negotiate a fair contract.''

BIS notes that the requirement to report offset agreement performance measures and non-performance penalties is not a new requirement. The previous Offset Reporting Regulation required companies to report performance measures. The change in this final rule only requires industry to

report performance measures and non-performance penalties as separate line items. Therefore, this change will not add any additional burden on industry.

Specific to the concern regarding U.S. industry negotiations, BIS does not include the specific performance measures and non-performance penalties submitted by industry in its annual report. Instead, BIS uses this information to better understand the trends in offset activities in defense trade. Country-specific offset policies that BIS has included in past reports were obtained from publicly available sources.

Comments on Protection of Business Proprietary Information

BIS received three comments regarding the confidentiality of the offset-related data that companies submit to BIS in relation to the public availability of the annual report. One commentator stated that the release of proprietary information could be damaging to companies and to the defense industry. Two commentators expressed concerns that foreign governments use or may use the data from the annual report to win concessions from U.S. defense contractors in offset negotiations.

Although the availability of the offset report and the confidentiality of offset-related data are outside the scope of this final rule, BIS is cognizant of the negative impacts of the release of proprietary information. As provided by Section 309(c) of the DPA, and § 701.5 of the Offset Reporting Regulation, BIS is precluded from publicly disclosing the specific information it receives from U.S. companies pursuant to the Offset Reporting Regulation. Therefore, the offset-related information collected by BIS from defense contractors is highly aggregated so that the activities of individual companies cannot be determined. Additionally, in recent years, BIS has revised the annual report to remove certain sections that were identified as beneficial to foreign governments and made other sections of the report available only within the U.S. Government. BIS will continue to consider additional measures specific to this concern.

IV. Overview of Final Rule

BIS is amending the Offset Reporting Regulation to update and provide clarification with regard to the information U.S. firms are required to submit each year to support the preparation of the annual report to Congress on offsets in defense trade.

Changes to § 701.1

This final rule amends the last sentence of § 701.1 of the Offset Reporting Regulation to reflect that Commerce has already submitted and will continue to submit reports to Congress. The previous § 701.1 suggested only that Commerce will be submitting reports in the future.

Changes to § 701.2

This final rule amends certain definitions in § 701.2 of the Offset Reporting Regulation to reflect BIS's 15-year experience in preparing the annual report to Congress. Specifically, this rule updated the illustrative list of activities in the definition of ''offset transaction'' in § 701.2(f) and the definitions of ''direct offset'' in § 701.2(g) and ''indirect offset'' in § 701.2(h).

In the definition of ''offset transaction'' in § 701.2(f), this rule removes reference to activities not commonly reported to BIS (*i.e.,* countertrade, barter, counterpurchase, and buy back) and adds reference to activities that are frequently reported (*i.e.*, credit assistance, training, and purchases). Note that this list remains illustrative. Additionally, to clarify the meaning of the different types of offset transactions specified in § 701.2(f), this final rule provides examples for each type of offset transaction listed. These examples were not included in the proposed rule and are intended to ensure better consistency in the data submitted to BIS. None of these terms are currently defined in the Offset Reporting Regulation.

Example 1 to § 701.2(f), clarifies that ''co-production'' includes transactions that are based upon a government-to-government agreement authorizing the transfer of technology to permit a foreign company to manufacture all or part of a U.S.-origin defense article. Such transactions are based upon an agreement specifically referenced in a Foreign Military Sale (''FMS'') Letter of Offer and Acceptance (LOA) and a government-to-government co-production Memorandum of Understanding. In Example 6, on the other hand, a foreign company receives technology to produce a component of a U.S. defense article, but in part because this transfer wasn't made pursuant to a co-production agreement specifically referenced in an LOA and co-production Memorandum of Understanding, it is classified as ''licensed production'' instead of ''co-production.'' Both of these examples also include ''technology transfers'', and that term is further described in Example 2.

Additionally, in Example 4 to § 701.2(f) a U.S. company makes arrangements for a line of credit at a financial institution, which is ''credit assistance'' (distinguishable from the use of credited or ''banked'' offset credits, which would be classified as ''other''). In its 15 years of collecting data for its report, BIS has observed that U.S. firms have submitted data on transactions under the ''credit assistance'' category for a wide variety of transactions, some of which BIS would not consider to be ''credit assistance.'' Section 701.2(f) also lists examples for all other terms referenced in the definition of ''offset transaction.''

This final rule amends the definitions for ''direct offset'' and ''indirect offset'' in § 701.2(g) and § 701.2(h) by removing the references to ''defense articles'' and ''defense goods.'' This change was made to clarify that U.S. firms are required to report on all offset transactions for which offset credit of $250,000 or more has been claimed from a foreign representative, even if the offset transaction itself does not involve a defense article or service (i.e., items or services controlled pursuant to the International Traffic in Arms Regulations (22 CFR parts 120–130) (ITAR)). This change clarifies the intent of the reporting requirement and reflects current reporting practices.

Changes to § 701.4

This final rule modifies § 701.4 of the Offset Reporting Regulation by reordering the section. The revised section begins with information pertaining to the reporting period and the date by which reports must be submitted to BIS each year, followed by updated reporting instructions on how to submit the report and on how the report should be formatted, and the contents of the required reports. This reordering will make it easier for companies affected by this regulation to identify all of the information they need to submit timely and accurate reports. This section also notes for the first time that BIS publishes an annual notice in the **Federal Register** to remind companies of their responsibility to report on offset agreements and transactions and to advise them of the reporting deadline (*see* § 701.4(a)).

This final rule also amends § 701.4(b) to update the address to which reported offsets data should be submitted and provides an e-mail address for electronic submissions and notes that data should be submitted in both hardcopy format and electronic format. This final rule deletes references to

outdated software and hardware formats that were described in § 701.4(c) of the previous Offset Reporting Regulation. Section 701.4(b)(1) also contains the notice, previously found in § 701.4(a), that only the firms directly responsible for reporting to the foreign customer should report offset transactions to BIS. This notice has been slightly updated in this final rule to further clarify the scope of reporting required by BIS. Note that the term ''U.S. firm'' used in § 701.4(c)(1) and § 701.4(c)(2) refers to the prime contractors that are physically located in the ''United States'' (defined in § 701.2(d)), and who are directly responsible for reporting to the foreign customer as described in § 701.4(b)(1). Section 701.4(b) states that U.S. firms must generally only report on offset agreements they have entered into with a foreign customer, not agreements entered into by their foreign subsidiaries or affiliates. However, U.S. firms must report on all offset transactions that they are directly responsible for reporting to the foreign customer, including transactions performed by a foreign subsidiary or affiliate that are credited toward the U.S. firm's offset agreement.

In order to better reflect the business cycle, the provisions of the Offset Reporting Regulation that required description of the contents of reports on offsets transactions (previously § 701.4(d)) and offsets agreements (previously § 701.4(e)) were reordered so that offset agreement reporting requirements are described in § 701.4(c)(1), before the offset transaction reporting requirements now found in § 701.4(c)(2).

Also in new §§ 701.4(c)(1) and 701.4(c)(2), the term ''military export sale'' (a defined term in § 701.2) has replaced the term ''weapon system,'' in order to clarify that not all reported defense sales involve weapon systems. Further clarifying changes made to the descriptions of information required to be reported under § 701.4 are described below.

In new § 701.4(c)(1)(ii), this final rule expands the information required to be submitted to BIS to describe offset agreements. Whereas the previous Offset Reporting Regulation requested only the name or description of the defense article and/or service subject to the offset agreement, this change requires that both the name and description of such articles and/or services be provided as well as the month and year that the offset agreement was signed. These changes will ensure that offset agreements are correctly reported for the appropriate year and will facilitate BIS's ability to track the fulfillment of offset obligations.

New §§ 701.4(c)(1)(iii) and 701.4(c)(2)(iv), respectively, require companies to assign the appropriate North American Industry Classification System (''NAICS'') code(s) to each military export sale for which there is an offset agreement triggering a reporting requirement and to each offset transaction reported under the Offset Reporting Regulation. In addition, new §§ 701.4(c)(1)(v) and 701.4(c)(2)(viii), respectively, require the value of each military export sale and offset transaction to be classified by NAICS code. Note that for military export sales and offset transactions involving items categorized under more than one NAICS code, all codes should be listed and values should be listed by each of the applicable NAICS codes. This final rule includes illustrative examples in §§ 701.4(c)(1)(iii) and 701.4(c)(2)(iv) to assist industry in classifying military export sales and offset transactions by NAICS codes.

Previously, BIS required industry to classify offset transactions by broad industry classification and to provide a name and description of the military export sale. Firms were directed to the Standard Industrial Classification (''SIC'') codes for assistance in identifying an appropriate industry category for offset transactions. As NAICS is the standard industrial classification system used in the United States and officially replaced the SIC in 1997 (see 62 FR 17288, Apr. 4, 1997), this change updates BIS's instructions to industry. This change allows BIS to gather more accurate information on military export sales and offset transactions and will enhance BIS's ability to assess the economic impact of offsets on the U.S. industrial base by allowing BIS to better utilize other data published by statistical agencies of the U.S. Government.

This final rule eliminates the requirement, previously found in § 701.4(e)(1)(iii) of the Offset Reporting Regulation, that companies report the names and titles of the signatories to offset agreements. BIS has determined that this information is not necessary for the preparation of BIS's annual report to Congress. Under the new § 701.4(c)(1)(iv), companies are required to report only the identity of the foreign government agency or branch that is a signatory to the offset agreement.

In order to clarify the individual status of performance measures and non-performance penalties, the final rule separates their reporting requirements by moving them from old § 701.4(e)(1)(vii) to new § 701.4(c)(1)(viii) and new § 701.4(c)(1)(ix), respectively. This rule also includes lists of examples for each.

In new § 701.4(c)(2)(ii), this final rule requires companies to report for each offset transaction the date when the related offset agreement was signed. This data will allow BIS to better track the fulfillment of offset agreements and identify trends in offset transaction activity.

This final rule revises examples of offset transaction categories. The section entitled ''Description of Offset Product/Service'' in the previous Offset Reporting Regulation has been replaced by new § 701.4(c)(2)(iii), entitled ''Offset Transaction Category.'' The categories of offset transactions listed as examples in the new section more accurately reflect the types of offset transactions that have been reported to BIS since 1994. For example, the category of ''cash payment'' has been removed, and the categories of ''licensed production,'' ''investment,'' and ''credit assistance'' have been added, as was an ''other'' category (for which the reporting company must include a description). The final rule makes one minor change in this section from the proposed rule. The category entitled ''overseas investment'' in the proposed rule has been renamed ''investment.'' BIS made this change because it is aware that there may be investment-related activities for which U.S. firms claim offset credit that may not be accurately labeled as ''overseas investment.''

Finally, this final rule adds new § 701.6 to describe the penalties available under the Defense Production Act (50 U.S.C. App. 2155) should companies not comply with this regulation. Willful violation of the Defense Production Act may result in punishment by fine or imprisonment, or both. The maximum penalty provided by the Defense Production Act is a $10,000 fine, or one year in prison, or both. The Government may also seek an injunction from a court of appropriate jurisdiction to prohibit the continuance of any violation of, or to enforce compliance with, the Defense Production Act.

V. Rulemaking Requirements

1. This rule has been determined to be significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), unless that collection of information displays a currently valid

Office of Management and Budget (''OMB'') Control Number. This regulation contains a collection previously approved by the OMB under control number 0694–0084, which carries a burden hour estimate of nine hours for a reporting firm to prepare and submit once per year. In addition, this final rule amends that collection for reporting on offset agreements and transactions by NAICS code, which carries an estimated additional burden of three hours for companies submitting annual reports to BIS.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The Regulatory Flexibility Act (''RFA''), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) 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. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Chief Counsel for Regulations, Department of Commerce, certified to the Chief Counsel for Advocacy, Small Business Administration, that this rule will not have a significant impact on a substantial number of small entities. The text of that certification was printed in the preamble to the proposed rule (74 FR 19468, April 24, 2009) and it is not repeated here. No comments were received regarding the economic impact of this final rule. As a result, no final regulatory flexibility analysis was prepared.

List of Subjects in 15 CFR Part 701

Administrative practice and procedure, Arms and munitions, Business and industry, Exports, Government contracts, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the National Security Industrial Base Regulations (15 CFR parts 700–709) are amended as follows:

PART 701—[AMENDED]

■ 1. The authority citation for part 701 is revised to read as follows:

Authority: 50 U.S.C. App. 2099 and Executive Order 12919, 59 FR 29525, 3 CFR, 1994 Comp. 901 and Executive Order 13286, 68 FR 10619, 3 CFR, 2003 Comp. 166.

■ 2. In § 701.1, revise the last sentence in the section to read:

§ 701.1 Purpose.

* * * Summary reports are submitted annually to Congress pursuant to Section 309 of the Defense Production Act of 1950, as amended.

■ 3. In § 701.2, revise paragraphs (f), (g), and (h) to read as follows:

§ 701.2 Definitions.

* * * * *

(f) *Offset Transaction*—Any activity for which the U.S. firm claims credit for full or partial fulfillment of the offset agreement. Activities to implement offset agreements are categorized as co-production, technology transfer, subcontracting, credit assistance, training, licensed production, investment, purchases and other. Paragraphs (f)(1) through (f)(8) of this section provide examples of the categories of offset transactions.

(1) *Example 1.* Company A, a U.S. firm, contracts for Company B, a foreign firm located in country C, to produce a component of a U.S.-origin defense article subject to an offset agreement between Company A and country C. The defense article will be sold to country C pursuant to a Foreign Military Sale and the production role of Company B is described in the Letter of Offer and Acceptance associated with that sale and a government-to-government co-production memorandum of understanding. This transaction would be categorized as co-production and would, like all co-production transactions, be direct.

(2) *Example 2.* Company A, a U.S. firm, transfers technology to Company B, a foreign firm located in country C, which allows Company B to conduct research and development directly related to a defense article that is subject to an offset agreement between Company A and country C. This transaction would be categorized as technology transfer and would be direct because the research and development is directly related to an item subject to the offset agreement.

(3) *Example 3.* Company A, a U.S. firm, contracts for Company B, a foreign firm located in country C, to produce a component of a U.S.-origin defense article subject to an offset agreement between Company A and country C. The contract with Company B is for a direct commercial sale and Company A does not license Company B to use any technology. The transaction would be categorized as subcontracting and would, like all subcontracting transactions, be direct.

(4) *Example 4.* Company A, a U.S. firm, makes arrangements for a line of credit at a financial institution for Company B, a foreign firm located in country C, so that Company B can produce an item that is not subject to the offset agreement between Company A and country C. The transaction would be categorized as credit assistance and would be indirect because the credit assistance is unrelated to an item covered by the offset agreement.

(5) *Example 5.* Company A, a U.S. firm, arranges for training of personnel from Company B, a foreign firm located in country C. The training is related to the production and maintenance of a U.S.-origin defense article that is subject to an offset agreement between Company A and country C. The transaction would be categorized as training and would be direct because the training is directly related to the production and maintenance of an item covered by the offset agreement.

(6) *Example 6.* Company A, a U.S. firm, contracts for Company B, a foreign firm located in country C, to produce a component of a U.S.-origin defense article that is subject to an offset agreement between Company A and country C. The contract with Company B is a Foreign Military Sale and Company A licenses Company B to use Company A's production technology to produce the component. There is no co-production agreement between the United States and country C. The transaction would be categorized as licensed production and would be direct because it involves the item covered by the offset agreement.

(7) *Example 7.* Company A, a U.S. firm, makes an investment in Company B, a foreign firm located in country C, so that Company B can create a new production line to produce a component of a defense article that is subject to an offset agreement between Company A and country C. The transaction would be categorized as investment and would be direct because the investment involves an item covered by the offset agreement.

(8) *Example 8.* Company A, a U.S. firm, purchases various off-the-shelf items from Company B, a foreign firm located in country C, but none of these items will be used by Company A to produce the defense article subject to the offset agreement between Company A and country C. The transaction would be categorized as purchases and would, like all purchase transactions, be indirect.

(g) *Direct Offset*—an offset transaction directly related to the article(s) or service(s) exported or to be exported pursuant to the military export sales agreement. See the examples illustrating offset transactions of this type in §§ 701.2(f)(1), 701.2(f)(2), 701.2(f)(3), 701.2(f)(5), 701.2(f)(6) and 701.2(f)(7) of this part.

(h) *Indirect Offset*—an offset transaction unrelated to the article(s) or service(s) exported or to be exported pursuant to the military export sales agreement. See the examples illustrating offset transactions of this type in §§ 701.2(f)(4) and 701.2(f)(8) of this part.

■ 4. Section 701.4 is revised to read as follows:

§ 701.4 Procedures.

(a) *Reporting period.* The Department of Commerce publishes a notice in the **Federal Register** annually reminding the public that U.S. firms are required to report annually on contracts for the sale of defense-related items or defense-related services to foreign governments or foreign firms that are subject to offset agreements exceeding $5,000,000 in value. U.S. firms are also required to report annually on offset transactions completed in performance of existing offset commitments for which offset credit of $250,000 or more has been claimed from the foreign representative. Such reports must be submitted to the Department of Commerce no later than June 15 of each year and must contain offset agreement and transaction data for the previous calendar year.

(b) *Reporting instructions.* (1) U.S. firms must only report on offset agreements they have entered into with a foreign customer. U.S. firms must report offset transactions that they are directly responsible for reporting to the foreign customer, regardless of who performs the transaction (*i.e.*, prime contractors must report for their subcontractors if the subcontractors are not a direct party to the offset agreement).

(2) Reports must be submitted in hardcopy to the Offset Program Manager, U.S. Department of Commerce, Bureau of Industry and Security, Room 3876, 14th Street and Constitution Avenue, NW., Washington, DC 20230, and as an e-mail attachment to *OffsetReport@bis.doc.gov.* E-mail attachments must include the information in a computerized spreadsheet or database format. If unable to submit a report in computerized format, companies should contact the Offset Program Manager for guidance. All submissions must include a point of contact (name and telephone number) and must be submitted by a company official authorized to provide such information.

(c) Reports must include the information described below. Any necessary comments or explanations relating to the information shall be footnoted and supplied on separate sheets attached to the reports.

(1) *Reporting on offset agreements.* U.S. firms shall provide an itemized list of new offset agreements entered into during the reporting period, including the information about each such agreement described in paragraphs (c)(1)(i) through (c)(1)(ix) of this section.

(i) *Name of foreign country.* Identify the country of the foreign entity involved in the military export sale associated with the offset agreement.

(ii) *Description of the military export sale.* Provide a name and description of the defense article and/or defense service referenced in the military export sale, as well as the date (month and year) that the related offset agreement was signed.

(iii) *Military export sale classification.* Identify the six-digit North American Industry Classification System (''NAICS'') code(s) associated with the military export sale. Refer to U.S. Census Bureau's U.S. NAICS Manual for a listing of applicable NAICS codes (*http://www.census.gov/epcd/www/naics.html*). Paragraphs (c)(1)(iii)(A) through (c)(1)(iii)(E) of this section provide examples that illustrate how to select the appropriate NAICS code(s).

(A) *Example 1.* Company A enters into an offset agreement associated with the sale of 24 fighter aircraft and guided missiles to country B. Fighter aircraft manufacturing is classified in the NAICS as NAICS 336411, Aircraft Manufacturing. Guided missiles are classified in the NAICS as NAICS 336414, Guided Missile and Space Vehicle Manufacturing. This military export sale should be classified under NAICS 336411 and NAICS 336414.

(B) *Example 2.* Company B enters into an offset agreement associated with the sale of a navigation system for a fleet of military aircraft to country C. Navigation system manufacturing is classified in the NAICS as NAICS 334511, Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing. This military export sale should be classified under NAICS 334511.

(C) *Example 3.* Company C enters into an offset agreement associated with the sale of radio communication equipment to country D. Radio communication equipment is classified in the NAICS as NAICS 334220, Radio and Television Broadcasting and Wireless Communication Equipment Manufacturing. This military export sale should be classified under NAICS 334220.

(D) *Example 4.* Company D enters into an offset agreement associated with the sale of 30 aircraft engines to country E. Aircraft engines are classified in the NAICS as NAICS 336412, Aircraft Engine and Engine Parts Manufacturing. This military export sale should be classified under NAICS 336412.

(E) *Example 5.* Company E enters into an offset agreement associated with the sale of armored vehicles to country F. Armored vehicles are classified in the NAICS as NAICS 336992, Military Armored Vehicle, Tank, and Tank Component Manufacturing. This military export sale should be classified under NAICS 336992.

(iv) *Foreign party to offset agreement.* Identify the foreign government agency or branch that is the signatory to the offset agreement.

(v) *Military export sale value.* Provide the U.S. dollar value of the military export sale. Should the military export sale involve more than one NAICS code, please separately list the values associated with each NAICS code.

(vi) *Offset agreement value.* Provide the U.S. dollar value of the offset agreement.

(vii) *Offset agreement term.* Identify the term of the offset agreement in months.

(viii) *Offset agreement performance measures.* Identify each category that describes the offset agreement's performance measures: best efforts, accomplishment of obligation, or other (please describe).

(ix) *Offset agreement penalties for non-performance.* Identify each category that describes the offset agreement's penalties for non-performance. For example, the agreement may include penalties such as liquidated damages, debarment from future contracts, added offset requirements, fees, commissions, bank credit guarantees, or other (please describe).

(2) *Reporting on offset transactions.* U.S. firms shall provide an itemized list of offset transactions completed during the reporting period, including the elements listed in paragraphs (c)(2)(i) through (c)(2)(x) of this section for each such transaction (numerical estimates are acceptable when actual figures are unavailable; estimated figures shall be followed by the letter ''E'').

(i) *Name of foreign country.* Identify the country of the foreign entity involved in the military export sale associated with the offset transaction.

(ii) *Description of the military export sale.* Provide a name and description of the defense article and/or defense

service referenced in the military export sale associated with the offset transaction, as well as the date the offset agreement was signed (month and year).

(iii) *Offset transaction category.* Identify each category that describes the offset transaction as co-production, technology transfer, subcontracting, training, licensing of production, investment, purchasing, credit assistance or other (please describe).

(iv) *Offset transaction classification.* Identify the six-digit NAICS code(s) associated with the offset transaction. Refer to U.S. Census Bureau's U.S. NAICS Manual for a listing of applicable NAICS codes (*http://www.census.gov/epcd/www/naics.html*). Paragraphs (c)(2)(iv)(A) through (c)(2)(iv)(E) of this section provide examples that illustrate how to select the appropriate NAICS code in the instances described therein.

(A) *Example 1.* Company A completes an offset transaction by co-producing aircraft engines in country B. Aircraft engine manufacturing is classified in the NAICS as NAICS 336412, Aircraft Engine and Engine Parts Manufacturing. This offset transaction should be classified under NAICS 336412.

(B) *Example 2.* Company B completes an offset transaction by licensing the production of automotive electrical switches in country C. Company B also assists in structuring a wholesale distribution network for these products. Automotive electrical switch manufacturing is classified in the NAICS as NAICS 335931, Current Carrying Wiring Device Manufacturing, and the wholesale distribution network is classified in the NAICS as NAICS 423120, Motor Vehicle Supplies and New Parts Merchant Wholesalers. This offset transaction should be classified under NAICS 335931 and NAICS 423120.

(C) *Example 3.* Company C completes an offset transaction by transferring technology to establish a biotechnology research center in country D. Biotechnology research and development is classified in the NAICS as NAICS 541711, Research and Development in Biotechnology. This offset transaction should be classified under NAICS 541711.

(D) *Example 4.* Company D completes an offset transaction by purchasing steel forgings from a steel mill in country E. Steel forgings are classified in the NAICS as NAICS 331111, Iron and Steel Mills. This offset transaction should be classified under NAICS 331111.

(E) *Example 5.* Company E completes an offset transaction by providing training assistance services in country F to certain plant managers. Training assistance is classified in the NAICS as NAICS 611430, Professional and Management Development Training. This offset transaction should be classified under NAICS 611430.

(v) *Offset transaction type.* Identify the offset transaction as a direct offset transaction, an indirect offset transaction, or a combination of both.

(vi) *Name of offset performing entity.* Identify, by name, the entity performing the offset transaction on behalf of the U.S. entity that entered into the offset agreement.

(vii) *Name of offset receiving entity.* Identify the foreign entity receiving benefits from the offset transaction.

(viii) *Actual offset value.* Provide the U.S. dollar value of the offset transaction without taking into account multipliers or intangible factors. Should the offset transaction involve more than one NAICS code, please list the U.S. dollar values associated with each NAICS code.

(ix) *Offset credit value.* Provide the U.S. dollar value credits claimed by the offset performing entity, including any multipliers or intangible factors.

(x) *Offset transaction performance location.* Name the country where each offset transaction was fulfilled, such as the purchasing country, the United States, or a third country.

■ 5. § 701.6 is added to read as follows:

§ 701.6 Violations, penalties, and remedies.

(a) Willful violation of the Defense Production Act may result in punishment by fine or imprisonment, or both. The maximum penalty provided by the Defense Production Act is a $10,000 fine, or one year in prison, or both.

(b) The Government may seek an injunction from a court of appropriate jurisdiction to prohibit the continuance of any violation of, or to enforce compliance with, the Defense Production Act and this regulation.

Dated: December 18, 2009.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. E9–30488 Filed 12–22–09; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 736, 738, 740, 742, 743, and 772

[Docket No. 0907241162–91276–01]

RIN 0694–AE62

Amendments to the Export Administration Regulations (EAR) Based Upon the Accession of Albania and Croatia to Formal Membership in the North Atlantic Treaty Organization (NATO)

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is publishing this final rule to amend certain requirements in the Export Administration Regulations (EAR) that apply to Albania and Croatia. These changes are based upon the accession of Albania and Croatia to formal membership in the North Atlantic Treaty Organization (NATO) on April 1, 2009. Consistent with the EAR license requirements and licensing policies that apply to members of NATO, this final rule amends the EAR to remove certain crime control (CC), national security (NS), and regional stability (RS) license requirements for these two countries. A license continues to be required for exports and reexports to Albania or Croatia of items on the Commerce Control List (CCL) controlled for national security or regional stability reasons that are identified as requiring a license to destinations indicated under NS Column 1 (also NS Column 2, for Albania) or RS Column 1, respectively, on the Commerce Country Chart. Certain restraint devices, discharge type arms, and related technology described on the CCL continue to require a license for crime control reasons to Albania or Croatia. A license also continues to be required for specially designed implements of torture described on the CCL. Furthermore, this rule does not affect any license requirements that apply to these countries based on other reasons for control identified in the EAR. This final rule also removes the EAR prohibition that applied to certain in transit shipments through Albania, removes Albania from Country Group D, and adds Albania to Country Group B. Croatia has already been designated in the EAR as a Country Group B country. In addition, this rule amends the provisions of License Exception APR (Additional Permissive Reexports) that apply to reexports of certain thermal

imaging cameras to include Albania and Croatia among the list of eligible destinations. Finally, this rule amends the definition of ''NATO (North Atlantic Treaty Organization)'' in the EAR to include Albania and Croatia.

DATES: This rule is effective December 23, 2009. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

ADDRESSES: You may submit comments, identified by RIN 0694–AE62, by any of the following methods:

- *E-mail: publiccomments@bis.doc.gov.* Include ''RIN 0694–AE62'' in the subject line of the message.
- *Fax:* (202) 482–3355. Please alert the Regulatory Policy Division, by calling (202) 482–2440, if you are faxing comments.
- *Mail or Hand Delivery/Courier:* Willard Fisher, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, *Attn:* RIN 0694–AE62.

Send comments regarding this collection of information, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), by e-mail to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Comments on this collection of information should be submitted separately from comments on the final rule (i.e., RIN 0694–AE62)—all comments on the latter should be submitted by one of the four methods outlined above.

FOR FURTHER INFORMATION CONTACT: John Varesi, Sensors and Aviation Division, Office of National Security and Technology Transfer Controls, Bureau of Industry and Security, *Telephone:* (202) 482–1114.

SUPPLEMENTARY INFORMATION:

Background

This final rule amends certain requirements in the Export Administration Regulations (EAR) that apply to Albania and Croatia. These changes are based upon the accession of Albania and Croatia to formal membership in the North Atlantic Treaty Organization (NATO) on April 1, 2009.

This rule amends the Commerce Country Chart (Supplement No. 1 to Part 738 of the EAR) by revising certain license requirements that apply to Albania and Croatia to be consistent with those that apply to other members of NATO. Specifically, this rule removes certain crime control (CC), national security (NS) and regional stability (RS) license requirements for Albania and Croatia. As a result of the changes made by this rule, Albania and Croatia are no longer designated as RS Column 2 destinations on the Commerce Country Chart and Croatia is no longer designated as an NS Column 2 destination. However, a license continues to be required for exports and reexports to Albania or Croatia of items on the Commerce Control List (CCL) (Supplement No. 1 to Part 774 of the EAR) that are controlled for national security or regional stability reasons and are identified as requiring a license to destinations indicated under NS Column 1 (also NS Column 2, for Albania) or RS Column 1, respectively, on the Commerce Country Chart. A license also continues to be required for exports and reexports to Albania or Croatia of restraint devices, discharge type arms, and related technology that are controlled for crime control reasons under Export Control Classification Numbers (ECCNs) 0A982, 0A985, and 0E982, respectively, on the CCL. Specially designed implements of torture that are controlled under ECCN 0A983 also continue to require a license for export and reexport to Albania or Croatia. In addition, this rule does not affect license requirements that apply to Albania or Croatia based on other reasons for control identified in the EAR, such as chemical/biological (CB), missile technology (MT), nuclear proliferation (NP), and encryption items (EI).

Consistent with the changes described above, this rule amends the national security (NS) license requirement provisions in Section 742.4(a) of the EAR by adding Croatia to the list of countries that are not subject to the NS Column 2 license requirements indicated in various Export Control Classification Numbers (ECCNs) on the CCL. In addition, this rule adds Albania and Croatia to the list of countries identified in Section 742.4(a) of the EAR that are not subject to the NS Column 2 license requirements that apply to certain ECCN 6A003.b.4.b cameras described therein. Although this rule does not remove all of the NS Column 2 license requirements for Albania, as it does for Croatia, the rule does make Albania eligible for the exemption that applies to certain ECCN 6A003.b.4.b cameras described in Section 742.4(a) of the EAR—this policy is consistent with the treatment that is provided for exports of such cameras to Cyprus, Malta, and South Africa, which also are subject to most NS Column 2 license requirements.

Consistent with the changes in the regional stability (RS) license requirements for Albania and Croatia described above, this rule adds both countries to the list of countries identified in Section 742.6(a)(4)(ii) of the EAR as not subject to the RS Column 2 license requirements that apply to certain ECCN 6A003.b.4.b cameras described therein. This rule also amends the RS Column 1 license requirements described in Section 742.6(a) of the EAR by adding Albania and Croatia to the list of countries to which certain exports or reexports of cameras controlled under ECCN 6A003.b.4.b, as described in Section 742.6(a)(2)(ii) or (a)(2)(iv) of the EAR, may be authorized in accordance with the requirements of Section 742.6(a)(2)(iii) or (a)(2)(v), respectively. In addition, this rule adds Albania and Croatia to the list of countries in Section 742.6(a)(3) of the EAR whose governments are authorized to reexport without a license ''military commodities'' controlled under ECCN 0A919 as part of a military deployment.

This rule also amends Section 743.3(b) of the EAR by adding Albania and Croatia to the list of countries that are subject to the reporting requirements described in this section, which apply to exports of ECCN 6A003.b.4.b thermal imaging cameras that have been authorized under the EAR without a validated license.

Most of the amendments to Sections 740.16(b)(3), 742.4(a), 742.6(a), and 743.3(b) of the EAR that are described above involve provisions of the EAR that were affected by a final rule published by BIS on May 22, 2009 (74 FR 23941), which revised certain license requirements and license exception eligibility requirements for thermal imaging cameras controlled by ECCN 6A003.b.4.b on the CCL. This final rule does not affect the scope of these requirements, except insofar as they apply to exports of such cameras to Albania and Croatia. For additional information on the application of these requirements to Albania and Croatia, please refer to the BIS point of contact identified in the May 22, 2009, final rule.

In addition to the national security and regional stability changes described above, this rule amends Section 736.2(b)(8)(ii) of the EAR (i.e., General Prohibition Eight) to remove ''Albania'' from the list of countries that are subject to the prohibition against certain in transit shipments. This prohibition

applies to intransit shipments through specified countries of items that generally would require a license for export or reexport to such countries and that are not authorized under either a license or a license exception.

This rule also amends Supplement No. 1 to Part 740 of the EAR (titled ''Country Groups'') by removing ''Albania'' from ''Country Group D'' and adding ''Albania'' to ''Country Group B—Countries,'' consistent with the treatment provided to other members of NATO. ''Croatia'' has already been designated in the EAR as a Country Group B country (see the interim rule titled, ''Simplification of Export Administration Regulations,'' published at 61 FR 12714, March 25, 1996; Country Group B, p. 12782). Whether or not a country has been designated by the EAR as a Country Group B country can affect its eligibility status with respect to certain license exceptions described in Part 740 of the EAR (e.g., License Exceptions LVS, GBS, and TSR).

Consistent with the status of Albania and Croatia as members of NATO, this rule also amends the License Exception APR (Additional Permissive Reexports) provisions in Section 740.16(b)(3) of the EAR to add Albania and Croatia to the list of eligible destinations for certain thermal imaging cameras controlled under ECCN 6A003.b.4.b on the CCL.

Finally, this rule amends Section 772.1 of the EAR to update the definition of ''NATO (North Atlantic Treaty Organization)'' by adding ''Albania'' and ''Croatia.''

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 13, 2009, 74 FR 41325 (August 14, 2009), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule contains collections of information subject to the requirements of the PRA. These collections have been approved by OMB under Control Number 0694–0088 (Multi-Purpose Application), which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748, and Control Number 0694–0133, which carries a burden hour estimate of 60 hours annually for all reports submitted in accordance with Section 743.3 of the EAR. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, as indicated in the ''**ADDRESSES**'' section of this rule.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

List of Subjects

15 CFR Part 736

Exports.

15 CFR Part 738

Administrative practice and procedure, Exports, Foreign trade.

15 CFR Part 740

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 742

Exports, Foreign trade.

15 CFR Part 743

Administrative practice and procedure, Reporting and recordkeeping requirements.

15 CFR Part 772

Exports.

■ Accordingly, parts 736, 738, 740, 742, 743, and 772 of the Export Administration Regulations (15 CFR Parts 730–774) are amended as follows:

PART 736—[AMENDED]

■ 1. The authority citation for 15 CFR part 736 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 2151 note; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, May 13, 2004; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009); Notice of November 6, 2009, 74 FR 58187 (November 10, 2009).

§ 736.2 [Amended]

■ 2. In Section 736.2(b)(8)(ii), remove the country, ''Albania,''.

PART 738—[AMENDED]

■ 3. The authority citation for 15 CFR part 738 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

■ 4. Supplement No. 1 to part 738 is amended in the entries for ''Albania'' and ''Croatia,'' by adding a reference to footnote number 2 in the entry for ''Albania,'' and by adding a reference to footnote number 3 in the entries for ''Albania'' and ''Croatia'' to read as follows:

SUPPLEMENT NO. 1 TO PART 738—COMMERCE COUNTRY CHART

[Reason for control]

Countries	Chemical & biological weapons			Nuclear non-proliferation		National Security		Missile Tech	Regional Stability		Firearms convention	Crime control			Anti-terrorism	
	CB	CB	CB	NP	NP	NS	NS	MT	RS	RS	FC	CC	CC	CC	AT	AT
	1	2	3	1	2	1	2	1	1	2	1	1	2	3	1	2
*			*			*		*		*		*			*	
Albania [2 3] ...	X			X		X		X	X							
*			*			*		*		*		*			*	
Croatia [3]	X			X	.....	X		X	X							
*			*			*		*		*		*			*	

[2] *See* §742.4(a) for special provisions that apply to exports and reexports to these countries of certain thermal imaging cameras.
[3] *See* §742.6(a)(3) for special provisions that apply to military commodities that are subject to ECCN OA919.

PART 740—[AMENDED]

■ 5. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

§ 740.16 [Amended]

■ 6. Section 740.16(b)(3) introductory text is amended by removing the phrase ''Australia, Austria, Belgium, Bulgaria, Canada,'' and adding in its place the phrase, ''Albania, Australia, Austria, Belgium, Bulgaria, Canada, Croatia,''.

Supplement No. 1 to Part 740 [Amended]

■ 7. In Supplement No. 1 to part 740, Country Groups, the table titled ''Country Group B—Countries'' is amended by adding, in alphabetical order, the country ''Albania''.

■ 8. In Supplement No. 1 to part 740, Country Groups, the table titled ''Country Group D'' is amended by removing the entry for ''Albania''.

PART 742—[AMENDED]

■ 9. The authority citation for 15 CFR part 742 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; Sec 1503, Public Law 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009); Notice of November 6, 2009, 74 FR 58187 (November 10, 2009).

§ 742.4 [Amended]

■ 10. Section 742.4(a) is amended:

■ a. By removing the word ''Bulgaria,'' immediately following the parenthetical phrase in the third sentence and adding in its place the phrase, ''Bulgaria, Croatia,''; and

■ b. By removing the phrase ''except Australia, Austria, Belgium, Bulgaria, Canada,'' in the fourth sentence and adding in its place the phrase, ''except Albania, Australia, Austria, Belgium, Bulgaria, Canada, Croatia,''.

■ 11. Section 742.6 is amended:

■ a. By revising the first sentence in paragraph (a)(2)(iii);

■ b. By revising the first sentence in paragraph (a)(2)(v);

■ c. By revising paragraph (a)(3); and

■ d. By revising paragraph (a)(4)(ii).

The revisions read as follows:

§ 742.6 Regional stability.

(a) * * *

(2) * * *

(iii) BIS may issue licenses for cameras subject to the license requirement of paragraph (a)(2)(ii) of this section that are fully-packaged for use as consumer-ready civil products that, in addition to the specific transactions authorized by such license, authorize exports and reexports of such cameras without a license to any civil end-user to whom such exports or reexport are not otherwise prohibited by U.S. law in Albania, Australia, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, South Africa, South Korea, Spain, Sweden, Switzerland, Turkey, and the United Kingdom. * * *

* * * * *

(v) BIS may also issue licenses for the cameras described in paragraph (a)(2)(iv) that, in addition to the specific transactions authorized by such license, authorize exports and reexports to authorized companies described in the license for the purpose of embedding such cameras into a completed product that will be distributed only in Albania, Australia, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, South Africa, South Korea, Spain, Sweden, Switzerland, Turkey, and the United Kingdom. * * *

(3) *Special RS Column 1 license requirement applicable to military commodities.* A license is required for reexports to all destinations except Canada for items classified under ECCN 0A919 except when such items are being reexported as part of a military deployment by a unit of the government of Albania, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, South Africa, South Korea, Spain, Sweden, Switzerland, Turkey,

the United Kingdom or the United States.

(4) * * *

(ii) Special RS Column 2 license requirements applicable only to certain cameras. As indicated by the CCL, and RS column 2 and footnote number 4 to the Commerce Country Chart, a license is required to any destination except Albania, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, South Africa, South Korea, Spain, Sweden, Switzerland, Turkey, and the United Kingdom for fully-packaged thermal imaging cameras for use as consumer-ready civil products controlled by 6A003.b.4.b when incorporating ''focal plane arrays'' that have not more than 111,000 elements and a frame rate of 60Hz or less and that are not being exported or reexported to be embedded in a civil product.

* * * * *

PART 743—[AMENDED]

■ 12. The authority citation for 15 CFR part 743 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq;* Public Law 106–508; 50 U.S.C. 1701 *et seq;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

§ 743.3 [Amended]

■ 13. Section 743.3(b) is amended by removing the phrase ''to Australia, Austria, Belgium, Bulgaria,'' and adding in its place the phrase ''to Albania, Australia, Austria, Belgium, Bulgaria, Croatia,''.

PART 772—[AMENDED]

■ 14. The authority citation for 15 CFR part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

■ 15. In Section 772.1, the definition of ''NATO (North Atlantic Treaty Organization)'' is revised to read as follows:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

NATO (North Atlantic Treaty Organization). A strategic defensive organization that consists of the following member nations: Albania, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Turkey, the United Kingdom, and the United States.

* * * * *

Dated: December 14, 2009.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. E9–30484 Filed 12–22–09; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 0910231375–91388–01]

RIN 0694–AE75

Removal of Entry From the Entity List: Person Removed Based on Removal Request

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) by removing one person from the Entity List (Supplement No. 4 to Part 744). This person is being removed from the Entity List because the End-User Review Committee (ERC) decided to approve this person's request for removal from the Entity List. The Entity List provides notice to the public that certain exports, reexports, and transfers (in-country) to parties identified on the Entity List require a license from the Bureau of Industry and Security (BIS) and that availability of License Exceptions in such transactions is limited.

DATES: *Effective Date:* This rule is effective December 23, 2009. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

ADDRESSES: You may submit comments, identified by RIN 0694–AE75, by any of the following methods: *E-mail: publiccomments@bis.doc.gov.* Include ''RIN 0694–AE75'' in the subject line of the message.

Fax: (202) 482–3355. Please alert the Regulatory Policy Division by calling (202) 482–2440, if you are faxing comments.

Mail or Hand Delivery/Courier: Timothy Mooney, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, *Attn:* RIN 0694–AE75.

Send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by e-mail to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Comments on this collection of information should be submitted separately from comments on the final rule (i.e. RIN 0694–AE75)—all comments on the latter should be submitted by one of the three methods outlined above.

FOR FURTHER INFORMATION CONTACT: Elizabeth Scott Sangine, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, *Phone:* (202) 482–3343, *Fax:* (202) 482–3911, *E-mail: bscott@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Entity List provides notice to the public that certain exports, reexports, and transfers (in-country) to parties identified on the Entity List require a license from the Bureau of Industry and Security (BIS) and that availability of license exceptions in such transactions is limited. Persons are placed on the Entity List on the basis of certain sections of part 744 (Control Policy: End-User and End-Use Based) of the EAR. BIS first published the Entity List in February 1997 as part of its efforts to inform the public of entities that have engaged in activities that could result in an increased risk of diversion of exported and reexported items to weapons of mass destruction (WMD) programs. Since its initial publication, grounds for identification on the Entity List have expanded to include activities sanctioned by the Department of State and activities contrary to U.S. national security and/or foreign policy interests.

ERC Entity List Decisions

Pursuant to Supplement No. 5 to part 744 (Procedures for End-User Review Committee Entity List Decisions) of the EAR, the ERC, composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions to make additions to, removals from or changes

to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and all decisions to remove or modify an entry by unanimous vote.

The ERC made a determination to remove Neda Kargar, located in the United Arab Emirates, as a result of her request for removal from the listed entity. Based upon the review of the information provided in the removal request in accordance with § 744.16 (Procedure for Requesting Removal or Modification of an Entity List Entity), and further review that was conducted by the ERC's member agencies, the ERC determined that Neda Kargar should be removed from the Entity List. The ERC decision to remove Neda Kargar took into account information indicating that she did not work at the location listed in her entry on the Entity List, her cooperation with the U.S. Government, and as her assurances of future compliance with the EAR. In accordance with § 744.16(c), the Deputy Assistant Secretary for Export Administration has sent written notification to Neda Kargar informing her of the ERC's decision to remove her from the Entity List. This final rule implements the decision to remove this U.A.E. person from the Entity List.

Removal From the Entity List

One person is being removed under this rule as a result of the submission of a formal request for removal based upon the procedures outlined in § 744.16 of the EAR. This entity is located in the United Arab Emirates:

United Arab Emirates

(1) *Neda Kargar,* No. 308, 3rd Floor, Rafi Center, Al Nakheel, Deira, Dubai, U.A.E.

The removal of Neda Kargar from the Entity List (from the U.A.E., as described above) eliminates the existing license requirement in Supplement No. 4 to part 744 for exports, reexports and transfers (in-country) to this person. However, the removal of Neda Kargar from the Entity List does not relieve persons of other obligations under part 744 of the EAR or under other parts of the EAR. Neither the removal of a person from the Entity List nor the removal of Entity List-based license requirements relieves persons of their obligations under General Prohibition 5 in § 736.2(b)(5) of the EAR which provides that, ''you may not, without a license, knowingly export or reexport any item subject to the EAR to an end-user or end-use that is prohibited by part 744 of the EAR.'' Nor do such removals relieve persons of their obligation to apply for export, reexport or in-country transfer licenses required by other provisions of the EAR. BIS strongly urges the use of Supplement No. 3 to part 732 of the EAR, ''BIS's 'Know Your Customer' Guidance and Red Flags,'' when persons are involved in transactions that are subject to the EAR.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 13, 2009 (74 FR 41325 (August 14, 2009)), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by the OMB under control numbers 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Miscellaneous and recordkeeping activities account for 12 minutes per submission. Total burden hours associated with the Paperwork Reduction Act and Office and Management and Budget control number 0694–0088 are expected to decrease slightly as a result of this rule.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States. (*See* 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.,* are not applicable.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

■ Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009); Notice of November 10, 2008, 73 FR 67097 (November 12, 2008).

Supplement No. 4 to Part 744 [Amended]

■ 2. Supplement No. 4 to part 744 is amended by removing under the United Arab Emirates, this one U.A.E. entity ''*Neda Kargar,* No. 308, 3rd Floor, Rafi Center, Al Nakheel, Deira, Dubai, U.A.E.''.

Dated: December 11, 2009.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. E9–30480 Filed 12–22–09; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 748

[Docket No. 0911051394–91397–01]

RIN 0694–AE77

Authorization Validated End-User: Amendment to Existing Validated End-User Authorizations in the People's Republic of China (PRC) and India

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In this final rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to suspend the availability of Authorization Validated End-User

(VEU) status for any export, reexport, or transfer (in-country) of items subject to the EAR to Aviza Technology China, a VEU in the People's Republic of China (PRC/China) and to GE India's GE Fanuc Systems PVT Ltd facility in India. VEU status was provided to the PRC company in an April 2009 final rule published in the **Federal Register**, and to the eligible facility of the Indian company in a July 2009 final rule published in the **Federal Register**.

BIS is suspending the availability of Authorization VEU for exports, reexports, and transfers (in-country) due to material changes at the companies, consistent with the authorization's eligible end-user provisions. Suspension of the availability of Authorization VEU in this amendment is not the result of prohibited activities by the two companies. This amendment does not otherwise create a *new* license requirement or adversely affect the licensing policy for exports, reexports or transfers of items to the company and facility identified in this rule.

DATES: This rule is effective December 23, 2009.

ADDRESSES: Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. You may submit comments, identified by RIN 0694–AE77 (VEUAVIZAGE), by any of the following methods:

E-mail: publiccomments@bis.doc.gov. Include ''RIN 0694–AE77 (VEUAVIZAGE)'' in the subject line of the message.

Fax: (202) 482–3355. Please alert the Regulatory Policy Division, by calling (202) 482–2440, if you are faxing comments.

Mail or Hand Delivery/Courier: Sheila Quarterman, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, *Attn:* RIN 0694–AE77 (VEUAVIZAGE).

Send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), by e-mail to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285. Comments on this collection of information should be submitted separately from comments on the final rule (i.e., RIN 0694–AE77 (VEUAVIZAGE))—all comments on the matter should be submitted by one of the three methods outlined above.

FOR FURTHER INFORMATION CONTACT: Elizabeth Scott Sangine, Acting Chair, End-User Review Committee, Bureau of Industry and Security, U.S. Department of Commerce, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230; by telephone (202) 482–3343, or by e-mail to *bscott@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

Background

BIS amended the EAR in a final rule published in the **Federal Register** on June 19, 2007 (72 FR 33646) to create a new Authorization Validated End-User (VEU). Authorization VEU allows the export, reexport or transfer (in-country) of certain specified items (including commodities, software and technology, except for those controlled for missile technology or crime control reasons) to approved civil end-users located in eligible destinations under a general authorization instead of under multiple individual licenses. Authorization VEU is described in § 748.15 of the EAR. The June 19 rule also identified China as the initial eligible destination for shipments under the authorization; BIS identified India as an eligible destination in an October 1, 2007 final rule (72 FR 56010).

In a rule published in the **Federal Register** on April 29, 2009 (74 FR 19382), BIS designated Aviza Technology China (Aviza) as a VEU, thus authorizing certain specific exports, reexports and transfers (in-country) to the listed facilities of the company under Authorization VEU. On July 2, 2009, BIS designated GE India as a VEU (74 FR 31620); GE India's listing included its GE Fanuc Systems PVT Ltd. (GE Fanuc) facility as an ''Eligible Destination,'' and listed specific items that could be exported, reexported or transferred (in-country) to the GE Fanuc facility under Authorization VEU. Prior to publication of this rule, Aviza and GE India's GE Fanuc facility were listed in Supplement No. 7 to Part 748 of the EAR (Supplement No. 7 to Part 748—Authorization Validated End-User (VEU): List of Validated End-Users, Respective Eligible Items and Eligible Destinations).

In this final rule, BIS amends the EAR to suspend, until further notice, the authority of any person to export, reexport, or transfer (in-country) any items subject to the EAR under Authorization VEU to Aviza and to the GE Fanuc facility in India. BIS is suspending the availability of Authorization VEU for Aviza and the GE Fanuc facility due to material changes at the companies, consistent with § 748.15 of the EAR.

Suspension of the availability of Authorization VEU in this amendment is not the result of prohibited activities by the two companies. This amendment does not otherwise create a *new* license requirement or adversely affect the licensing policy for exports, reexports or transfers of items to the company and facility identified in this rule.

This amendment applies only to transactions under Authorization VEU involving Aviza and the GE Fanuc facility in India, which were previously identified in Supplement No. 7 to Part 748 of the EAR. This amendment does not apply to other companies or facilities in China or India that may be designated as eligible under Authorization VEU. License requirements and other provisions of the EAR continue to apply to exports, reexports, or transfers (in-country) to Aviza in China and the GE Fanuc facility in India. Additionally, all conditions and restrictions that applied to transactions involving Aviza or the GE Fanuc facility pursuant to Authorization VEU prior to the effective date of this amendment continue to apply. These restrictions and conditions include any that were imposed on either company in connection with its eligibility for Authorization VEU, as communicated by BIS in the initial letter that granted each company VEU status.

Since August 21, 2001, the Export Administration Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)), as extended most recently by the Notice of August 13, 2009 (74 FR 41325 (August 14, 2009), has continued the EAR in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

Saving Clause

Shipments of items removed from eligibility for export, reexport or transfer under Authorization VEU as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on December 23, 2009, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previously applicable authorization so long as they are exported, reexported or transferred before January 6, 2010. Any such items not actually exported or reexported before midnight, on January 6, 2010, require a license in accordance with this regulation.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* unless that collection of information displays a currently valid OMB Control Number. This regulation involves information collections previously approved by the OMB under control number 0694–0088, ''Multi-Purpose Application'', which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748, and which involves requirements in connection with Authorization Validated End-User. This rule is expected to result in an increase in license applications submitted to BIS. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase significantly as a result of this rule.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. The provisions of the Administrative Procedure Act requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable to this rule because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments may be submitted to Sheila Quarterman, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230.

List of Subjects in 15 CFR Part 748

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

■ Accordingly, part 748 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 748—[AMENDED]

■ 1. The authority citation for 15 CFR part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

Supplement No. 7 to Part 748 [Amended]

■ 2. Supplement No. 7 to part 748 (Authorization Validated End-User (VEU): List of Validated End-Users, Respective Eligible Items and Eligible Destinations) is amended by:

■ a. Removing the entry for Aviza Technology China from the ''Validated End-User,'' ''Eligible Items (By ECCN),'' and ''Eligible Destination'' columns; and

■ b. Removing the entry for GE Fanuc Systems PVT Ltd. from the ''Eligible Items (by ECCN)'' and ''Eligible Destination'' columns associated with the VEU GE India.

Dated: December 18, 2009.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. E9–30487 Filed 12–22–09; 8:45 am]

BILLING CODE 3150–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 54

[TD 9472]

RIN 1545–BG48

Notice Requirements for Certain Pension Plan Amendments Significantly Reducing the Rate of Future Benefit Accrual; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations (TD 9472) that were published in the **Federal Register** on Tuesday, November 24, 2009 (74 FR 61270) providing guidance relating to the application of the section 204(h) notice requirements to a pension plan amendment that is permitted to reduce benefits accrued before the plan amendment's applicable amendment date.

DATES: This correction is effective on December 23, 2009, and is applicable on November 24, 2009.

FOR FURTHER INFORMATION CONTACT: Pamela R. Kinard, (202) 622–6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9472) that are the subject of this document are under sections411(d)(6) and 4980F of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 9472) contain an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 9472), which were the subject of FR Doc. E9–28078, is corrected as follows:

On page 61275, column 3, in the preamble, under the paragraph heading ''Effective/Applicability Dates'', lines 4 and 5 from the bottom of first paragraph of the column, the language ''(available on the IRS Web site at *http://www.irs.gov/pub/irs-drop/a-09–82.pdf*),'' is removed and replaced with the language ''(2009–48 IRB 720) *See* § 601.601(d)(2)(ii)(*b*),'' in its place.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E9–30535 Filed 12–22–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 285

RIN 1510–AB19

Debt Collection Authorities Under the Debt Collection Improvement Act of 1996

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: This final rule adopts the interim rule, published in the **Federal Register** on June 11, 2009, concerning the time limitation on the collection of nontax debts by centralized offset.

DATES: This rule is effective December 23, 2009.

FOR FURTHER INFORMATION CONTACT: Thomas Dungan, Policy Analyst, at (202) 874–6660, or Tricia Long, Senior Attorney, at (202) 874–6680.

SUPPLEMENTARY INFORMATION:

I. Background

The Food, Conservation and Energy Act of 2008, Public Law 110–334, Section 14219, 22 Stat. 923 (2008) (''the Act'') amended the Debt Collection Act of 1982 (as amended by the Debt Collection Improvement Act of 1996) to remove a restriction on the collection of debt by administrative offset, i.e., offset of payments pursuant to 31 U.S.C. 3716. Prior to this change, administrative offset to collect debt was only available if the debt was delinquent for a period of less than ten years. The amendment to the law allows for the collection of debt by administrative offset without any time limitation and applies to any debt outstanding on or after the date of the enactment of the Act.

On June 11, 2009, the Financial Management Service published in the **Federal Register** an interim rule implementing the statutory change. (*See* 74 FR 27707, June 11, 2009).

Comments on the Interim Rule

By the close of the comment period, FMS received no comments on the interim rule.

Adoption as Final Rule

Accordingly, the interim rule amending 31 CFR part 285, published at 74 FR 27707, June 11, 2009, is adopted as a final rule without change.

Dated: December 18, 2009.

Richard L. Gregg,

Acting Fiscal Assistant Secretary.

[FR Doc. E9–30549 Filed 12–22–09; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 27

[Docket No. USCG–2009–0891]

RIN 1625–AB40

Federal Civil Penalties Inflation Adjustment Act—2009 Implementation

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is adjusting fines and other civil monetary penalties to reflect the impact of inflation. These adjustments are made in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996.

DATES: This final rule is effective 30 days after December 23, 2009.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2009–0891 and are available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2009–0891 in the ''Keyword'' box, and then clicking ''Search.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Heather Young, CG–5232, Coast Guard; telephone 202–372–1022, e-mail *Heather.l.young@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

I. Abbreviations
II. Background
III. Method of Calculation
IV. Regulatory Analyses
A. Regulatory Planning and Review
B. Small Entities
C. Assistance for Small Entities
D. Collection of Information
E. Federalism
F. Unfunded Mandates Reform Act
G. Taking of Private Property
H. Civil Justice Reform
I. Protection of Children
J. Indian Tribal Governments
K. Energy Effects
L. Technical Standards
M. Environment

I. Abbreviations

Abbreviation	Explanation
CFR	Code of Federal Regulations.
CMPs ..	Civil Monetary Penalties.
CPI–U ..	Consumer Price Index for All Urban Consumers, Not Seasonally Adjusted, U.S. City Average.
RFA	Regulatory Flexibility Act.
U.S.C. ..	United States Code.

II. Background

Congress has established fines or other civil monetary penalties (CMPs) for those who violate Federal laws and regulations. However, the deterrent value of these fines and penalties diminishes over time from the effects of inflation. To address this problem, Congress enacted the Federal Civil Penalties Inflation Adjustment Act, Public Law 101–410, 104 Stat. 890, §§ 1–6, as amended by the Debt Collection Improvement Act of 1996, Public Law 104–134, 110 Stat. 1321, § 31001(s)(1); 28 U.S.C. 2461. These statutes require Federal agencies to adjust their CMPs for inflation at least once every four years, using a nondiscretionary statutory formula, thus making further direct involvement by Congress unnecessary.

This final rule is published without a prior notice of proposed rulemaking or public comment period. Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for dispensing with notice and comment in this rulemaking. This rulemaking implements the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996. These statutes require certain actions with respect to adjusting CMPs for inflation and do not allow for discretion in implementation, so that prior notice and comment is unnecessary and contrary to the public interest.

III. Method of Calculation

The method for calculating the effects of inflation on fines and penalties is very specifically prescribed by statutes, which allow no discretion. The statutes specify the inflation measure to be used, the method for the calculation of the inflation adjustment, and the method for the numerical rounding of the results.

The statutes require the use of the change in the Consumer Price Index for All Urban Consumers (CPI–U) as the inflation measure for these calculations. The CPI–U is calculated and published by the U.S. Department of Labor, Bureau of Labor Statistics, and uses the period of 1982 to 1984 as the base level where the CPI–U = 100.

The inflation adjustment prescribed by the statutes is calculated as the difference between the CPI–U for the month of June of the calendar year preceding the adjustment and the CPI–U for the month of June of the calendar year in which the amount of the civil monetary penalty was last set or adjusted pursuant to law. Since the last inflation adjustment was made in 2003 and the year preceding this adjustment is 2008, the current inflation adjustment equals the increase in the CPI–U (not seasonally adjusted) from June, 2003 to June, 2008:

$(CPI-U_{2008} - CPI-U_{2003}) / CPI-U_{2003} = (218.815 - 183.7) / (183.7) = .1912 = 19.12\%$

With certain exceptions, each of the approximately 140 civil fines and penalties were adjusted by multiplying their 2003 values by 1.1912. The exceptions included: Two penalties of 19 U.S.C. 1581(d) that were enacted under the Tariff Act of 1930 and are exempt from inflation adjustments; four penalties applicable to bridge owners whose increases are defined within their respective statutes; and three penalties established in 2006 which are not eligible for inflation adjustment until 2010.

The final step is to round the inflation-adjusted fines and penalties according to the rounding rules prescribed by the statutes. The statutes specify that numbers are rounded according to the nearest:

1. Multiple of $10 in the case of penalties less than or equal to $100;
2. Multiple of $100 in the case of penalties greater than $100 but less than or equal to $1,000;
3. Multiple of $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000;
4. Multiple of $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000;
5. Multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and
6. Multiple of $25,000 in the case of penalties greater than $200,000.

Because of the rounding rules, some fines and penalties may not increase from their 2003 values. For example, a fine of $1,000 in 2003 would increase to $1,191.20 with the 2008 adjustment. However, for fines and penalties greater than $1,000 but less than or equal to $10,000, the inflation adjusted value is rounded to the nearest $1,000; so the penalty, with rounding, remains at $1,000.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

We expect the economic impact of this rule to be so minimal that a full regulatory assessment is unnecessary. This rule concerns civil monetary penalties imposed for violating Federal law and regulations which have no impact on law-abiding persons. While the expense of a fine or penalty imposed for violations of civil statutes is borne by the violator, these expenses are completely avoidable by complying with the law.

B. Small Entities

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires agencies to consider whether regulatory actions would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. An RFA analysis is not required when a rule is exempt from notice and comment rulemaking under 5 U.S.C. 553(b). The Coast Guard determined that this rule is exempt from notice and comment rulemaking pursuant to 5 U.S.C. 553(b)(B). Therefore, an RFA analysis is not required for this rule. The Coast Guard, nonetheless, expects that this final rule will not have a significant economic impact on a substantial number of small entities.

C. Assistance for Small Entities

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

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

D. Collection of Information

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

E. Federalism

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

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. This rule affects only those who violate Federal law or regulations, and involves no discretion on the part of the Coast Guard.

G. Taking of Private Property

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

H. Civil Justice Reform

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

I. Protection of Children

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

J. Indian Tribal Governments

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

K. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

L. Technical Standards

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

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

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under section 2.B.2, figure 2–1, paragraph (34)(a) of the Instruction. This rule involves regulations which are editorial or procedural, such as those updating addresses or establishing application procedures. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 27

Administrative practice and procedure, Penalties.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 27 as follows:

PART 27—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION

■ 1. The the authority citation for part 27 continues to read:

Authority: Secs. 16, Public Law 101410, 104 Stat. 890, as amended by Sec. 31001(s)(1), Public Law 104134, 110 Stat. 1321 (28 U.S.C. 2461 note); Department of Homeland Security Delegation No. 0170.1, sec. 2 (106).

■ 2. Revise § 27.3 to read as follows:

§ 27.3 Penalty Adjustment Table.

Table 1 identifies the statutes administered by the Coast Guard that authorize a civil monetary penalty. The ''adjusted maximum penalty'' is the maximum penalty authorized by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, as determined by the Coast Guard.

TABLE 1—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

U.S. Code citation	Civil monetary penalty description	Adjusted maximum penalty amount ($)
14 U.S.C. 88(c)	Saving Life and Property	$8,000
14 U.S.C. 645(i)	Confidentiality of Medical Quality Assurance Records (first offense)	4,000
14 U.S.C. 645(i)	Confidentiality of Medical Quality Assurance Records (subsequent offenses)	30,000
16 U.S.C. 4711(g)(1)	Aquatic Nuisance Species in Waters of the United States	35,000
19 U.S.C. 70	Obstruction of Revenue Officers by Masters of Vessels	3,000
19 U.S.C. 70	Obstruction of Revenue Officers by Masters of Vessels—Minimum Penalty	700
19 U.S.C. 1581(d)	Failure to Stop Vessel When Directed; Master, Owner, Operator, or Person in Charge (1)	5,000
19 U.S.C. 1581(d)	Failure to Stop Vessel When Directed; Master, Owner, Operator, or Person in Charge—Minimum Penalty (1).	1,000
33 U.S.C. 471	Anchorage Ground/Harbor Regulations General	110
33 U.S.C. 474	Anchorage Ground/Harbor Regulations St. Mary's River	300
33 U.S.C. 495(b)	Bridges/Failure to Comply with Regulations (2)	25,000
33 U.S.C. 499(c)	Bridges/Drawbridges (2)	25,000
33 U.S.C. 502(c)	Bridges/Failure to Alter Bridge Obstructing Navigation (2)	25,000
33 U.S.C. 533(b)	Bridges/Maintenance and Operation (2)	25,000
33 U.S.C. 1208(a)	Bridge to Bridge Communication; Master, Person in Charge, or Pilot	800
33 U.S.C. 1208(b)	Bridge to Bridge Communication; Vessel	800
33 U.S.C. 1232(a)	PWSA Regulations	40,000
33 U.S.C. 1236(b)	Vessel Navigation: Regattas or Marine Parades; Unlicensed Person in Charge	8,000
33 U.S.C. 1236(c)	Vessel Navigation: Regattas or Marine Parades; Owner Onboard Vessel	8,000
33 U.S.C. 1236(d)	Vessel Navigation: Regattas or Marine Parades; Other Persons	3,000
33 U.S.C. 1319	Pollution Prevention	40,000
33 U.S.C. 1319(2)(A)	Pollution Prevention (per violation)	15,000
33 U.S.C. 1319(2)(A)	Pollution Prevention (Maximum—repeated violations)	40,000
33 U.S.C. 1319(2)(B)	Pollution Prevention (per day of violation)	15,000
33 U.S.C. 1319(2)(B)	Pollution Prevention (Maximum—repeated violations)	190,000
33 U.S.C. 1321(b)(6)(B)(i)	Oil/Hazardous Substances: Discharges (Class I per violation)	15,000
33 U.S.C. 1321(b)(6)(B)(i)	Oil/Hazardous Substances: Discharges (Class I total under paragraph)	40,000
33 U.S.C. 1321(b)(6)(B)(ii)	Oil/Hazardous Substances: Discharges (Class II per day of violation)	15,000
33 U.S.C. 1321(b)(6)(B)(ii)	Oil/Hazardous Substances: Discharges (Class II total under paragraph)	190,000
33 U.S.C. 1321(b)(7)(A)	Oil/Hazardous Substances: Discharges (per day of violation) Judicial Assessment	40,000
33 U.S.C. 1321(b)(7)(A)	Oil/Hazardous Substances: Discharges (per barrel of oil or unit discharged) Judicial Assessment (3).	1,100

TABLE 1—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

U.S. Code citation	Civil monetary penalty description	Adjusted maximum penalty amount ($)
33 U.S.C. 1321(b)(7)(B)	Oil/Hazardous Substances: Failure to Carry Out Removal/Comply With Order (Judicial Assessment).	40,000
33 U.S.C. 1321(b)(7)(C)	Oil/Hazardous Substances: Failure to Comply with Regulation Issued Under 1321(j) (Judicial Assessment).	40,000
33 U.S.C. 1321(b)(7)(D)	Oil/Hazardous Substances: Discharges, Gross Negligence (per barrel of oil or unit discharged) Judicial Assessment.	4,000
33 U.S.C. 1321(b)(7)(D)	Oil/Hazardous Substances: Discharges, Gross Negligence—Minimum Penalty (Judicial Assessment).	130,000
33 U.S.C. 1322(j)	Marine Sanitation Devices; Operating	3,000
33 U.S.C. 1322(j)	Marine Sanitation Devices; Sale or Manufacture	8,000
33 U.S.C. 1608(a)	International Navigation Rules; Operator	8,000
33 U.S.C. 1608(b)	International Navigation Rules; Vessel	8,000
33 U.S.C. 1908(b)(1)	Pollution from Ships; General	40,000
33 U.S.C. 1908(b)(2)	Pollution from Ships; False Statement	8,000
33 U.S.C. 2072(a)	Inland Navigation Rules; Operator	8,000
33 U.S.C. 2072(b)	Inland Navigation Rules; Vessel	8,000
33 U.S.C. 2609(a)	Shore Protection; General	40,000
33 U.S.C. 2609(b)	Shore Protection; Operating Without Permit	15,000
33 U.S.C. 2716a(a)	Oil Pollution Liability and Compensation	40,000
42 U.S.C. 9609(a)	Hazardous Substances, Releases, Liability, Compensation (Class I)	35,000
42 U.S.C. 9609(b)	Hazardous Substances, Releases, Liability, Compensation (Class II)	35,000
42 U.S.C. 9609(b)	Hazardous Substances, Releases, Liability, Compensation (Class II subsequent offense)	100,000
42 U.S.C. 9609(c)	Hazardous Substances, Releases, Liability, Compensation (Judicial Assessment)	35,000
42 U.S.C. 9609(c)	Hazardous Substances, Releases, Liability, Compensation (Judicial Assessment subsequent offense).	100,000
46 U.S.C. App 1505(a)(2)	Safe Containers for International Cargo	8,000
46 U.S.C. App 1712(a)	International Ocean Commerce Transportation—Common Carrier Agreements per violation	6,000
46 U.S.C. App 1712(a)	International Ocean Commerce Transportation—Common Carrier Agreements per violation—Willful violation.	30,000
46 U.S.C. App 1712(b)	International Ocean Commerce Transportation—Common Carrier Agreements—Fine for tariff violation (per shipment).	60,000
46 U.S.C. App 1805(c)(2)	Suspension of Passenger Service	70,000
46 U.S.C. 2110(e)	Vessel Inspection or Examination Fees	8,000
46 U.S.C. 2115	Alcohol and Dangerous Drug Testing	7,000
46 U.S.C. 2302(a)	Negligent Operations: Recreational Vessels	6,000
46 U.S.C. 2302(a)	Negligent Operations: Other Vessels	30,000
46 U.S.C. 2302(c)(1)	Operating a Vessel While Under the Influence of Alcohol or a Dangerous Drug	7,000
46 U.S.C. 2306(a)(4)	Vessel Reporting Requirements: Owner, Charterer, Managing Operator, or Agent	8,000
46 U.S.C. 2306(b)(2)	Vessel Reporting Requirements: Master (3)	1,100
46 U.S.C. 3102(c)(1)	Immersion Suits	8,000
46 U.S.C. 3302(i)(5)	Inspection Permit (3)	1,100
46 U.S.C. 3318(a)	Vessel Inspection; General	8,000
46 U.S.C. 3318(g)	Vessel Inspection; Nautical School Vessel	8,000
46 U.S.C. 3318(h)	Vessel Inspection; Failure to Give Notice IAW 3304(b) (3)	1,100
46 U.S.C. 3318(i)	Vessel Inspection; Failure to Give Notice IAW 3309(c) (3)	1,100
46 U.S.C. 3318(j)(1)	Vessel Inspection; Vessel ≥ 1600 Gross Tons	15,000
46 U.S.C. 3318(j)(1)	Vessel Inspection; Vessel < 1600 Gross Tons	3,000
46 U.S.C. 3318(k)	Vessel Inspection; Failure to Comply with 3311(b)	15,000
46 U.S.C. 3318(l)	Vessel Inspection; Violation of 3318(b)–3318(f)	8,000
46 U.S.C. 3502(e)	List/count of Passengers	110
46 U.S.C. 3504(c)	Notification to Passengers	15,000
46 U.S.C. 3504(c)	Notification to Passengers; Sale of Tickets	800
46 U.S.C. 3506	Copies of Laws on Passenger Vessels; Master	300
46 U.S.C. 3718(a)(1)	Liquid Bulk/Dangerous Cargo	40,000
46 U.S.C. 4106	Uninspected Vessels	8,000
46 U.S.C. 4311(b)(1)	Recreational Vessels (maximum for related series of violations)	300,000
46 U.S.C. 4311(b)(1)	Recreational Vessels; Violation of 4307(a)	6,000
46 U.S.C. 4311(c)	Recreational vessels (3)	1,100
46 U.S.C. 4507	Uninspected Commercial Fishing Industry Vessels	8,000
46 U.S.C. 4703	Abandonment of Barges (3)	1,100
46 U.S.C. 5116(a)	Load Lines	8,000
46 U.S.C. 5116(b)	Load Lines; Violation of 5112(a)	15,000
46 U.S.C. 5116(c)	Load Lines; Violation of 5112(b)	8,000
46 U.S.C. 6103(a)	Reporting Marine Casualties	35,000
46 U.S.C. 6103(b)	Reporting Marine Casualties; Violation of 6104	8,000
46 U.S.C. 8101(e)	Manning of Inspected Vessels; Failure to Report Deficiency in Vessel Complement (3)	1,100
46 U.S.C. 8101(f)	Manning of Inspected Vessels	15,000
46 U.S.C. 8101(g)	Manning of Inspected Vessels; Employing or Serving in Capacity not Licensed by USCG	15,000
46 U.S.C. 8101(h)	Manning of Inspected Vessels; Freight Vessel < 100 GT, Small Passenger Vessel, or Sailing School Vessel (3).	1,100

TABLE 1—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

U.S. Code citation	Civil monetary penalty description	Adjusted maximum penalty amount ($)
46 U.S.C. 8102(a)	Watchmen on Passenger Vessels (3)	1,100
46 U.S.C. 8103(f)	Citizenship Requirements	800
46 U.S.C. 8104(i)	Watches on Vessels; Violation of 8104(a) or (b)	15,000
46 U.S.C. 8104(j)	Watches on Vessels; Violation of 8104(c), (d), (e), or (h)	15,000
46 U.S.C. 8302(e)	Staff Department on Vessels	110
46 U.S.C. 8304(d)	Officer's Competency Certificates	110
46 U.S.C. 8502(e)	Coastwise Pilotage; Owner, Charterer, Managing Operator, Agent, Master, or Individual in Charge.	15,000
46 U.S.C. 8502(f)	Coastwise Pilotage; Individual	15,000
46 U.S.C. 8503	Federal Pilots	40,000
46 U.S.C. 8701(d)	Merchant Mariners Documents	800
46 U.S.C. 8702(e)	Crew Requirements	15,000
46 U.S.C. 8906	Small Vessel Manning	35,000
46 U.S.C. 9308(a)	Pilotage: Great Lakes; Owner, Charterer, Managing Operator, Agent, Master, or Individual in Charge.	15,000
46 U.S.C. 9308(b)	Pilotage: Great Lakes; Individual	15,000
46 U.S.C. 9308(c)	Pilotage: Great Lakes; Violation of 9303	15,000
46 U.S.C. 10104(b)	Failure to Report Sexual Offense	8,000
46 U.S.C. 10314(a)(2)	Pay Advances to Seamen	800
46 U.S.C. 10314(b)	Pay Advances to Seamen; Remuneration for Employment	800
46 U.S.C. 10315(c)	Allotment to Seamen	800
46 U.S.C. 10321	Seamen Protection; General	7,000
46 U.S.C. 10505(a)(2)	Coastwise Voyages: Advances	7,000
46 U.S.C. 10505(b)	Coastwise Voyages: Advances; Remuneration for Employment	7,000
46 U.S.C. 10508(b)	Coastwise Voyages: Seamen Protection; General	7,000
46 U.S.C. 10711	Effects of Deceased Seamen	300
46 U.S.C. 10902(a)(2)	Complaints of Unfitness	800
46 U.S.C. 10903(d)	Proceedings on Examination of Vessel	110
46 U.S.C. 10907(b)	Permission to Make Complaint	800
46 U.S.C. 11101(f)	Accommodations for Seamen	800
46 U.S.C. 11102(b)	Medicine Chests on Vessels	800
46 U.S.C. 11104(b)	Destitute Seamen	110
46 U.S.C. 11105(c)	Wages on Discharge	800
46 U.S.C. 11303(a)	Log Books; Master Failing to Maintain	300
46 U.S.C. 11303(b)	Log Books; Master Failing to Make Entry	300
46 U.S.C. 11303(c)	Log Books; Late Entry	200
46 U.S.C. 11506	Carrying of Sheath Knives	80
46 U.S.C. 12151(a)	Documentation of Vessels (violation per day) (4)	15,000
46 U.S.C. 12151(c)	Engaging in Fishing After Falsifying Eligibility (fine per day) (4)	130,000
46 U.S.C. 12309(a)	Numbering of Undocumented Vessels—Willful violation	6,000
46 U.S.C. 12309(b)	Numbering of Undocumented Vessels (3)	1,100
46 U.S.C. 12507(b)	Vessel Identification System	15,000
46 U.S.C. 14701	Measurement of Vessels	30,000
46 U.S.C. 14702	Measurement; False Statements	30,000
46 U.S.C. 31309	Commercial Instruments and Maritime Liens (3)	15,000
46 U.S.C. 31330(a)(2)	Commercial Instruments and Maritime Liens; Mortgagor	15,000
46 U.S.C. 31330(b)(2)	Commercial Instruments and Maritime Liens; Violation of 31329	35,000
46 U.S.C. 70119	Port Security	30,000
46 U.S.C. 70119(b)	Port Security—Continuing Violations (4)	50,000
49 U.S.C. 5123(a)(1)	Hazardous Materials: Related to Vessels—Maximum Penalty	60,000
49 U.S.C. 5123(a)(1)	Hazardous Materials: Related to Vessels—Minimum Penalty	300
49 U.S.C. 5123(a)(2)	Hazardous Materials: Related to Vessels—Penalty from Fatalities, Serious Injuries/Illness or Substantial Damage to Property (5).	110,000

(1) Enacted under the Tariff Act of 1930, exempt from inflation adjustments.
(2) These penalties increased in accordance with the statute to: $10,000 in 2005, $15,000 in 2006, $20,000 in 2007, and $25,000 in 2008 and thereafter.
(3) These penalties did not qualify for an adjustment under the rounding rules of the Act.
(4) These penalties were enacted in 2006 and did not qualify for an adjustment.
(5) These penalties were enacted or amended in 2005 were rounded based on the CPI change from 2005 to 2008.

Dated: December 10, 2009.

K.S. Cook,

Rear Admiral, Director of Prevention Policy, U.S. Coast Guard.

[FR Doc. E9–30493 Filed 12–22–09; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100, 117, 147, and 165

[USCG–2009–1039]

Quarterly Listings; Safety Zones, Security Zones, Special Local Regulations, and Drawbridge Operation Regulations; Correction

AGENCY: Coast Guard, DHS.

ACTION: Notice of expired temporary rules issued; correction.

SUMMARY: The U.S. Coast Guard published a notice in the **Federal Register** on November 27, 2009 (74 FR 62239), providing required notice of substantive rules issued by the Coast Guard and temporarily effective between March 2005 and November 2008, that expired before they could be published in the **Federal Register.** That notice inadvertently listed incorrect documents numbers in its table. This document corrects the table by replacing the notice in its entirety.

DATES: This document becomes effective December 23, 2009. This document lists temporary Coast Guard rules between March 26, 2005 and November 29, 2008 that became effective and were terminated before they could be published in the **Federal Register**.

ADDRESSES: The Docket Management Facility maintains the public docket for this notice. Documents indicated in this notice will be available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building ground floor, room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: For questions on this notice contact Yeoman First Class Denise Johnson, Office of Regulations and Administrative Law, telephone (202) 372–3862. For questions on viewing, or on submitting material to the docket, contact Ms. Angie Ames, Docket Operations, telephone 202–366–5115.

SUPPLEMENTARY INFORMATION: Coast Guard District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety and security needs within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. *Safety zones* may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. *Security zones* limit access to prevent injury or damage to vessels, ports, or waterfront facilities and may also describe a zone around a vessel in motion. *Special local regulations* are issued to enhance the safety of participants and spectators at regattas and other marine events. *Drawbridge operation regulations* authorize changes to drawbridge schedules to accommodate bridge repairs, seasonal vessel traffic, and local public events. Timely publication of these rules in the **Federal Register** is often precluded when a rule responds to an emergency, or when an event occurs without sufficient advance notice. The affected public is, however, informed of these rules through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the rule. Because **Federal Register** publication was not possible before the beginning of the effective period, mariners were personally notified of the contents of these safety zones, security zones, special local regulations, regulated navigation areas or drawbridge operation regulations by Coast Guard officials' on-scene prior to any enforcement action. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To meet this obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary safety zones, security zones, special local regulations, regulated navigation areas and drawbridge operation regulations. Permanent rules are not included in this list because they are published in their entirety in the **Federal Register.** Temporary rules are also published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. The temporary rules listed in this notice have been exempted from review under Executive Order 12666, Regulatory Planning and Review, because of their emergency nature, or limited scope and temporary effectiveness.

The following unpublished rules were placed in effect temporarily during the period between March 2005 and November 2008 unless otherwise indicated.

Dated: December 16, 2009.

S.G. Venckus,

Chief, Office of Regulations and Administrative Law.

2ND QUARTER 2008 LISTING

Docket No.	Location	Type	Effective date
CGD08–06–017	Illinois Waterway, IL	Drawbridge Operation Regulation (Part 117)	4/24/2006
CGD09–06–115	Frankfort, MI	Safety Zones (Parts 147 and 165)	9/2/2007
CGD09–07–020	Algonac, MI	Safety Zones (Parts 147 and 165)	6/2/2007
CGD09–07–026	Toledo, OH	Safety Zones (Parts 147 and 165)	5/24/2007
CGD09–07–031	Detroit, MI	Safety Zones (Parts 147 and 165)	7/21/2007
CGD09–07–033	Milwaukee, WI	Safety Zones (Parts 147 and 165)	6/5/2007
CGD09–07–051	Paradise, MI	Safety Zones (Parts 147 and 165)	7/4/2007
CGD09–07–054	Put In Bay, OH	Safety Zones (Parts 147 and 165)	7/4/2007
CGD09–07–057	Cedarville, MI	Safety Zones (Parts 147 and 165)	7/4/2007
CGD09–07–058	Munising, MI	Safety Zones (Parts 147 and 165)	7/4/2007
CGD09–07–059	Sault Ste. Marie, MI	Safety Zones (Parts 147 and 165)	7/4/2007
CGD09–07–067	Detroit, MI	Safety Zones (Parts 147 and 165)	7/4/2007
CGD09–07–072	AuGres, MI	Safety Zones (Parts 147 and 165)	7/1/2007
CGD09–07–074	Alpena, MI	Safety Zones (Parts 147 and 165)	7/4/2007
CGD09–07–076	Marquette, MI	Safety Zones (Parts 147 and 165)	7/5/2007
CGD09–07–077	Bay Village, OH	Safety Zones (Parts 147 and 165)	7/22/2007
CGD09–07–081	Harrisville, MI	Safety Zones (Parts 147 and 165)	7/7/2007

2ND QUARTER 2008 LISTING—Continued

Docket No.	Location	Type	Effective date
CGD09–07–083	Lorain, OH	Safety Zones (Parts 147 and 165)	7/8/2007
CGD09–07–085	Cleveland, OH	Safety Zones (Parts 147 and 165)	7/14/2007
CGD09–07–087	Grosse Pointe Park, MI	Safety Zones (Parts 147 and 165)	7/7/2007
CGD09–07–089	Port Huron, MI	Safety Zones (Parts 147 and 165)	7/11/2007
CGD09–07–090	Tonawanda, NY	Safety Zones (Parts 147 and 165)	7/22/2007
CGD09–07–091	Detroit, MI	Safety Zones (Parts 147 and 165)	7/13/2007
CGD09–07–092	Harbor Beach, MI	Safety Zones (Parts 147 and 165)	7/14/2007
CGD09–07–093	Marinette, WI	Safety Zones (Parts 147 and 165)	7/20/2007
CGD09–07–094	Oswego, NY	Safety Zones (Parts 147 and 165)	7/25/2007
CGD09–07–095	Cleveland, OH	Safety Zones (Parts 147 and 165)	7/28/2007
CGD09–07–097	Trenton, MI	Safety Zones (Parts 147 and 165)	7/21/2007
CGD09–07–098	Trenton, MI	Safety Zones (Parts 147 and 165)	7/20/2007
CGD09–07–100	St. Clair, MI	Safety Zones (Parts 147 and 165)	7/27/2007
CGD09–07–101	Sault Ste. Marie, MI	Safety Zones (Parts 147 and 165)	7/28/2007
CGD09–07–103	Baldwinsville, NY	Safety Zones (Parts 147 and 165)	9/15/2007
CGD09–07–106	Erie, PA	Safety Zones (Parts 147 and 165)	8/10/2007
CGD09–07–114	Detroit, MI	Safety Zones (Parts 147 and 165)	9/1/2007
CGD09–07–117	Detroit, MI	Safety Zones (Parts 147 and 165)	8/31/2007
CGD09–07–118	Cleveland, OH	Safety Zones (Parts 147 and 165)	9/1/2007
CGD09–07–119	Chicago, IL	Safety Zones (Parts 147 and 165)	5/15/2007
CGD09–07–121	Cleveland, OH	Safety Zones (Parts 147 and 165)	9/8/2007
CGD11–06–004	San Francisco Bay, CA	Special Local Regulation (Parts 100)	7/21/2007
CGD11–06–007	San Francisco Bay, CA	Special Local Regulation (Parts 100)	5/26/2006
CGD11–06–009	San Francisco, CA	Drawbridge Operation Regulation (Part 117)	7/30/2007
CGD11–06–044	Knights Landing, CA	Drawbridge Operation Regulation (Part 117)	11/29/2007
CGD11–08–001	San Francisco, CA	Drawbridge Operation Regulation (Part 117)	1/26/2008
CGD13–06–021	Seattle, WA	Safety Zones (Parts 147 and 165)	5/6/2006
CGD13–06–022	Portland, OR	Safety Zones (Parts 147 and 165)	5/12/2006
CGD13–06–024	Olympia, WA	Security zones (Part 165)	5/28/2006
CGD13–06–032	Tacoma, WA	Safety Zones (Parts 147 and 165)	7/2/2006
CGD13–06–033	Tacoma, WA	Safety Zones (Parts 147 and 165)	7/4/2006
CGD13–06–035	Warrenton, OR	Safety Zones (Parts 147 and 165)	7/14/2006
CGD13–06–039	Dyes Inlet, WA	Safety Zones (Parts 147 and 165)	8/19/2006
CGD13–06–040	Duwamish River, WA	Safety Zones (Parts 147 and 165)	8/16/2006
CGD13–06–055	Portland, OR	Safety Zones (Parts 147 and 165)	12/14/2006
CGD13–06–056	Puget Sound, WA	Safety Zones (Parts 147 and 165)	12/14/2006
CGD13–07–018	Olympia, WA	Safety Zones (Parts 147 and 165)	5/31/2007
CGD13–07–024	Lake Washington, WA	Safety Zones (Parts 147 and 165)	8/4/2007
CGD13–07–026	Lake Washington, WA	Special Local Regulation (Parts 100)	8/2/2007
CGD13–07–027	Seattle, WA	Safety Zones (Parts 147 and 165)	8/1/2007
CGD13–07–039	Portland, OR	Safety Zones (Parts 147 and 165)	10/7/2007
CGD13–07–057	Portland, OR	Safety Zones (Parts 147 and 165)	12/27/2007
CGD13–08–008	Portland, OR	Safety Zones (Parts 147 and 165)	1/24/2008
CGD13–08–009	Puget Sound, WA	Security zones (Part 165)	1/25/2008
CGD13–08–012	Portland, OR	Safety Zones (Parts 147 and 165)	2/5/2008
CGD13–08–014	Seattle, WA	Security zones (Part 165)	8/1/2008
CGD13–08–015	Elliott Bay, WA	Security zones (Part 165)	2/7/2008
CGD13–08–016	Tillamook Bay, OR	Safety Zones (Parts 147 and 165)	2/8/2008
COTP Charleston 06–008	Charleston, SC	Safety Zones (Parts 147 and 165)	1/13/2006
COTP Charleston 06–025	Charleston, SC	Safety Zones (Parts 147 and 165)	2/15/2006
COTP Charleston 06–054	Charleston, SC	Safety Zones (Parts 147 and 165)	5/6/2006
COTP Charleston 06–085	Mount Pleasant, SC	Security zones (Part 165)	5/4/2006
COTP Guam 06–002	Apra Harbor, GU	Safety Zones (Parts 147 and 165)	2/8/2006
COTP Guam 06–007	Philippine Sea, GU	Safety Zones (Parts 147 and 165)	4/22/2006
COTP Honolulu 06–006	Honolulu, HI	Security zones (Part 165)	10/6/2006
COTP Jacksonville 06–075	Fernandina Beach, FL	Safety Zones (Parts 147 and 165)	5/5/2006
COTP Jacksonville 06–076	Palatka, FL	Safety Zones (Parts 147 and 165)	5/26/2006
COTP Jacksonville 06–077	Augustine, FL	Safety Zones (Parts 147 and 165)	5/28/2006
COTP Jacksonville 06–102	Jacksonville, FL	Safety Zones (Parts 147 and 165)	7/22/2006
COTP Jacksonville 06–117	Green Cove Springs, FL	Safety Zones (Parts 147 and 165)	5/29/2006
COTP Jacksonville 06–225	Kissimmee, FL	Safety Zones (Parts 147 and 165)	12/9/2006
COTP Jacksonville 06–229	Merritt Island, FL	Safety Zones (Parts 147 and 165)	12/1/2006
COTP Jacksonville 06–258	Jacksonville, FL	Safety Zones (Parts 147 and 165)	11/25/2006
COTP Miami 06–202	Broward, FL	Special Local Regulation (Parts 100)	12/17/2006
COTP Miami 07–002	Miami, FL	Security zones (Part 165)	2/2/2007
COTP Miami 07–016	Miami, FL	Safety Zones (Parts 147 and 165)	1/25/2007
COTP Miami 07–018	Miami, FL	Safety Zones (Parts 147 and 165)	1/25/2007
COTP Miami 07–025	Fort Lauderdale, FL	Safety Zones (Parts 147 and 165)	2/9/2007
COTP Miami 07–033	Miami, FL	Safety Zones (Parts 147 and 165)	4/28/2007
COTP Miami 07–042	Fort Pierce, FL	Safety Zones (Parts 147 and 165)	3/14/2007
COTP Miami 07–042	Fort Pierce, FL	Safety Zones (Parts 147 and 165)	3/14/2007
COTP Miami 07–049	Fort Lauderdale, FL	Safety Zones (Parts 147 and 165)	3/9/2007

2ND QUARTER 2008 LISTING—Continued

Docket No.	Location	Type	Effective date
COTP Miami 07–064	Fort Lauderdale, FL	Safety Zones (Parts 147 and 165)	5/19/2007
COTP Miami 07–071	Golden Beach, FL	Safety Zones (Parts 147 and 165)	3/26/2007
COTP Miami 07–080	West Palm Beach, FL	Safety Zones (Parts 147 and 165)	5/6/2007
COTP Miami 07–088	Miami Beach, FL	Safety Zones (Parts 147 and 165)	4/18/2007
COTP Miami 07–096	Port Everglades, FL	Security zones (Part 165)	4/30/2007
COTP Miami 07–097	Fort Pierce, FL	Safety Zones (Parts 147 and 165)	5/7/2007
COTP Miami 07–099	Miami, FL	Safety Zones (Parts 147 and 165)	4/29/2007
COTP Miami 07–101	Miami, FL	Safety Zones (Parts 147 and 165)	4/21/2007
COTP Miami 07–105	Fort Lauderdale, FL	Safety Zones (Parts 147 and 165)	5/7/2007
COTP Miami 07–106	Miami, FL	Safety Zones (Parts 147 and 165)	5/7/2007
COTP Miami 07–113	Miami, FL	Safety Zones (Parts 147 and 165)	7/4/2007
COTP Miami 07–118	Fort Pierce, FL	Safety Zones (Parts 147 and 165)	6/4/2007
COTP Miami 07–119	Miami, FL	Security zones (Part 165)	6/10/2007
COTP Miami 07–124	Miami, FL	Safety Zones (Parts 147 and 165)	6/2/2007
COTP Miami 07–135	Fort Lauderdale, FL	Safety Zones (Parts 147 and 165)	6/1/2007
COTP Miami 07–176	Fort Lauderdale, FL	Safety Zones (Parts 147 and 165)	7/18/2007
COTP Mobile-05–051	Mobile, AL	Safety Zones (Parts 147 and 165)	5/23/2006
COTP Mobile-06–001	Destin, FL	Safety Zones (Parts 147 and 165)	4/7/2006
COTP Mobile-06–003	Panama City, FL	Safety Zones (Parts 147 and 165)	8/20/2006
COTP Mobile-06–004	Pensacola, FL	Safety Zones (Parts 147 and 165)	3/22/2006
COTP Mobile-06–005	Pensacola, FL	Safety Zones (Parts 147 and 165)	3/19/2006
COTP Mobile-06–006	Biloxi, MS	Safety Zones (Parts 147 and 165)	3/6/2006
COTP Mobile-06–007	Mobile, AL	Safety Zones (Parts 147 and 165)	3/6/2006
COTP Mobile-06–008	Pensacola, FL	Safety Zones (Parts 147 and 165)	3/7/2006
COTP Mobile-06–014	Mobile, AL	Safety Zones (Parts 147 and 165)	5/23/2006
COTP Mobile-06–016	Mobile, AL	Safety Zones (Parts 147 and 165)	6/10/2006
COTP Mobile-06–017	Panama City, FL	Safety Zones (Parts 147 and 165)	7/4/2006
COTP Mobile-06–018	Panama City, FL	Safety Zones (Parts 147 and 165)	6/12/2006
COTP Mobile-06–020	Demopolis, AL	Safety Zones (Parts 147 and 165)	7/14/2006
COTP Mobile-06–021	Pensacola, FL	Safety Zones (Parts 147 and 165)	7/4/2006
COTP Mobile-06–022	Orange Beach, AL	Safety Zones (Parts 147 and 165)	8/19/2006
COTP Mobile-06–023	Gulfport, MS	Safety Zones (Parts 147 and 165)	7/19/2006
COTP Mobile-06–024	Destin, FL	Safety Zones (Parts 147 and 165)	11/14/2006
COTP Mobile-06–025	St. Louis, MS	Safety Zones (Parts 147 and 165)	8/14/2006
COTP Mobile-06–027	Walton Beach, FL	Safety Zones (Parts 147 and 165)	9/21/2006
COTP Mobile-06–028	Pascagoula, MS	Safety Zones (Parts 147 and 165)	9/19/2006
COTP Mobile-06–029	Pascagoula, MS	Safety Zones (Parts 147 and 165)	9/22/2006
COTP Mobile-06–030	Panama City, FL	Safety Zones (Parts 147 and 165)	10/28/2006
COTP Mobile-06–031	Mobile, AL	Safety Zones (Parts 147 and 165)	10/21/2006
COTP Mobile-06–032	Pensacola, FL	Security zones (Part 165)	11/9/2006
COTP Mobile-07–010	Pensacola Bay, FL	Safety Zones (Parts 147 and 165)	3/12/2007
COTP Mobile-07–011	Pensacola Bay, FL	Safety Zones (Parts 147 and 165)	3/14/2007
COTP Mobile-07–015	Pascagoula, MS	Safety Zones (Parts 147 and 165)	4/18/2007
COTP Mobile-07–016	Santa Rosa Island, FL	Safety Zones (Parts 147 and 165)	5/30/2007
COTP Mobile-07–017	Pensacola Beach, FL	Safety Zones (Parts 147 and 165)	7/4/2007
COTP Mobile-07–020	Biloxi, MS	Safety Zones (Parts 147 and 165)	5/11/2007
COTP Morgan City-06–001	Morgan City, LA	Safety Zones (Parts 147 and 165)	1/24/2006
COTP Morgan City-06–006	Morgan City, LA	Safety Zones (Parts 147 and 165)	7/3/2006
COTP Morgan City-06–007	Morgan City, LA	Safety Zones (Parts 147 and 165)	10/12/2006
COTP Morgan City-07–007	Morgan City, LA	Safety Zones (Parts 147 and 165)	8/13/2007
COTP Morgan City-07–011	Morgan City, LA	Safety Zones (Parts 147 and 165)	9/26/2007
COTP Morgan City-07–016	Morgan City, LA	Safety Zones (Parts 147 and 165)	10/12/2007
COTP Morgan City-08–003	Morgan City, LA	Safety Zones (Parts 147 and 165)	3/13/2008
COTP New Orleans-05–055	Angoa, LA	Safety Zones (Parts 147 and 165)	8/8/2005
COTP New Orleans-05–056	Plaquemine, LA	Safety Zones (Parts 147 and 165)	8/10/2005
COTP New Orleans-05–057	Jonesville, LA	Safety Zones (Parts 147 and 165)	8/22/2005
COTP New Orleans-05–080	Natchez, MS	Safety Zones (Parts 147 and 165)	10/8/2005
COTP New Orleans-05–081	Natchez, MS	Safety Zones (Parts 147 and 165)	10/9/2005
COTP New Orleans-05–082	Natchez, MS	Safety Zones (Parts 147 and 165)	10/14/2005
COTP New Orleans-05–083	Natchez, MS	Safety Zones (Parts 147 and 165)	10/15/2005
COTP New Orleans-05–084	New Orleans, LA	Safety Zones (Parts 147 and 165)	10/10/2005
COTP New Orleans-05–085	New Orleans, LA	Safety Zones (Parts 147 and 165)	10/12/2005
COTP New Orleans-05–086	New Orleans, LA	Safety Zones (Parts 147 and 165)	10/14/2005
COTP New Orleans-05–087	Pilottown, LA	Safety Zones (Parts 147 and 165)	10/28/2005
COTP New Orleans-05–088	Baton Rouge, LA	Safety Zones (Parts 147 and 165)	11/5/2005
COTP New Orleans-05–089	Lake Providence, LA	Safety Zones (Parts 147 and 165)	10/23/2005
COTP New Orleans-05–090	Angoa, LA	Safety Zones (Parts 147 and 165)	10/31/2005
COTP New Orleans-05–091	New Orleans, LA	Safety Zones (Parts 147 and 165)	10/28/2005
COTP New Orleans-05–092	New Orleans, LA	Safety Zones (Parts 147 and 165)	11/22/2005
COTP New Orleans-05–094	Shreveport-Bossier City, LA	Safety Zones (Parts 147 and 165)	11/26/2005
COTP New Orleans-05–095	Monroe, LA	Safety Zones (Parts 147 and 165)	12/17/2005
COTP New Orleans-05–096	New Orleans, LA	Safety Zones (Parts 147 and 165)	11/25/2005

2ND QUARTER 2008 LISTING—Continued

Docket No.	Location	Type	Effective date
COTP New Orleans-05–097	New Orleans, LA	Safety Zones (Parts 147 and 165)	11/28/2005
COTP New Orleans-05–098	New Orleans, LA	Safety Zones (Parts 147 and 165)	11/30/2005
COTP New Orleans-05–099	Baton Rouge, LA	Safety Zones (Parts 147 and 165)	12/2/2005
COTP New Orleans-05–100	New Orleans, LA	Safety Zones (Parts 147 and 165)	12/1/2005
COTP New Orleans-05–104	New Orleans, LA	Safety Zones (Parts 147 and 165)	12/20/2005
COTP New Orleans-05–105	New Orleans, LA	Safety Zones (Parts 147 and 165)	12/22/2005
COTP New Orleans-06–001	New Orleans, LA	Safety Zones (Parts 147 and 165)	1/18/2006
COTP New Orleans-06–002	St James, LA	Safety Zones (Parts 147 and 165)	1/16/2006
COTP New Orleans-06–003	New Orleans, LA	Safety Zones (Parts 147 and 165)	2/27/2006
COTP New Orleans-06–004	Pilottown, LA	Safety Zones (Parts 147 and 165)	2/4/2006
COTP New Orleans-06–005	New Orleans, LA	Safety Zones (Parts 147 and 165)	3/4/2006
COTP New Orleans-06–006	Chalmette, LA	Safety Zones (Parts 147 and 165)	3/7/2006
COTP New Orleans-06–007	New Orleans, LA	Security zones (Part 165)	3/8/2006
COTP New Orleans-06–008	Chalmette, LA	Safety Zones (Parts 147 and 165)	3/10/2006
COTP New Orleans-06–009	New Orleans, LA	Safety Zones (Parts 147 and 165)	4/9/2006
COTP New Orleans-06–010	Chalmette, LA	Safety Zones (Parts 147 and 165)	3/14/2006
COTP New Orleans-06–012	New Orleans, LA	Security zones (Part 165)	4/27/2006
COTP New Orleans-06–013	New Orleans, LA	Safety Zones (Parts 147 and 165)	5/17/2006
COTP New Orleans-06–014	New Orleans, LA	Safety Zones (Parts 147 and 165)	7/3/2006
COTP New Orleans-06–015	New Orleans, LA	Safety Zones (Parts 147 and 165)	6/7/2006
COTP New Orleans-06–016	Harvey, LA	Safety Zones (Parts 147 and 165)	7/4/2006
COTP New Orleans-06–017	New Orleans, LA	Safety Zones (Parts 147 and 165)	7/4/2006
COTP New Orleans-06–018	Baton Rouge, LA	Safety Zones (Parts 147 and 165)	7/4/2006
COTP New Orleans-06–019	Luling, LA	Safety Zones (Parts 147 and 165)	7/3/2006
COTP New Orleans-06–020	Donaldsonville, LA	Safety Zones (Parts 147 and 165)	7/3/2006
COTP New Orleans-06–021	Baton Rouge, LA	Safety Zones (Parts 147 and 165)	7/4/2006
COTP New Orleans-06–033	Longwood, LA	Safety Zones (Parts 147 and 165)	9/2/2006
COTP New Orleans-06–034	Convent, LA	Safety Zones (Parts 147 and 165)	10/1/2006
COTP New Orleans-06–035	New Orleans, LA	Safety Zones (Parts 147 and 165)	10/4/2006
COTP New Orleans-06–037	Algiers, LA	Safety Zones (Parts 147 and 165)	10/16/2006
COTP New Orleans-06–038	Donaldsonville, LA	Safety Zones (Parts 147 and 165)	10/16/2006
COTP New Orleans-06–039	Kenner, LA	Safety Zones (Parts 147 and 165)	10/16/2006
COTP New Orleans-06–040	New Orleans, LA	Safety Zones (Parts 147 and 165)	11/8/2006
COTP New Orleans-06–042	Port Allen, LA	Safety Zones (Parts 147 and 165)	12/16/2006
COTP New Orleans-06–043	Baton Rouge, LA	Safety Zones (Parts 147 and 165)	12/1/2006
COTP New Orleans-06–045	Metairie, LA	Safety Zones (Parts 147 and 165)	12/31/2006
COTP New Orleans-06–046	New Orleans, LA	Safety Zones (Parts 147 and 165)	12/31/2006
COTP New Orleans-06–047	Donaldsonville, LA	Safety Zones (Parts 147 and 165)	12/31/2006
COTP Ohio Valley 06–033	Cincinnati, OH	Safety Zones (Parts 147 and 165)	7/8/2006
COTP Ohio Valley 06–038	Louisville, KY	Safety Zones (Parts 147 and 165)	7/4/2006
COTP Ohio Valley 06–047	Huntington, WV	Safety Zones (Parts 147 and 165)	8/13/2006
COTP Ohio Valley 06–050	Huntsville, AL	Safety Zones (Parts 147 and 165)	8/31/2006
COTP Ohio Valley 06–053	Louisville, KY	Safety Zones (Parts 147 and 165)	10/21/2006
COTP Ohio Valley 07–007	Louisville, KY	Security zones (Part 165)	3/2/2007
COTP Ohio Valley 07–042	Clarksville, TN	Safety Zones (Parts 147 and 165)	9/8/2007
COTP Ohio Valley-06–029	Cape Girardeau, MO	Safety Zones (Parts 147 and 165)	7/4/2006
COTP Ohio Valley-06–035	Kingston, TN	Safety Zones (Parts 147 and 165)	7/2/2006
COTP Ohio Valley-06–037	Louisville, KY	Safety Zones (Parts 147 and 165)	7/3/2006
COTP Ohio Valley-06–039	Cincinnati, OH	Safety Zones (Parts 147 and 165)	7/8/2006
COTP Ohio Valley-06–046	Richmond, OH	Safety Zones (Parts 147 and 165)	8/20/2006
COTP Ohio Valley-06–048	Cincinnati, OH	Security zones (Part 165)	9/22/2006
COTP Ohio Valley-06–049	Florence, AL	Safety Zones (Parts 147 and 165)	8/3/2006
COTP Ohio Valley-06–051	Cincinnati, OH	Safety Zones (Parts 147 and 165)	10/3/2006
COTP Ohio Valley-06–052	Charleston, WV	Safety Zones (Parts 147 and 165)	10/7/2006
COTP Ohio Valley-06–054	Kingston, TN	Safety Zones (Parts 147 and 165)	11/14/2006
COTP Ohio Valley-06–055	Parkersburg, WV	Safety Zones (Parts 147 and 165)	11/4/2006
COTP Ohio Valley-07–009	Louisville, KY	Safety Zones (Parts 147 and 165)	4/19/2007
COTP Ohio Valley-07–012	Pickwick Dam, TN	Safety Zones (Parts 147 and 165)	5/5/2007
COTP Port Arthur-016–06	Lake Charles, LA	Safety Zones (Parts 147 and 165)	6/21/2006
COTP Port Arthur-06–012	Sweet Lake, LA	Safety Zones (Parts 147 and 165)	12/4/2006
COTP Port Arthur-06–018	Orange, TX	Safety Zones (Parts 147 and 165)	7/8/2006
COTP Port Arthur-06–020	Port Arthur, TX	Safety Zones (Parts 147 and 165)	8/11/2006
COTP Port Arthur-06–022	Port Arthur, TX	Safety Zones (Parts 147 and 165)	9/11/2006
COTP Port Arthur-06–023	Orange, TX	Safety Zones (Parts 147 and 165)	10/8/2006
COTP Port Arthur-06–024	Port Arthur, TX	Safety Zones (Parts 147 and 165)	10/22/2006
COTP Port Arthur-06–025	Port Arthur, TX	Safety Zones (Parts 147 and 165)	11/5/2006
COTP Port Arthur-06–026	Port Arthur, TX	Safety Zones (Parts 147 and 165)	11/15/2006
COTP Port Arthur-06–027	Port Arthur, TX	Safety Zones (Parts 147 and 165)	11/24/2006
COTP Port Arthur-06–028	Port Arthur, TX	Safety Zones (Parts 147 and 165)	11/19/2006
COTP Port Arthur-06–029	Orange, TX	Safety Zones (Parts 147 and 165)	12/5/2006
COTP Port Arthur-06–030	Port Arthur, TX	Safety Zones (Parts 147 and 165)	12/3/2006
COTP Port Arthur-06–031	Port Arthur, TX	Safety Zones (Parts 147 and 165)	12/10/2006

2ND QUARTER 2008 LISTING—Continued

Docket No.	Location	Type	Effective date
COTP Port Arthur-06–032	Orange, TX	Safety Zones (Parts 147 and 165)	12/21/2006
COTP Port Arthur-15–006	Orange, TX	Safety Zones (Parts 147 and 165)	6/25/2006
COTP Port Arthur-19–006	Orange, TX	Safety Zones (Parts 147 and 165)	7/20/2006
COTP Prince William Sound 07–001.	Valdez, AK	Safety Zones (Parts 147 and 165)	4/29/2007
COTP San Diego 05–030	Lake Havasu, AZ	Safety Zones (Parts 147 and 165)	3/26/2005
COTP San Diego 05–053	San Diego, CA	Safety Zones (Parts 147 and 165)	10/11/2005
COTP San Diego 05–061	San Diego, CA	Safety Zones (Parts 147 and 165)	7/15/2005
COTP San Diego 05–080	San Diego, CA	Safety Zones (Parts 147 and 165)	12/11/2005
COTP San Diego 05–091	San Diego, CA	Safety Zones (Parts 147 and 165)	7/24/2005
COTP San Diego 05–093	San Diego, CA	Safety Zones (Parts 147 and 165)	8/2/2005
COTP San Diego 05–097	San Diego, CA	Safety Zones (Parts 147 and 165)	8/18/2005
COTP San Diego 05–100	San Diego, CA	Safety Zones (Parts 147 and 165)	10/1/2005
COTP San Diego 05–102	San Diego, CA	Safety Zones (Parts 147 and 165)	11/13/2005
COTP San Diego 07–004	San Diego, CA	Security zones (Part 165)	6/18/2007
COTP San Diego 07–005	San Diego, CA	Safety Zones (Parts 147 and 165)	7/7/2007
COTP San Diego 07–043	San Diego, CA	Safety Zones (Parts 147 and 165)	7/4/2007
COTP San Diego 07–052	Mission Bay, CA	Safety Zones (Parts 147 and 165)	12/31/2007
COTP San Diego 07–069	San Diego Bay, CA	Special Local Regulation (Parts 100)	7/4/2007
COTP San Diego 07–074	San Diego Bay, CA	Safety Zones (Parts 147 and 165)	5/15/2007
COTP San Diego 07–152	San Diego Bay, CA	Safety Zones (Parts 147 and 165)	7/3/2007
COTP San Diego 07–251	San Diego Bay, CA	Safety Zones (Parts 147 and 165)	6/30/2007
COTP San Diego 07–252	San Diego Bay, CA	Safety Zones (Parts 147 and 165)	7/4/2007
COTP San Diego 07–352	San Diego Bay, CA	Safety Zones (Parts 147 and 165)	7/4/2007
COTP San Diego 07–452	Ocean Beach, CA	Safety Zones (Parts 147 and 165)	7/4/2007
COTP San Diego 07–552	Ocean Beach, CA	Safety Zones (Parts 147 and 165)	7/4/2007
COTP St. Petersburg 06–081	Tampa Bay, FL	Safety Zones (Parts 147 and 165)	4/25/2006
COTP St. Petersburg 06–105	Tampa Bay, FL	Safety Zones (Parts 147 and 165)	5/28/2006
COTP St. Petersburg 06–124	Ft. Myers, FL	Safety Zones (Parts 147 and 165)	7/4/2006
COTP St. Petersburg 06–137	Marco Island, FL	Safety Zones (Parts 147 and 165)	7/4/2006
COTP St. Petersburg 06–138	Venice Inlet, FL	Safety Zones (Parts 147 and 165)	7/4/2006
COTP St. Petersburg 06–139	Bradenton Beach, FL	Safety Zones (Parts 147 and 165)	7/3/2006
COTP St. Petersburg 06–170	San Carlos Bay, FL	Safety Zones (Parts 147 and 165)	8/5/2006
COTP St. Petersburg 06–255	Tampa Bay, FL	Safety Zones (Parts 147 and 165)	11/23/2006

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–1096]

RIN 1625–AA00

Safety Zones: Fireworks Displays in the Captain of the Port, Portland Zone

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing several safety zones in the Captain of the Port Portland, Oregon zone for annual fireworks displays that take place around the 4th of July each year. The safety zones are necessary to help ensure the safety of the maritime public during the events and will do so by prohibiting all persons and vessels from entering the safety zones unless authorized by the Captain of the Port Portland, Oregon or his/her designated representatives.

DATES: This rule is effective January 22, 2010.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2008–1096 and are available online by going to *http://www.regulations.gov,* inserting USCG–2008–1096 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail MST1 Jaime Sayers, Coast Guard Sector Portland; telephone 503–240–9319, e-mail *Jaime.A.Sayers@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 24, 2009, we published a notice of proposed rulemaking (NPRM) entitled ''Safety Zones: Fireworks Displays in the Captain of the Port Portland Zone'' in the **Federal Register** (74 FR 12292). We received no comments on the proposed rule. No public meeting was requested and none was held.

Background and Purpose

Fireworks displays create hazardous conditions for the maritime public as a result of the large number of vessels that congregate near the displays as well as the noise, falling debris, and explosions that occur during the events. The safety zones established by this rule will help to ensure the safety of the maritime public by prohibiting all persons and vessels from coming too close to the fireworks displays and their associated hazards.

Discussion of Comments and Changes

No comments on this rule were received and no changes to the rule were made.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The Coast Guard has made this finding because the rule will have little, if any, economic impact since the safety zones it establishes will only be in effect for several hours during one day each year and will not significantly impede maritime traffic transiting the areas where they are located.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels wishing to transit one of the safety zones established by this rule. The rule will not have a significant economic impact on a substantial number of small entities, however, because the safety zones established are only to be in effect for several hours during one day each year and will not significantly impede maritime traffic transiting the areas where they are located.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National

Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of safety zones. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Amend § 165.1315 to add paragraphs (a)(15) through (24) and revise paragraphs (b) and (c) to read as follows:

§ 165.1315 Safety Zones: Fireworks Displays in the Captain of the Port Portland Zone.

(a) * * *

(15) *Arlington Chamber of Commerce Fireworks Display, Arlington, OR:*

(i) *Location.* All waters of the Columbia River encompassed by lines connecting the following points in the vicinity of Arlington, Oregon: from the southern shore of the Columbia River at 45°43′23″ N 120°12′11″ W, thence to 45°43′29″ N 120°12′12″ W, thence to 45°43′31″ N 120°12′06″ W, thence to the southern shore of the Columbia River at 45°43′26″ N 120° 12′12″ W.

(ii) *Enforcement period.* This safety zone is in effect from approximately 8:30 p.m. to approximately 11:30 p.m. for one day during the last week of June or the first week of July each year.

(16) *East County 4th of July Fireworks, Gresham, OR:*

(i) *Location.* All waters of the Columbia River encompassed in a 500 foot radius around position 45°33′33″ N 122°27′03″ W.

(ii) *Enforcement period.* This safety zone is in effect from approximately 8:30 p.m. to approximately 11:30 p.m. for one day during the first week of July each year.

(17) *Port of Cascade Locks July 5th Fireworks Display, Cascade Locks, OR:*

(i) *Location.* All waters of the Columbia River encompassed in a 500 foot radius around position 45°40′16″ N 121°53′38″ W.

(ii) *Enforcement period.* This safety zone is in effect from approximately 8:30 p.m. to approximately 11:30 p.m. for one day during the first week of July each year.

(18) *Astoria Regatta Association Fireworks Display, Astoria, OR:*

(i) *Location.* All waters of the Columbia River encompassed by lines connecting the following points in the vicinity of Astoria, Oregon: from the southern shore of the Columbia River at 46°22′34″ N 123°48′33″ W, thence to 46°11′52″ N 123°48′35″ W, thence to 46°11′52″ N 123°48′19″ W, thence to the southern shore of the Columbia River at 46°11′39″ N 123° 48′13″ W.

(ii) *Enforcement Period.* This safety zone is in effect from approximately 11:30 p.m. one day during the second weekend of August each year.

(19) *City of Washougal July 4th Fireworks Display, Washougal WA:*

(i) *Location.* All waters of the Columbia River encompassed by lines connecting the following points in the vicinity of Washougal, Washington: from the northern shore of the Columbia River at 45°33′50″ N 122°20′16″ W, thence to 45°33′42″ N 122°02′29″ W, thence to 45°33′53″ N 122°20′39″ W, thence to the northern shore of the Columbia River at 45°35′04″ N 122°20′53″ W.

(ii) *Enforcement period.* This safety zone is in effect from approximately 8:30 p.m. to approximately 11:30 p.m. one day during the first week of July each year.

(20) *City of St. Helens 4th of July Fireworks Display, St. Helens, OR:*

(i) *Location.* All waters of the Columbia River encompassed in a 1200 foot radius around position 45°51′51″ N 122°47′22″ W.

(ii) *Enforcement period.* This safety zone is in effect from approximately 8:30 p.m. to approximately 11:30 p.m. one day during the first week of July each year.

(21) *Waverly Country Club 4th of July Fireworks Display, Milwaukie, OR:*

(i) *Location.* All waters of the Willamette River encompassed by lines connecting the following points in the vicinity of Milwaukie, Oregon: from 45°27′10″ N 122°29′35″ W, thence to 45°27′12″ N 122°39′25″ W, thence to 45°26′56″ N 122°39′15″ W, thence to 45°26′52″ N 122°39′25″ W.

(ii) *Enforcement period.* This safety zone is in effect from approximately 8:30 p.m. to approximately 11:30 p.m. one day during the first week of July each year.

(22) *Booming Bay Fireworks, Westport, WA:*

(i) *Location.* All waters of Grays Harbor encompassed in a 600 foot radius around position 46°54′14″ N 124°06′08″ W.

(ii) *Enforcement period.* This safety zone is in effect from approximately 8:30 p.m. to approximately 11:30 p.m. one day during the last week of June or the first week of July each year.

(23) *Hood River 4th of July, Hood River, OR:*

(i) *Location.* All waters of the Columbia River encompassed in a 1000 foot radius around position 45°42′58″ N 121° 30″31″ W.

(ii) *Enforcement Period.* This safety zone is in effect from 8:30 p.m. to approximately 11:30 p.m. one day during the last week of June or the first week of July each year.

(24) *Rufus 4th of July Fireworks, Rufus, OR:*

(i) *Location.* All waters of the Columbia River encompassed in a 500 foot radius around position 45°41′30″ N 120°45′47″ W.

(ii) *Enforcement period.* This safety zone is in effect from approximately 8:30 p.m. to approximately 11:30 p.m. for one day during the last week of June or the first week of July each year.

(b) *Regulations.* In accordance with § 165.23 of this part, no person may enter or remain in these safety zones unless authorized by the Captain of the Port, Portland or his/her designated representative. Also in accordance with § 165.23 of this part, no person may bring into, cause to be brought into, or allow to remain in these safety zones any vehicle, vessel, or object unless authorized by the Captain of the Port, Portland or his/her designated representative.

(c) *Notice.* In accordance with § 165.7 of this part, notification of the specific period of enforcement for each of these safety zones may be made by marine broadcast, local notice to mariners, local news media, distribution in leaflet form, on-scene oral notices, and/or publication in the **Federal Register**.

Dated: June 22, 2009.

F.G. Mye,

Captain, U.S. Coast Guard, Captain of the Port Portland.

[FR Doc. E9–30491 Filed 12–22–09; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0126; FRL–8804–1]

Bifenazate; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of bifenazate (1-methylethyl 2-(4-methoxy[1,1′-biphenyl]-3-yl) hydrazinecarboxylate) and its metabolite, diazinecarboxylic acid, 2-(4-methoxy-[1,1'-biphenyl]-3-yl), 1-methylethyl ester (expressed as bifenazate) in or on bean, dry seed. Interregional Research Project #4 (IR-4) requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 23, 2009. Objections and requests for hearings must be received on or before February 22, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0126. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (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 in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Barbara Madden, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6463; e-mail address: *madden.barbara@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Electronic Access to Other Related Information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR cite at *http://www.gpoaccess.gov/ecfr*

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2008–0126 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before February 22, 2010.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2008–0126 by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Tolerance

In the **Federal Register** of March 12, 2008 (73 FR 13225) (FRL–8354–6), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8E7318) by Interregional Research Project #4 (IR-4), 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR 180.572 be amended by establishing tolerances for combined residues of the insecticide bifenazate (1-methylethyl 2-(4-methoxy[1,1′-biphenyl]-3-yl) hydrazinecarboxylate) and its metabolite, diazinecarboxylic acid, 2-(4-methoxy-[1,1'-biphenyl]-3-yl), 1-methylethyl ester (expressed as bifenazate), in or on bean dry, seed at 0.2 parts per million (ppm); grass, forage, fodder and hay, group 17, forage at 140 ppm; and grass, forage, fodder and hay, group 17, hay at 120 ppm. That notice referenced a summary of the petition prepared by Chemtura Corporation, the registrant, on behalf of IR-4, which is available to the public in the docket, *http://www.regulations.gov*. One comment was received on the notice of filing. EPA's response to this comment is discussed in Unit IV.C.

After the petition was submitted, IR-4 subsequently withdrew the tolerance request for grass, forage, fodder and hay, group 17, forage; and grass, forage, fodder and hay, group 17, hay. As such, these commodities are not considered in this document.

EPA reviewed the petition and determined that the tolerance should be set at 0.60 ppm on bean, dry seed. The

reasons for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for combined residues of the insecticide bifenazate (1-methylethyl 2-(4-methoxy[1,1′-biphenyl]-3-yl) hydrazinecarboxylate) and its metabolite, diazinecarboxylic acid, 2-(4-methoxy-[1,1'-biphenyl]-3-yl), 1-methylethyl ester (expressed as bifenazate), in or on bean, dry seed at 0.60 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Bifenazate is not acutely toxic by the oral, inhalation, or dermal routes of exposure. It is minimally irritating to the eye and slightly-irritating to the skin. Bifenazate is a dermal sensitizer by the Magnusson/Kligman method, but not the Buehler method. Subchronic and chronic studies in rats and dogs indicate that the liver and hematopoietic system (spleen and/or bone marrow with associated hematological findings) are the primary target organs in these species, with additional toxicity in the kidney (chronic dog) and adrenal gland (male rats) also identified. Similarly, the hematopoietic system (spleen) was the primary target organ in the repeat-dose dermal toxicity study. Also associated with this toxicity in several studies were decreased body weight, body-weight gain, and food consumption. No evidence of carcinogenicity was seen in the rat and mouse studies and the Agency has classified bifenazate as ''not likely'' to be a human carcinogen by any relevant route of exposure. A full battery of mutagenicity studies were negative for mutagenic or clastogenic activity. The developmental studies in rats and rabbits did not demonstrate increased sensitivity of fetuses to bifenazate. Similarly, increased qualitative or quantitative susceptibility to offspring were not observed with bifenazate during pre- or postnatal development in the reproduction study. There was no evidence of neurotoxicity (clinical signs or neuropathology) in any of the toxicology studies conducted with bifenazate. Therefore, a bifenazate developmental neurotoxicity (DNT) study was not required by the Agency. Specific information on the studies received and the nature of the adverse effects caused by bifenazate as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document titled ''Bifenazate; Petition for Establishment of Tolerances for the Use of Bifenazate on Dry Bean Seed. HED Human-Health Risk Assessment,'' pages 23–24 in docket ID number EPA–HQ–OPP–2008–0126.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a benchmark dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-, intermediate-, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the level of concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for bifenazate used for human risk assessment can be found at *http://www.regulations.gov* in the document titled ''Bifenazate; Petition for Establishment of Tolerances for the Use of Bifenazate on Dry Bean Seed. HED Human-Health Risk Assessment,'' pages 10–11 in docket ID number EPA–HQ–OPP–2008–0126.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to bifenazate, EPA considered exposure under the petitioned-for tolerance as well as all existing bifenazate tolerances in 40 CFR 180.572. EPA assessed dietary exposures from bifenazate in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. No such effects were identified in the toxicological studies for bifenazate; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA

assumed that all commodities, except squash, peach, tomato and milk, contained tolerance-level residues. For squash, peach and tomato, EPA assumed residues were present at average field trial levels. For milk, the tolerance level was adjusted upward to account for all of the residues of concern for risk assessment. Default processing factors were assumed for all commodities except apple juice, grape juice, wine/sherry, tomato paste, and tomato puree. The processing factors for these commodities were based on data from processing studies. The chronic analysis also incorporated average percent crop treated (PCT) information for some registered commodities but assumed 100 PCT for the new use.

iii. *Cancer*. No evidence of carcinogenicity was seen in the cancer studies performed with bifenazate on rats and mice, and EPA has classified bifenazate as ''not likely'' to be a human carcinogen by any relevant route of exposure. Therefore, a cancer exposure assessment was not conducted.

Bifenazate contains hydrazine as part of its chemical structure. This side chain is structurally similar to unsymmetrical dimethyl hydrazine (UDMH), a category B2 animal carcinogen and possible human carcinogen. However, EPA has concluded that formation of free biphenyl hydrazine or other hydrazines is unlikely based on the results of submitted metabolism studies. The rat, livestock, and plant metabolism studies indicate that metabolism of bifenazate proceeds via oxidation of the hydrazine moiety of bifenazate to form D3598 (diazene). The D3598 is then metabolized to D1989 (methoxy biphenyl) and to bound residues by reaction with natural products. A radish metabolism study which specifically monitored for the formation of biphenyl hydrazine found none. Based on the results of the metabolism studies, especially the absence of biphenyl hydrazine in the radish metabolism study or in the excreta of rats in the rat metabolism study, EPA concluded that the formation of free hydrazines is unlikely. This conclusion is further supported by the lack of carcinogenic effects in the bifenazate carcinogenicity studies.

iv. *Anticipated residue and percent crop treated (PCT) information*. Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- Condition a: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- Condition b: The exposure estimate does not underestimate exposure for any significant subpopulation group.
- Condition c: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

Almond 5%; apple 5%; apricot 1%; cherry 1%; cucumber 1%; grape 5%; nectarine 5%; peach 10%; pear 10%; pecan 1%; pepper 1%; pistachio 1%; plum 5%; strawberry 30%; tomato 1%; walnut 1%; and watermelon 1%; 100 PCT was assumed for all new uses and the remaining currently registered uses.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most recent 6 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than one. In those cases, 1% is used as the average PCT and 2.5% is used as the maximum PCT. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the highest observed maximum value reported within the recent 6 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which bifenazate may be applied in a particular area.

2. *Dietary exposure from drinking water*. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for bifenazate in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of bifenazate. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the First Index Reservoir Screening Tool (FIRST) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of bifenazate for chronic exposures are estimated to be 11.2 parts per billion (ppb) for surface water and 0.044 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 11.2 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and

flea and tick control on pets). Bifenazate is currently registered for the following residential non-dietary sites: Ornamental plants, including bedding plants, flowering plants, foliage plants, bulb crops, perennials, trees, and shrubs. There is a potential for short-term dermal and inhalation exposure of homeowners applying bifenazate on these sites. However, post-application exposures of adults and children from this use are expected to be negligible. Therefore, EPA assessed only short-term dermal and inhalation residential handler exposures for adults. Handler exposures were estimated assuming applications would be made using hose-end sprayers, since this application method is expected to result in higher exposures than other application methods, such as pump sprayers or similar devices.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found bifenazate to share a common mechanism of toxicity with any other substances, and bifenazate does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that bifenazate does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* The prenatal and postnatal toxicology database for bifenazate includes rat and rabbit developmental toxicity studies and a 2–generation reproduction toxicity study in rats. There was no quantitative or qualitative evidence of increased susceptibility of rats or rabbit fetuses to *in utero* exposure in the developmental studies, nor of rats following prenatal/postnatal exposure in the 2–generation reproduction study.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

• There are no residual uncertainties in the toxicity database. The bifenazate toxicological database is complete with the exception of an inhalation study, acute and subchronic neurotoxicity studies and an immunotoxicity study. The immunotoxicity and acute and subchronic neurotoxicity studies are now required as a part of new data requirements in the 40 CFR part 158 for conventional pesticide registration and a 28–day inhalation study has not been submitted. However, the Agency does not believe that conducting these studies will result in a lower point of departure (POD) than that currently used for overall risk assessment, and therefore, a database uncertainty factor (UFDB) is not needed to account for lack of these studies for the following reasons:

i. The toxicology database for bifenazate does not indicate that the immune system is the primary target organ. The observed effects on the immune system have been well characterized and were seen at dose(s) that produce evidence of overt systemic toxicity. These effects included increased spleen weight in females and histopathological changes in the spleen in males in a 90–day oral rat toxicity study, extramedullary hematopoiesis in the both sexes in a 21–day dermal toxicity study in rats, and changes in hematological parameters, clinical chemistry parameters in both sexes and histopathological effects in bone marrow (compensatory hyperplasia) in both sexes in a 1–year chronic toxicity study.

ii. The overall weight of evidence suggests that bifenazate does not directly target the immune system, and these findings may be due to secondary effect of overt systemic toxicity. Further, there is no evidence of neurotoxicity or neuropathology in the bifenazate database.

iii. A 28–day inhalation study is not available; however, the EPA has determined that the additional FQPA SF is not needed. Residential inhalation risk was estimated by calculating exposure using the Agency's Residential SOPs. For chemicals with low vapor pressure (7.5×10^{-5} mmHg or below for outdoor uses at 20–30°C) these standard assumptions are expected to overestimate the exposure via the inhalation route. Bifenazate is such a compound and exposure through the inhalation route is expected to be minimal. Therefore, the risk estimate is conservative and is considered protective and the additional FQPA SF is not needed.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf*.

• There is no quantitative or qualitative evidence of increased susceptibility of rats or rabbit fetuses to *in utero* exposure in developmental studies, nor following pre/post-natal exposure to rats in the 2–generation reproduction study.

• A developmental neurotoxicity study (DNT) is not required because there is no evidence of neurotoxicity or neuropathology in the bifenazate database.

• The dietary food and drinking water exposure assessments will not underestimate the potential exposures for infants and children; and the residential use (ornamentals) is not expected to result in post-application exposure to infants and children.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk.* An acute aggregate risk assessment takes into account exposure estimates from acute dietary consumption of food and drinking water. No adverse effect resulting from

a single-oral exposure was identified and no acute dietary endpoint was selected. Therefore, bifenazate is not expected to pose an acute risk.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to bifenazate from food and water will utilize 50% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of bifenazate is not expected.

3. *Short-term risk*. Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Bifenazate is currently registered for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for bifenazate.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food, water, and residential exposures aggregated result in aggregate MOEs of 2,200 for the U.S. population. The aggregate MOEs for adults take into consideration food and drinking water exposures as well as dermal and inhalation exposures of adults applying bifenazate to ornamentals in residential areas. Since residential exposure of infants and children is not expected, short-term aggregate risk for infants and children is the sum of the risk from food and water, which does not exceed the Agency's level of concern.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Bifenazate is not registered for any use patterns that would result in intermediate-term residential exposure. Therefore, the intermediate-term aggregate risk is the sum of the risk from exposure to bifenazate through food and water, which has already been addressed, and will not be greater than the chronic aggregate risk.

5. *Aggregate cancer risk for U.S. population*. Bifenazate has been classified as *not likely* to be a human carcinogen by any relevant route of exposure and is, therefore, not expected to pose a cancer risk.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to bifenazate residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology is available to enforce the tolerance expression. High-performance liquid chromatography (HPLC) Method UCC-D2341 is available as a primary enforcement method for determination of the combined residues of bifenazate and its metabolite, diazinecarboxylic acid, 2-(4-methoxy-[1,1'-biphenyl]-3-yl), 1-methylethyl ester (expressed as bifenazate), in/on crop matrices. The method has undergone a successful validation and has been forwarded to the Food and Drug Administration (FDA) for inclusion in the Pesticide Analytical Manual (PAM) Volume II. In addition, a method utilizing a liquid chromatographic system with tandem mass spectrometers (LC/MS/MS) was recently submitted as a confirmatory method (Method NCL ME 245) and has been forwarded to FDA. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are currently no established Codex, Canadian, or Mexican maximum residue limits (MRLs) for bifenazate in/on dry bean seed.

C. Response to Comments

A comment was received from a private citizen indicating that testing conducted on animals have absolutely no validity and cruel to the test animals. The Agency disagrees with the commenter's claims regarding animal testing. Since humans and animals have complex organ systems and mechanisms for the distribution of chemicals in the body, as well as processes for eliminating toxic substances from their systems, EPA relies on laboratory animals, such as, rats and mice to mimic the complexity of human and higher-order animal physiological responses when exposed to a pesticide. EPA is committed, however, to reducing the use of animals whenever possible. EPA-required studies include animals only when the requirements of sound toxicological science make the use of an animal absolutely necessary. The Agency's goal is to be able to predict the potential of pesticides to cause harmful effects to humans and wildlife by using fewer laboratory animals as models and have been accepting data from alternative (to animals) test methods for several years. As progress is made on finding or developing non-animal test models that reliably predict the potential for harm to humans or the environment, EPA expects that it will need fewer animal studies to make safety determinations. Finally, because the commenter has not provided the Agency with a specific rationale (including supporting information) as to why the Agency's action is inconsistent with the legal standards in section 408 of FFDCA, EPA can not provide any more detailed response to the commenter's disagreement with the Agency's decision.

In addition, the commenter noted several adverse effects seen in animal toxicology studies with bifenazate and claims because of these effects no tolerance should be approved. EPA has found, however, that there is a reasonable certainty of no harm to humans after considering these toxicological studies and the exposure levels of humans to bifenazate.

D. Revisions to Petitioned-For Tolerances

The initial petition submitted by IR-4 proposed tolerance for grass, forage, fodder and hay, group 17, forage; and grass, forage, fodder and hay, group 17, hay. EPA reviewed the petition and concluded that in order to grant the use on grass, a ruminant metabolism and adequate feeding studies would be required. IR-4 subsequently withdrew these proposed tolerances.

EPA evaluated this petition and upon reviewing the submitted field trial data and entering it into the Agency's tolerance spreadsheet as specified by the *Guidance for Setting Pesticide Tolerances Based on Field Trial Data* SOP, it was determined that the tolerance should be set at 0.60 ppm for residues in/on bean, dry seed as opposed to the level proposed by IR-4.

Additionally, EPA has revised the tolerance expression to clarify (1) that, as provided in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of bifenazate not specifically mentioned; and (2) that compliance with the specified tolerance levels is to be determined by measuring only the specific compounds mentioned in the tolerance expression. This change was made to both the tolerance expressions for plant commodities and livestock commodities because it makes no substantive change to the meaning of the tolerance but rather only clarifies the existing language.

V. Conclusion

Therefore, a tolerance is established for combined residues of the insecticide bifenazate (1-methylethyl 2-(4-methoxy[1,1′-biphenyl]-3-yl) hydrazinecarboxylate) and its metabolite, diazinecarboxylic acid, 2-(4-methoxy-[1,1'-biphenyl]-3-yl), 1-methylethyl ester (expressed as bifenazate), in or on bean, dry seed at 0.60 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to 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).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report 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 this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 11, 2009.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.572 is amended by revising paragraphs (a)(1) introductory text, (a)(2) introductory text, and (b) introductory text; and alphabetically adding ''Bean, dry, seed'' to the table in paragraph (a)(1) to read as follows:

§ 180.572 Bifenazate; tolerance for residues.

(a) *General.* (1) Tolerances are established for residues of bifenazate (1-methylethyl 2-(4-methoxy[1,1′-biphenyl]-3-yl)hydrazinecarboxylate) including its metabolites and degradates, in or on the commodities listed in the following table. Compliance with the tolerance levels specified are to be determined by measuring only the sum of bifenazate and its metabolite diazinecarboxylic acid, 2-(4-methoxy-[1,1′-biphenyl]-3-yl), 1-methylethyl ester (expressed as bifenazate) in or on the following food commodities:

Commodity	Parts per million
* * *	* *
Bean, dry seed	0.60
* * *	* *

* * * * *

(2) Tolerances are established for residues of bifenazate (1-methylethyl 2-(4-methoxy[1,1′-biphenyl]-3-yl) hydrazinecarboxylate) including its metabolites and degradates, in or on the commodities listed in the following table. Compliance with the tolerance levels specified are to be determined by measuring only the sum of bifenazate and its metabolites diazinecarboxylic acid, 2-(4-methoxy-[1,1′-biphenyl]-3-yl), 1-methylethyl ester (expressed as bifenazate); 1,1′-biphenyl, 4-ol; and 1,1′-biphenyl, 4-oxysulfonic acid (expressed as 1,1′-biphenyl, 4-ol) in or on the following food commodities:

* * * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for residues of bifenazate (1-methylethyl 2-(4-methoxy[1,1′-biphenyl]-3-yl)hydrazinecarboxylate) including its

metabolites and degradates in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. Compliance with the tolerance levels specified in the following table are to be determined by measuring only the sum of bifenazate and its metabolite diazinecarboxylic acid, 2-(4-methoxy-[1,1′-biphenyl]-3-yl), 1-methylethyl ester (expressed as bifenazate). The tolerances will expire and are revoked on the dates specified in the following table.

* * * * *

[FR Doc. E9–30138 Filed 12–22–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0536 and 2007–0097; FRL–8793–5]

Fenarimol; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fenarimol in or on hop, dried cones. This regulation additionally increases the established tolerance in or on apple. Interregional Research Project Number 4 (IR-4) requested the tolerance on hop and EPA proposed the tolerance increase on apple under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 23, 2009. Objections and requests for hearings must be received on or before February 22, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0536. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (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 in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Laura Nollen, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7390; e-mail address: *nollen.laura@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing electronically available documents at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR cite at *http://www.gpoaccess.gov/ecfr*. To access the OPPTS Harmonized Test Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/oppts and select ''Test Methods & Guidelines'' on the left side navigation menu*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–0536 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before February 22, 2010.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2007–0536, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Tolerance

In the **Federal Register** of August 22, 2007 (72 FR 47010) (FRL–8142–5) (Docket ID number EPA-HQ-OPP-2007–0536, EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 6E7074) by IR-4, 500 College Road East, Suite 201 W, Princeton, NJ 08540–6635. The petition requested that 40 CFR 180.421 be amended by establishing tolerances for residues of the fungicide fenarimol,

alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-5-pyrimidinemethanol, in or on hop at 1.0 parts per million (ppm). That notice referenced a summary of the petition prepared on behalf of IR-4 by Gowan Company, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

In the **Federal Register** of June 6, 2007 (72 FR 31221) (FRL–8122–7) (Docket ID number EPA-HQ-OPP-2007–0097). EPA issued a proposed rule pursuant to sections 408(e) of FFDCA, 21 U.S.C. 346a(e). The rule proposed that 40 CFR 180.421 be amended by increasing the tolerance for residues of the fungicide fenarimol, alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-5-pyrimidinemethanol, in or on apple from 0.1 ppm to 0.3 ppm. EPA proposed the tolerance increase in order to harmonize with a Codex Maximum Residue Limit (MRL) of 0.3 ppm on apples. The proposal explained the basis for EPA's conclusion that there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to fenarimol, including exposure under the amended apple tolerance. The proposal established a 60–day public comment period. Comments were received in response to the proposed rule. EPA's response to these comments is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA has revised the proposed tolerance on hop, dried cones. The reason for this change is explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for residues of fenarimol on hop, dried cones at 5.0 ppm and apple at 0.3 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Fenarimol has a relatively low order of acute toxicity via the oral, dermal, and inhalation routes of exposure. It is not a dermal sensitizer but causes corneal opacity in rabbits. Chronic studies indicated that the liver is a target organ for toxicity. Liver toxicity was manifested by liver weight increases and the presence of ''fatty liver'' in rats. In dogs, increased liver weights and increases in serum enzymes, indicative of liver toxicity, were noted. Additionally, reproduction and developmental studies showed that fenarimol inhibited aromatase, an enzyme involved in the conversion of androgens to estrogens. Two acceptable rodent carcinogenicity studies showed no evidence of significant tumor increases; therefore, fenarimol has been classified as ''not likely to be carcinogenic to humans.'' Additionally, the toxicity database indicates no evidence of mutagenicity or neurotoxicity.

The toxicology data for fenarimol provides no indication of increased susceptibility, as compared to adults, of rat and rabbit fetuses to *in utero* exposure in developmental studies. Developmental kidney effects (hydronephrosis) in the rat were shown to be reversible. The multi-generation reproduction study in rats indicates that fenarimol causes reduced fertility in males and dystocia in females; these effects were attributed to the inhibition of aromatase. Decreased litter size was also noted in the study.

Non-guideline reproductive performance studies in mice, guinea pigs, and rabbits resulted in decreased reproductive performance in male mice, but no such effect in the guinea pig or rabbit studies. A pubertal assay conducted in female rats resulted in decreased T4 thyroid hormone coupled with an increase in circulating thyroid stimulating hormone (TSH) levels. A female rat uterotrophic assay resulted in significant uterine weight increases accompanied by increased serum follicle stimulating hormone (FSH) levels and decreased serum T3 levels.

Specific information on the studies received and the nature of the adverse effects caused by fenarimol as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document ''Fenarimol. Human Health Risk Assessment for the Proposed Food Use of Fenarimol on Hops,'' pages 46 to 49 in docket ID number EPA–HQ–OPP–2007–0536.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a benchmark dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-term, intermediate-term, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the level of concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for fenarimol used for human risk assessment can be found at *http://www.regulations.gov* in document ''Fenarimol. Human Health Risk Assessment for the Proposed Food Use of Fenarimol on Hops,'' pages 28 to 29 in docket ID number EPA–HQ–OPP–2007–0536.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to fenarimol, EPA considered exposure under the petitioned-for tolerances as well as all existing fenarimol tolerances in 40 CFR 180.421. EPA assessed dietary exposures from fenarimol in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

No such effects were identified in the toxicological studies for fenarimol; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Continuing Surveys of Food Intakes by Individuals (CSFII). The chronic dietary exposure assessment for fenarimol is refined using anticipated residues (ARs) from field trial data, processing factors, and percent crop treated (PCT) data.

ARs based on Food and Drug Administration (FDA) monitoring data were used for apples, bananas, cherries, grapes, and pears. Tolerance values were assumed for foods covered by all additional tolerances. PCT data was used for apples, cherries, grapes, and pears. Dietary Exposure Evalution Model (DEEM) default processing factors were used for all food commodities, except apple juice, pear juice, grape juice, and raisins, which used factors derived from processing studies.

iii. *Cancer*. Based on the absence of significant tumor increases in two adequate rodent carcinogenicity studies, EPA has classified fenarimol as ''not likely to be carcinogenic to humans.'' Therefore, a quantitative exposure assessment to evaluate cancer risk is unnecessary.

iv. *Anticipated residue and PCT information*. Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the AR levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such Data Call-Ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

• *Condition a*. The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.

• *Condition b*. The exposure estimate does not underestimate exposure for any significant subpopulation group.

• *Condition c*. Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

Apples, 20%; cherries, 15%; grapes, 25%; and pears, 10%.

In most cases, EPA uses available data from USDA/National Agricultural Statistics Service (NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most recent 6 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than one. In those cases, 1% is used as the average PCT and 2.5% is used as the maximum PCT. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the highest observed maximum value reported within the recent 6 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which fenarimol may be applied in a particular area.

2. *Dietary exposure from drinking water*. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for the total residues of concern, including parent fenarimol and its organic degradates (U–1, U–2, U–6, and U–7), in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of fenarimol. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of fenarimol for surface water are estimated to be 66 parts per billion

(ppb) for chronic exposures. For ground water, the estimated drinking water concentration is 19 ppb.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 66 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Fenarimol is currently registered for use on professionally managed turf areas, such as stadia and golf course tees, greens, and fairways. Short-term postapplication dermal exposure to adult golfers is possible.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found fenarimol to share a common mechanism of toxicity with any other substances, and fenarimol does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that fenarimol does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) safety factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional SF when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. The database for prenatal developmental (in rats and rabbits) and reproductive (in rats) toxicity is considered complete and includes special studies in addition to conventional guideline studies. The rat developmental study showed evidence of hydronephrosis in fetuses at dose levels equal to or possibly lower than doses causing maternal toxicity; however, a special study showed this effect to be reversible and therefore not considered an adverse effect. Additionally, the decreased live born litter size and survival indices in the rat multi-generation reproduction study are considered to be secondary consequenies of parental effects (e.g. dystocia and fertility), and is not an indicator of increased susceptibility. Therefore, there is no evidence of increased susceptibility of fetuses following *in utero* exposure in the rat or rabbit developmental toxicity study or of offspring following prenatal and postnatal exposure in the rat reproduction study, and there are no concerns or residual uncertainties for prenatal and/or postnatal toxicity.

3. *Conclusion*. EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for fenarimol is complete except for immunotoxicity testing. Recent changes to 40 CFR part 158 make immunotoxicity testing (OPPTS Harmonized Test Guideline 870.7800) required for pesticide registration; however, the available data for fenarimol do not show potential for immunotoxicity. Consequently, the EPA believes the existing data are sufficient for endpoint selection for exposure/risk assessment scenarios and for evaluation of the requirements under the FQPA, and an additional database UF does not need to be applied.

ii. There is no indication that fenarimol is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that fenarimol results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2–generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The chronic dietary food exposure assessment utilized tolerance-level residues or ARs that are based on reliable field trial data, and factors derived from processing studies (for apple juice, pear juice, grape juice, and raisins) or DEEM default processing factors. For several currently registered commodities, the chronic assessment also utilized PCT data that have a valid basis and are considered to be reliable. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to fenarimol in drinking water. EPA made similarly conservative assumptions to assess postapplication exposures. These assessments will not underestimate the exposure and risks posed by fenarimol.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-term, intermediate-term, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. An acute aggregate risk assessment takes into account exposure estimates from acute dietary consumption of food and drinking water. No adverse effect resulting from a single-oral exposure was identified and no acute dietary endpoint was selected. Therefore, fenarimol is not expected to pose an acute risk.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to fenarimol from food and water will utilize 76% of the cPAD for infants less than 1–year old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of fenarimol is not expected.

3. *Short-term risk*. Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Fenarimol is currently registered for use on professionally managed turf, including stadia and golf

course tees, greens, and fairways, which could result in short-term postapplication dermal exposure to golfers. The Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to fenarimol.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures aggregated result in aggregate MOEs of 8,800 for adults 20–49 years old. EPA has determined that this assessment adequately estimates the risk for youth golfers as well. As the aggregate MOE is greater than 1,000 (the LOC), short-term aggregate exposure to fenarimol is not of concern to EPA.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Fenarimol is not registered for any use patterns that would result in intermediate-term residential exposure. Therefore, the intermediate-term aggregate risk is the sum of the risk from exposure to fenarimol through food and water, which has already been addressed, and will not be greater than the chronic aggregate risk.

5. *Aggregate cancer risk for U.S. population*. As discussed in Unit III.C.1.iii., EPA has classified fenarimol as ''not likely to be carcinogenic to humans,'' and it is not expected to pose a cancer risk to humans.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to fenarimol residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology, gas chromatography (GC) with an electrolytic conductivity detector (ECD), is available to enforce the tolerance expression, and is published in the Pesticide Analytical Manual (PAM) Vol. II (Method R039).

B. International Residue Limits

Residue definitions are harmonized between the United States, Codex, and Mexico. In order to harmonize with a Codex MRL of 0.3 ppm for apples, EPA is increasing the tolerance for residues of apples from 0.1 ppm to 0.3 ppm. Additionally, a Codex MRL exists on hop dried cones at 5.0 ppm. The Agency is establishing a tolerance on hop, dried cones at 5.0 ppm to harmonize MRLs between the United States and Codex for this commodity.

C. Response to Comments

EPA received one comment to the proposed rule of June 6, 2007, which made a general objection to the presence of any pesticide residues on crops and stated that EPA should set no pesticide tolerance greater than zero. The Agency understands the commenter's concerns and recognizes that some individuals believe that pesticides should be banned completely. However, the existing legal framework provided by section 408 of the FFDCA states that tolerances greater than zero may be set when it has been demonstrated that the pesticide meets the safety standard imposed by that statute. This citizen's comment appears to be directed at the underlying statute and not EPA's implementation of it; the citizen has made no contention that EPA has acted in violation of the statutory framework.

D. Revisions to Petitioned-For Tolerances

Based upon review of the data supporting the IR-4 petition, EPA revised the proposed tolerance for hop, dried cones from 1.0 ppm to 1.2 ppm. EPA revised the tolerance level based on analysis of the residue field trial data using the Agency's Tolerance Spreadsheet in accordance with the Agency's ''Guidance for Setting Pesticide Tolerances Based on Field Trial Data.'' However, it was discovered that a Codex MRL exists on hops, dried cones at 5.0 ppm. As a result, EPA has increased the hop, dried cones tolerance from 1.2 ppm to 5.0 ppm to harmonize with Codex. The potentially greater exposure under this increased tolerance value was included in EPA's fenarimol risk assessment.

V. Conclusion

Therefore, a tolerance is established for residues of fenarimol, alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-5-pyrimidinemethanol, in or on hop, dried cones at 5.0 ppm. Additionally, the established tolerance of fenarimol in or on apple is increased from 0.1 ppm to 0.3 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) and 408(e) of FFDCA following an agency initiated proposal. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule on hops, dried cones, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply to this tolerance. The tolerance on apples, however, was initiated by an EPA proposal and thus the RFA is applicable. Pursuant to the RFA, the Agency hereby certifies that the apple tolerance will not have significant negative economic impact on a substantial number of small entities. Establishing a pesticide tolerance or an exemption from the requirement of a pesticide tolerance is, in effect, the removal of a regulatory restriction on pesticide residues in food and thus such an action will not have any negative economic impact on any entities, including small entities.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10,

1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to 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).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report 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 this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 8, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In §180.421 the table in paragraph (a) is amended by revising the entry for ''Apple'' and by alphabetically adding the entry for ''Hop, dried cones'' to read as follows:

§ 180.421 Fenarimol; tolerances for residues.

(a) * * *

Commodity	Parts per million
Apple	0.3
* * * * *	
Hop, dried cones	5.0
* * * * *	

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[FR Doc. E9–30371 Filed 12–22–09; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 240

[Docket No. FRA–2008–0091, Notice No. 4]

RIN 2130–AB95

Qualification and Certification of Locomotive Engineers; Miscellaneous Revisions

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA is making miscellaneous amendments to its regulation governing the qualification and certification of locomotive engineers. These changes address the unanticipated consequences arising from reclassifications, clarify the grounds upon which a railroad may revoke a locomotive engineer's certification, and make the regulation consistent with other FRA regulations and guidance. In particular, this rule: prohibits a railroad from reclassifying a person's locomotive engineer certificate to that of a more restrictive class during the period in which the certificate is otherwise valid while permitting the railroad to place restrictions on the locomotive engineer, if appropriate; clarifies that revocation of an engineer's certificate may only occur for the reasons specified in the regulation; requires each railroad to identify the actions it will take in the event that a person fails a skills performance test or the railroad finds deficiencies with an engineer's performance during an operational monitoring observation or unannounced compliance test; requires each railroad to describe the scoring system used by the railroad during performance skills tests, operational monitoring observations and unannounced compliance tests; and makes some minor clarifying revisions to the regulation.

DATES: *Effective Date:* The rule is effective February 22, 2010.

Petitions for reconsideration: Any petition for reconsideration of any portion of the rule must be submitted no later than January 22, 2010.

ADDRESSES: Petitions for reconsideration of this rule should include the agency name and Docket No. FRA–2008–0091, Notice No. 4, and be submitted by any one of the following methods:

- *Fax:* 1–202–493–2251;
- *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, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or
- Electronically through the Federal eRulemaking Portal, *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All petitions for reconsideration received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John L. Conklin, Program Manager, Locomotive Engineer Certification, U.S. Department of Transportation, Federal Railroad Administration, Mail Stop 25, West Building 3rd Floor West, Room W38–208, 1200 New Jersey Avenue, SE., Washington, DC 20590 (*telephone:* 202–493–6318); or John Seguin, Trial Attorney, U.S. Department of Transportation, Federal Railroad

Administration, Office of Chief Counsel, RCC–10, Mail Stop 10, West Building 3rd Floor, Room W31–217, 1200 New Jersey Avenue, SE., Washington, DC 20590 (*telephone:* 202–493–6045).

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to the Rail Safety Improvement Act of 1988, Public Law 100–342, § 4, 102 Stat. 624, 625–27 (June 22, 1988) (recodified at 49 U.S.C. 20135), Congress conferred on the Secretary of DOT the authority to establish a locomotive engineer qualification licensing or certification program. The Secretary of Transportation delegated this authority to the Federal Railroad Administrator. 49 CFR 1.49(m). In 1991, FRA implemented this statutory provision by issuing a final rule. 56 FR 28228, 28254 (June 19, 1991) (codified at 49 CFR part 240).

By notice of proposed rulemaking (NPRM) published on December 31, 2008 (73 FR 80349), FRA proposed revisions to its regulations governing the qualification and certification of locomotive engineers. The comment period for the NPRM closed on March 2, 2009. FRA received written comments submitted by the Association of American Railroads, the Union Pacific Railroad Company, the Brotherhood of Locomotive Engineers and Trainmen, and the United Transportation Union. FRA also received a written request from the United Transportation Union, Nebraska State Legislative Board, for a hearing. Pursuant to 49 U.S.C. 20103(e), which requires that ''[a]n opportunity for an oral presentation shall be provided'' when prescribing or amending a railroad safety regulation, FRA held a public hearing on April 14, 2009. The Union Pacific Railroad Company and the BNSF Railway Company provided oral comments at the hearing. Additionally, on April 14, 2009, FRA reopened the NPRM comment period for an additional 30 days so that (i) FRA could make the public hearing transcript available for review and comment by the general public, (ii) interested parties could provide additional comments or documents, and (iii) interested parties could respond to testimony provided at the public hearing.

By letter dated May 18, 2009, the Brotherhood of Locomotive Engineers and Trainmen requested an extension of that comment period, which closed on May 14, 2009. Based on that request, FRA reopened the comment period for an additional 30 days until June 15, 2009. *See* 74 FR 25,208 (May 27, 2009). FRA received written, post-hearing comments submitted by the Association of American Railroads, the Brotherhood of Locomotive Engineers and Trainmen, and the United Transportation Union. The comment period for the NPRM closed on June 15, 2009.

II. General Summary of the Comments

A. Prohibiting Reclassification

FRA proposed to amend 49 CFR 240.107 by adding a new paragraph (e) that would prohibit a railroad from reclassifying the certification of any type of certified engineer to a more restrictive class of certificate or to a student engineer certificate during the period in which the certification is otherwise valid. *See* 73 FR 80349, 80351–80352 (December 31, 2008).

Reaction to the NPRM

While some commenters supported the NPRM's proposal to prohibit reclassifications, others argued against it. Those commenters who opposed the proposal raised four main concerns:

(1) FRA seeks to deny railroads the ability to use skill performance testing failures as opportunities to correct deficiencies in employee skill-sets during the 3-year certificate period which will: (i) Increase denials at recertification and (ii) take away incentive for employees to improve their skills during the remedial training time prior to recertification.

(2) Sections 240.209 and 240.211 provide that a person who fails to achieve a passing score under the testing and evaluation requirements of part 240 shall not be permitted to operate as a locomotive servicing or train service engineer prior to that person achieving a passing score. However, the NPRM prohibits a railroad from reclassifying the certificate of any type of certified engineer to a more restrictive class or a student, and thus, would prevent a person who fails from ever operating, testing, or going through remedial training again.

(3) The proposed rule changes will require some type of training for the entire time an engineer's current certificate is valid and then a denial process when the engineer is up for recertification. This could impose up to three years of training of an engineer with the same outcome as the current reclassification process.

(4) FRA does not recognize the medical component of the engineer certification process. Engineers may be released to return to work after a major illness, because their bodies are medically fit for duty. However, in some instances, they have lost the cognitive ability to properly perform their job responsibilities. While a doctor may not be able to test for such diminished cognitive abilities, a Designated Supervisor of Locomotive Engineers (DSLE) can observe an engineer's ability to timely make correct decisions in operating a train. By disallowing a DSLE to make this judgment, FRA is closing off an important avenue of safety by assuming that any time a doctor allows an employee to return to duty, the employee is fit to work.

FRA's Response

(1) The commenters appear to be blending the three requirements of Part 240. Those requirements are (i) unannounced compliance (efficiency) tests, (ii) annual check rides and (iii) skills tests. Federal regulations only require knowledge and skills tests when certifying or recertifying an engineer or relying on a certification granted by another railroad under 49 CFR 240.225(a). However, a railroad may impose more stringent requirements and thus, have additional operational tests and performance evaluations. This rule simply limits such additional test and evaluation failure consequences by prohibiting reclassification. Thus, the rule does not deny railroads the opportunity to correct deficiencies during the 3-year certification period. Indeed, nothing in this rule prohibits a railroad from evaluating engineers and providing any necessary remedial training between certification periods.

(2) FRA's prohibition on reclassification would not prevent a person who failed to achieve a passing score under the testing and evaluation requirements of part 240 from ever operating a locomotive again. The railroad could simply place a restriction on the certificate of the person who failed (240.107(d)) thereby prohibiting the person from operating a locomotive except under the restrictions specified. Once the person achieves a passing score or shows improvement, the restriction may be lifted. Thus, the person who failed would not be reclassified as a student although the person's engineer activities could be limited as if the person were a student.

(3) The issue raised by some commenters regarding a railroad having to provide training to a certified person whose certificate has been restricted may be handled by seeking a waiver of the part 240 requirements. As provided in § 240.9, a railroad may apply for a waiver in accordance with the provisions of part 211 of this chapter from training, continuing education, and other requirements for a person who will not be operating as a

locomotive servicing or train service engineer for that railroad. Further, this rule in no way prohibits a railroad from initiating disciplinary sanctions against its employees in the normal and customary manner, including those contained in its collective bargaining agreements. *See* § 240.5.

(4) FRA is not disallowing a DSLE from making a judgment. If the employee is medically fit but a check ride reveals skills deficiencies, restrictions may be placed on the certificate until the person can prove competency.

As noted in the NPRM, FRA has considered other options, including permitting reclassification while providing affected engineers with the option of challenging the reclassification through a hearing. However, allowing reclassifications, even with a hearing, could result in the disparate treatment of engineers. If, for example, two train service engineers commit the same operating deficiency, a railroad may decide to reprimand one of the engineers but reclassify the certificate of the other engineer to a student engineer certificate. Assuming the reclassification is upheld during the hearing process, one engineer could return to work as a train service engineer while the other could only return to work as a student engineer. This rule attempts to eliminate the potential for disparate treatment that could result from the practice of reclassifying engineers' certificates.

B. Restrictions

In its proposal to prohibit reclassification, FRA noted that the proposed provision would not prevent a railroad from placing restrictions on a certificate pursuant to 240.107(d). FRA further noted that restrictions are applied and reviewed in accordance with the internal railroad rules, procedures, and processes developed in coordination with its employees. *See* 73 FR 80349, 80352 (December 31, 2008).

Reaction to the NPRM

One commenter questioned how FRA could continue to bear responsibility for the manner in which railroads exercise discretion under part 240 when FRA claims it will leave the matter of restrictions to non-FRA decision-makers. According to the commenter, FRA is removing itself from oversight of restrictions imposed by railroads which will then become subject to the oversight of arbitrators who are not obligated to follow any precedence. Thus, FRA may become bound by arbitrators' decisions, resulting in more inconsistencies and unanticipated consequences.

FRA's Response

Contrary to the commenter's assertion, it has been FRA's understanding that a restriction is not a denial of certification or a revocation under part 240 and thus, disputes regarding restrictions are covered by the Railway Labor Act and should be handled under the procedures provided for in that Act. Furthermore, a restricted train service or locomotive servicing engineer certificate is still a valid certificate that other railroads may rely on when determining whether the person is qualified pursuant to § 240.225. Of course, any railroad that chooses to rely on a restricted certificate issued by another railroad should ensure that the person can demonstrate that they are qualified—and should certainly not ignore the restriction.

C. Revocations

FRA proposed to amend 49 CFR 240.307 to clarify and ensure that each railroad understands that it may revoke an engineer's certificate only for that conduct specifically identified in § 240.117(e) or § 240.119(c). FRA was informed by at least one Class I railroad that it believes § 240.307 could be read to allow revocation for deficiencies other than those specified in § 240.117(e) or § 240.119(c). FRA proposed to make clear that such an interpretation is incorrect and contravenes the intent and purpose of part 240 when it was issued. *See* 73 FR 80349, 80353 (December 31, 2008).

Reaction to the NPRM

Some commenters supported the proposal, but one commenter argued against it. The commenter who opposed the proposal suggested that limiting revocations to § 240.117(e) and § 240.119(c) violations does not make sense in light of Emergency Order No. 26 (EO 26), which restricts the use of cell phones and other electronic devices in certain circumstances. The NPRM would prohibit railroads from revoking an engineer's certificate for violating EO 26 unless that violation was combined with a § 240.117(e) or § 240.119(c) violation. The commenter believes that a violation of EO 26, in and of itself, should be a revocable offense.

FRA's Response

Whether a locomotive engineer should have his or her certificate revoked for violating EO 26 is beyond the scope of the NPRM. In the future, FRA plans to revisit EO 26 and could initiate a rulemaking that would make the requirements of EO 26 permanent. In any such rulemaking, FRA could consider adding violations of those requirements to the list of revocable offenses under part 240. In the meantime, a railroad may choose to discipline its employees for improper use of electronic devices, but may not revoke an engineer's certification based on a violation of EO 26.

D. Skills Tests

FRA proposed to amend 49 CFR 240.127 to require each railroad to indicate the action it will take, beyond those required by § 240.211(c), in the event that a person fails a skills performance test. *See* 73 FR 80349, 80352–80353 (December 31, 2008).

Reaction to the NPRM

In response to FRA's proposal to amend 49 CFR 240.127 and 240.129 (see section E below), a commenter asserted that there is no reason to require railroads to specify the potential measures to be taken. According to the commenter, a railroad would need the flexibility to change the actions it would take in the event of failure, but the proposal would prohibit a railroad from adopting new approaches to failures unless the changes were reflected in the certification program. Further, the situation will be even worse if FRA requires each railroad to resubmit a revised program each time a change is made.

Another commenter suggested that FRA's proposed language should be used along with the following: ''and if said action is subject in any regard to a collective bargaining agreement, the applicable provisions of the collective bargaining agreement shall be included as an appendix to the railroad's program.''

FRA's Response

The rule balances the need to provide railroads with the flexibility to handle skills test and evaluation failures appropriately with the need to make the test and evaluation process transparent. FRA believes that transparency will help prevent railroads from developing processes for handling skills test failures that could result in unanticipated consequences.

Although FRA considered other options, such as prescribing the specific actions a railroad must take, FRA believes it should be left up to each railroad to decide the appropriate actions to take in light of various factors, including collective bargaining agreements. Indeed, FRA previously proposed prescribing the number of tests and interval between retests and

other consequences of test failure in the 1989 NPRM (54 FR 50890, 50933–50935 (December 11, 1989)), but did not implement those proposals based, in part, on commenters' concerns that the proposals would disrupt contractual agreements (56 FR 28228, 28236–28237 (June 19, 1991)). Further, FRA has found that the vast majority of railroads have adequate policies to deal with skills test failures or deficiencies and have handled them appropriately for many years.

To avoid restricting the options available to the railroads and employee representatives to develop processes for handling skill test failures, FRA designed this proposal to be as flexible as possible. There are a variety of actions and approaches that a railroad can take in response to a skills test failure and FRA does not want to stifle a railroad's ability to adopt an approach that is best for its organization. Some of the actions railroads may want to consider include: develop and provide formal remedial training for engineers who fail skills tests or have deficiencies in their performance; automatically download event recorder data upon a test failure or deficient performance in order to preserve evidence of the failure/deficiency; require two supervisors to ride along on a retest; and retest an engineer on an actual train if the engineer failed a test on a simulator. Each railroad should also consider implementing a formal procedure whereby an engineer is given the opportunity to explain, in writing, the factors that he or she believes caused their skills test failure or performance deficiencies. This explanation may allow a railroad to determine what areas of training to focus on or perhaps discover that the reason for the failure/deficiency was due to something other than a lack of skills.

FRA believes there are numerous other approaches that could and should be considered and evaluated by railroads and their employees. FRA realizes that a railroad's list of actions it will take in response to a skills test failure or deficient performance could be expansive given the various circumstances that could contribute to a test failure or deficient performance. FRA disagrees with the suggestion to add a provision regarding collective bargaining agreements (CBAs). FRA does not enforce CBAs. In addition, railroad discipline policies are beyond the scope of the NPRM and Part 240. *See* 49 CFR 240.5.

E. Operational Monitoring

FRA proposed to amend 49 CFR 240.129 to require railroads to indicate the action they will take in the event they find deficiencies with an engineer's performance during an operational monitoring observation or unannounced compliance test. *See* 73 FR 80349, 80353 (December 31, 2008).

Reaction to the NPRM

In addition to one commenter's assertion that there is no reason to require railroads to specify the potential measures to be taken (see section D above), other commenters suggested that 49 CFR 240.129 should explicitly state that regardless of whether an engineer's performance is monitored pursuant to § 240.129(b) or is being tested pursuant to § 240.129(e), the only circumstances in which an adverse certification outcome is possible is when the monitoring/testing discloses a violation of § 240.117(e). According to those commenters, if a railroad finds some deficiency that is unrelated to § 240.117(e) (e.g., non-compliance with throttle modulation or train handling procedures, or any other performance deficiencies), it lacks authority under part 240 to take any action whatsoever. Further, on a railroad where engineers are unionized, available disciplinary options are subject to whatever constraints are imposed by the applicable collective bargaining agreement.

Commenters also suggested that 49 CFR 240.129 should include the following changes: (i) The use of simulators should be limited to training only, and using simulators for either testing or monitoring purposes should be explicitly prohibited; (ii) only a DSLE who is qualified on the physical characteristics of the territory over which a test is being conducted— and on the equipment used in the test— should be empowered to make a finding that could have adverse consequences under 49 CFR 240.127 and 49 CFR 240.129; and (iii) where movable banners, barricades or flags are used, the banner/board must, at a minimum, meet the standards for rear end marking devices as prescribed by 49 CFR part 221.

FRA's Response

As discussed in section D above, the NPRM attempted to balance the need to provide railroads with flexibility to handle deficiencies appropriately with the need to make the process transparent. FRA believes that transparency will help prevent railroads from developing processes for handling deficiencies that again result in unanticipated consequences.

While the remaining comments regarding § 240.129 are beyond the scope of the NPRM and FRA declines to address them in detail, FRA would like to clarify the comments regarding the interaction between § 240.129 and § 240.117(e). Although a railroad may not revoke a certificate for deficiencies not covered by § 240.117(e), a railroad may place restrictions on the certificate pursuant to § 240.107(d). *See* preceding discussion in section II.B. above.

F. Scoring Systems

In the NPRM, FRA sought comments as to whether it should require the railroads to explain the scoring system they use to determine whether a person passes or fails a skills test or operational monitoring ride.

Reaction to the NPRM

Some commenters suggested that railroad scoring systems should be published in detail and subject to FRA approval. Another commenter advocated against requiring railroads to explain their scoring systems. According to that commenter, FRA lacks evidence of a problem with the railroads' assessment of engineer performance and there are no allegations that railroads are falling short in efforts to ascertain whether engineers are capable of performing safely. Further, the commenter suggested that there is no safety basis for interfering in railroads' decisions on how to construct their scoring systems nor is there an indication of the criteria FRA would use in deciding whether the scoring systems are adequate.

FRA's Response

As discussed in the NPRM, FRA is aware of concerns raised by locomotive engineers that they have no way of knowing why and how they failed a skills test or monitoring ride. Further, FRA is aware that at least one railroad has, in the past, deducted points on a performance skills test for non-safety related items that should not have been counted towards the engineer's evaluation score. Thus, FRA continues to believe that requiring railroads to explain their scoring systems will have the benefit of ensuring that the scoring criteria are transparent and the pass/fail determinations are arrived at consistently throughout the railroad. FRA believes that transparency will help prevent railroads from developing part 240-required tests that include items that should not be scored (*e.g.,* fuel conservation, meets schedule, etc.) and will assist FRA in determining how the tests are scored.

G. Material Modifications

As part of its proposal to require the railroads to update their programs to indicate the action they will take in the event that a person fails a part 240.127 skills test or a railroad finds deficiencies with a locomotive engineer's performance during a part 240.129 observation or test, FRA indicated that it would not consider the program updates to be material modifications pursuant to 49 CFR 240.103(e). *See* 73 FR 80349, 80353 (December 31, 2008).

Reaction to the NPRM

Some commenters suggested that the updates should be considered material modifications pursuant to 240.103(e) but did not articulate a legal basis for doing so. Another commenter suggested that deeming the updates to be material modifications would deny the railroads the flexibility they need to address test failures and performance deficiencies since the proposal would, according to the commenter, prohibit railroads from adopting new approaches to failures unless the changes were reflected in their certification programs.

FRA's Response

Based on its review of the comments and 49 CFR part 240, FRA does not consider any of the program updates required by the amendments to 49 CFR 240.127 and 240.129 to be material modifications pursuant to 49 CFR 240.103(e). FRA expects that each railroad will not have to develop a new scoring system or process to handle test failures or deficiencies but will simply document the previously implemented system or process in its program.

H. Additional Issues (Elimination of Phase-In Dates, etc.)

FRA proposed to: (i) Eliminate the implementation and phase-in dates listed throughout part 240 and any section or section heading that references those dates; delete §§ 240.117(i) and (j); (ii) revise the language in part 240 containing references to various provisions in 49 CFR part 232 (*see, e.g.,* §§ 240.117(e)(3) and 240.309(e)(3)) in order to make them consistent with the language in part 232; (iii) revise the term ''annually monitored'' in § 240.129(c)(2) to read ''monitored each calendar year''; (iv) amend §§ 240.129(e) and 240.303(d) in order to make them consistent with guidance provided by FRA in Memorandum OP–04–13 (February 3, 2004); (v) delete the reference to §§ 240.203(a)(1)–(3) in the penalty schedule and revise §§ 240.203(b) and (c) in the penalty schedule to reference paragraphs (a) and (b); (vi) amend the reference to subsection (d) in the current penalty schedule for § 240.205 to read (b); (vii) amend the reference to § 240.15 in § 240.307(j) to read § 240.215; (viii) amend the reference to 49 CFR 218.5(f) in § 240.7 (subsection (1) of the definition of ''*locomotive engineer*'') to read 49 CFR 218.5; (ix) amend the reference to paragraph (c) in § 240.203(a) to read paragraph (b); and (x) delete the last paragraph of Appendix D to part 240 which begins ''Although the number of state agencies * * *.''

Reaction to the NPRM

The only comments received by FRA on these proposals supported their implementation.

FRA's Response

Since FRA did not receive any comments objecting to the proposed amendments and because FRA sees no reason to change its approach, they will be adopted in this final rule as proposed in the NPRM.

I. Other Comments

In addition to the comments discussed above, FRA received comments espousing interpretations of various provision of part 240 and commenting on part 240's appellate procedures. For example, one comment suggested that part 240 does not permit a railroad to rely upon past revocable offenses as a basis for denial of recertification. Another comment stated that the appellate procedures in subpart E of Part 240 are unwieldy and too time consuming. Since these comments are beyond the scope of the NPRM, FRA need not address them in this rulemaking. However, FRA notes that it is developing recommendations for implementing the Rail Safety Improvement Act mandate for certification of train conductors and is participating in a Railroad Safety Advisory Committee Working Group concerning the certification of train conductors. Based on that rulemaking, FRA expects that Part 240 will be reviewed and possibly amended in light of the provisions in the conductor certification rule. The comments that are beyond the scope of this rulemaking might be more properly addressed during that process.

III. Section-by-Section Analysis

Section 240.107 Criteria for Designation of Classes of Service

FRA is amending this section by adding a new paragraph (e) that prohibits a railroad from reclassifying the certification of any type of certified engineer to a more restrictive class of certificate or to a student engineer certificate during the period in which the certification is otherwise valid. Although reclassification has been referred to by different names by various parties (*e.g.,* demotion, diminution in the quality of a license, etc.), the practice that FRA is prohibiting is the taking of any type of locomotive engineer certificate, during the period in which the certificate is valid, and replacing it with a more restrictive class of certificate or a student engineer certificate based on deficiencies found during operational evaluations and skills tests that do not require revocation of an engineer's certification under §§ 240.117(e) or 240.119(c).

Although FRA has previously interpreted the plain language of the regulation to permit reclassification, the unanticipated consequences of that practice necessitate its prohibition. As explained in the NPRM, the effect of the reclassification policy used by one Class I railroad has been to require some engineers to exchange their train service certificates for student engineer certificates without an opportunity for review of the reclassification decision. An engineer who is reclassified to a student could find it more difficult to be certified by another U.S. railroad than an engineer who has not been reclassified. Further, there is significant room for abuse in a system that allows reclassification based on the somewhat subjective scoring of a skills performance test. Thus, FRA is prohibiting railroads from requiring an engineer to exchange his or her train service or locomotive servicing certification for a more restrictive class of certificate or a student engineer certificate during the period in which the certification is otherwise valid.

While this rule prohibits the practice of reclassification, it does not prevent the railroads from continuing to pursue other measures to ensure the safe operation of locomotives. For example, the rule does not prevent a railroad from placing restrictions on a certificate pursuant to § 240.107(d). It should be noted, however, that while § 240.107(d) permits a railroad to place restrictions on a certificate; restrictions are applied and reviewed in accordance with internal railroad rules, procedures and processes. Part 240 does not govern the issuance or review of restrictions; that is a matter handled under a railroad's internal discipline system or collective bargaining agreement.

This rule also does not prevent a railroad from suspending or revoking a certificate pursuant to § 240.307 for violation of one of the provisions contained in § 240.117(e), or prohibiting

a person from operating a locomotive as a train service or locomotive servicing engineer pursuant to § 240.211(c). Further, this rule does not prevent a railroad from offering an engineer the opportunity to work for the railroad in any other capacity provided that the railroad does not reclassify the engineer's certificate. For example, CBAs often contain a provision by which the parties agree to permit flowback from an engineer job to another railroad job if a locomotive engineer should somehow become ineligible to operate locomotives or trains. As FRA has previously clarified, part 240 is not intended to create or prohibit flowback. *See* § 240.5(e) and 64 FR 60966, 60975 (November 8, 1999).

This rule does not convert part 240's locomotive engineer certification system into a licensing system. Although some parties have referred to the practice of reclassification as a ''diminution in the quality of a license,'' a certificate is not a license and this rule does not convert a locomotive engineer certificate issued in accordance with part 240 into a license. Indeed, in adopting a certification system (*i.e.,* FRA sets eligibility criteria but leaves it to the railroads to evaluate candidates by those standards) rather than a traditional licensing system (*i.e.,* a government agency sets eligibility criteria and evaluates candidates), FRA noted that part 240 ''afford railroads considerable discretion'' in the daily administration of their certification program but ''FRA bears responsibility for the manner in which the railroads exercise that discretion, since the performance of the railroads'' under part 240 will determine whether their safety purposes are fulfilled. *See* 56 FR 28228, 28229–28230 (June 19, 1991). This rule continues that relationship.

Section 240.127 Criteria for Examining Skill Performance

This section is amended to require each railroad to indicate the types of actions it will take, beyond what is required by § 240.211(c), in the event that a person fails a skills performance test. In addition, this section is amended to require each railroad to describe the scoring system it will use during a skills performance test administered in accordance with the procedures required under § 240.211, including a description of the skills to be tested and the weight or possible score that each skill will be given.

Pursuant to § 240.101 and § 240.103, each railroad's written certification program, including its procedures for skill performance testing under § 240.127 and monitoring operational performance under § 240.129, is subject to FRA approval. That approval process, in connection with this rule, will permit FRA an opportunity to ensure that each railroad is handling skills test failures in accordance with the intent and spirit of the regulation. The rule will also compel each railroad to carefully consider the process by which it will handle skill test failures and demonstrate to FRA that it is dealing with its engineers in an objective manner. Moreover, requiring a railroad to explain its scoring system will likely have the benefit of ensuring that the scoring criteria are transparent and that pass/fail determinations are arrived at consistently throughout the railroad.

Although a railroad will be required to update its certification program under this rule, FRA does not consider the updates to be material modifications pursuant to § 240.103(e). Of course, FRA may find issues during a review or audit of the updated certification program and will address those issues with the railroad at that time.

Section 240.129 Criteria for Monitoring Operational Performance of Certified Engineers

This section is amended to require railroads to indicate the types of actions they will take in the event they find deficiencies with an engineer's performance during an operational monitoring observation or unannounced compliance test. In addition, this section is amended to require each railroad to describe the scoring system it will use during an operational monitoring observation or unannounced compliance test administered in accordance with the procedures required under § 240.303.

As explained in the NPRM, FRA believes it is up to each railroad to decide the appropriate action to take in light of various factors, including collective bargaining agreements. Further, FRA has found that the vast majority of railroads have adequate policies to deal with deficiencies with an engineer's performance and have handled them appropriately for many years. For a discussion of the benefits of this amendment and actions railroads may want to consider taking in the event they find deficiencies with an engineer's performance, see FRA's Response in Section II.D. of the preamble to this rule.

Although a railroad will be required to update its certification program under this rule, FRA does not consider the updates to be material modifications pursuant to § 240.103(e). Of course, FRA may find issues during a review or audit of the updated certification program and will address those issues with the railroad at that time.

Section 240.307 Revocation of Certification

This section is amended to clarify and ensure that railroads understand that they may revoke an engineer's certificate only for that conduct specifically identified in § 240.117(e) or § 240.119(c). FRA has been informed by at least one Class I railroad that it believes § 240.307 could be read to allow revocation for deficiencies other than those specified in § 240.117(e) or § 240.119(c). This rule makes clear that such an interpretation is incorrect and contravenes the intent and purpose of part 240 when it was issued.

IV. Regulatory Impact and Notices

1. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing policies and procedures, and determined to be non-significant under both Executive Order 12866 and DOT policies and procedures. *See* 44 FR 11034 (February 26, 1979). FRA has prepared and placed in Docket No. FRA–2008–0091 a Regulatory Evaluation addressing the economic impact of this rule. Document inspection and copying facilities are available at the DOT Central Docket Management Facility located in Room W12–140 on the Ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590. Docket material is also available for inspection electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at the Office of Chief Counsel, RCC–10, Mail Stop 10, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; please refer to Docket No. FRA–2008–0091.

In this final rule, FRA is clarifying and/or amending certain sections of its existing regulation pertaining to the qualification and certification of locomotive engineers. Costs that may be incurred due to the rule are presented below. The revision or amendments to a railroad's certification program will not need to be submitted to FRA, but must be available to present to FRA upon request. The table below presents the estimated 20-year monetary costs associated with the final rule, at discount rates of 3 percent and 7 percent.

TOTAL 20-YEAR COSTS

Revisions (Update) to engineer certification programs	$362,088.00
Description of program scoring systems	362,088.00
Total Burden	724,176.00
Total 20-Year Costs (Discounted at 3%)	703,083.50
Total 20-Year Costs (Discounted at 7%)	676,800.00

This analysis determines that over a 20-year period the discounted costs will be approximately $703,084 when discounted at 3%, and $676,800 when discounted at 7%.

The benefits that will accrue cannot be expressed in monetary terms; however, FRA is confident that such benefits will meet or exceed the costs associated with implementation of the final rule. The main benefit of this final rule is that railroads will no longer be able to use this regulation in a manner not contemplated by FRA. FRA also anticipates benefits flowing from a more precise and complete regulation. Benefits resulting from this final rule are process improvements that assist FRA in working with a railroad to resolve problems associated with the engineer certification program. The final rule works with railroad carriers' needs and operating environments to produce a regulatory scheme that is economically efficient while providing FRA oversight. Savings, that have not been quantified, would accrue from the consolidated provisions of the rule and the clarification of the railroads' certification programs.

2. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 13272 (67 FR 53461, August 16, 2002) require agency review of proposed and final rules to assess their impact on small entities. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), FRA has prepared and placed in the docket a Certification Statement that assesses the small entity impact of this rule, and certifies that this final rule is not expected to have a significant economic impact on a substantial number of small entities.

Document inspection and copying facilities are available at the DOT Central Docket Management Facility located in Room W12–140 on the Ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590. Docket material is also available for inspection electronically through the Federal eRulemaking Portal at *http://www.regulations.gov*. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at the Office of Chief Counsel, RCC–10, Mail Stop 10, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; please refer to Docket No. FRA–2008–0091.

The U.S. Small Business Administration (SBA) stipulates in its ''Size Standards'' that the largest a railroad business firm that is ''for-profit'' may be, and still be classified as a ''small entity,'' is 1,500 employees for ''Line-Haul Operating Railroads,'' and 500 employees for ''Switching and Terminal Establishments.'' ''Small entity'' is defined in the Act as a small business that is not independently owned and operated, and is not dominant in its field of operation. SBA's ''Size Standards'' may be altered by Federal agencies after consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final policy that formally establishes ''small entities'' as railroads which meet the line haulage revenue requirements of a Class III railroad. The revenue requirements are currently $20 million or less in annual operating revenue. The $20 million limit (which is adjusted by applying the railroad revenue deflator adjustment) is based on the Surface Transportation Board's threshold for a Class III railroad carrier. FRA uses the same revenue dollar limit to determine whether a railroad or shipper or contractor is a small entity.

There are approximately 733 railroads that would be affected by this regulation. Of this number, approximately 687, or 94 percent, are small entities. Although this regulation affects a substantial number of small entities, FRA does not anticipate that this regulation would impose a significant economic impact on a substantial number of small entities.

The factual basis for the certification that this final rule will not have a significant economic impact on a substantial number of small entities, is that the average net cost incurred by each of the small railroads due to this regulation will be approximately $752 (not discounted). Also, each of the affected small railroads will only incur these average costs during the first year of implementation of the regulation. This is far less than one percent of the annual average revenue for small (local) railroads (approximately $4.0 million[1] in 2007 (not discounted) per small railroad).Accordingly, FRA does not consider this impact to be significant. Nor does FRA anticipate that this regulation would result in long-term or short-term insolvency for any small railroad.

FRA invited comments from all interested parties on this Certification at the NPRM stage of the rulemaking. FRA particularly encouraged small entities that could potentially be impacted by the proposed amendments to participate in the public comment process by submitting comments on this assessment or this rulemaking to the official US DOT docket. Although comments were received pertaining to this rulemaking effort, no comments were received that specifically and directly addressed this Certification. With the absence of comments specifically addressing The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 13272, FRA will adhere to originally presented Certification that accompanied the NPRM. The Certification basis remains unchanged for the final rule.

3. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements are duly designated, and the estimated time to fulfill each requirement is as follows:

CFR section/subject	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
240.9—Waivers—Petitions for Waiver	733 railroads	3 petitions	1 hour	3 hours.
240.101/103—Certification Program: Written Program for Certifying Qualifications of Locomotive Engineers—Amendments.	733 railroads	50 amend. prog.	1 hour	50 hours.

[1] ''Railroad Facts'', Association of American Railroads, 2008 Edition, p.3. CALCULATION: [$2.1 billion/523 local (Class III) = $4.01 million (average revenue)]

CFR section/subject	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—Certification Programs for New Railroads	20 railroads	20 new prog.	40 hours	800 hours.
—New Railroads Final Review and Submission of Certification Program.	20 railroads	20 reviews	1 hour	20 hours.
—Material Modifications to Approved Prog.	733 railroads	30 mod. prog.	45 minutes	23 hours.
240.105—Selection Criteria For Designated Supervisors of Locomotive Engineers (DSLEs)—Examinations of DSLEs.	733 railroads	50 exams	1 hour	50 hours.
—Written Report by Railroad Chief Operating Officer of Testing of DSLE.	10 railroads	10 reports	1 hour	10 hours.
240.109—Candidate's Review and Written Comments on Prior Safety Conduct Data.	17,667 candidates	25 responses	1 hour	25 hours.
240.111—Request for State Driving Data and National Driver Register Data—Driver's License Data Requests.	17,667 candidates	17,667 requests	15 minutes	4,417 hours.
—National Driver Register Data: Notification by Railroad to Employees of Matches and Employee Requests to State Agency for Relevant Data.	733 railroads	177 notific. + 177 requests.	15 minutes	89 hours.
—Written Responses from Candidate on Driver's License Data.	733 railroads	20 comments	15 minutes	5 hours.
—Notice to Railroad of Absence of License	53,000 candidates	4 letters	15 minutes	1 hour.
—Individual Duty to Furnish Data on Prior Conduct as Motor Vehicle Operator—Ph. Calls.	733 railroads	200 calls	10 minutes	33 hours.
240.113—Individual Duty to Furnish Data on Prior Safety Conduct as an Employee of A Different Railroad—Requests to Former Employing Railroad of Service Record and Railroad Responses.	17,667 candidates	353 requests + 353 resp..	15 min.; 30 min.	265 hours.
240.119—Employee Self-Referral to EAP Counselor for Substance Abuse Disorder.	53,000 locomotive engineers.	50 self-referrals	5 minutes	4 hours.
240.121—Criteria—Hearing/Vision Acuity: Subsequent Years—Copies of Part 240 Appendix F to RR Medical Examiner.	20 new railroads	20 copies	15 min	5 hours.
—Medical Examiner Consultation with DSLE to Issue Conditional Certification Report.	733 railroads	20 reports	1 hour	20 hours.
—Notification—Hearing/Vision Change by Certified Engineer to Railroad.	733 railroads	10 notific.	15 minutes	3 hours.
New Requirements:				
240.127/129 Criteria for Examining Skill Performance/Operational Perf.—Revision of RR Certification Programs Engineer's Failures/Deficiencies and Scoring System.	733 railroads	46 amended programs + 687 amended prog..	48 hours + 8 hour	7,704 hours.
240.201/221/223/301—List of DSLEs	733 railroads	733 updates	60 minutes	733 hours.
—List of Design. Qual. Locomotive Engineers	733 railroads	733 updates	60 minutes	733 hours.
240.201/217/223/301—Locomotive Engineers Certificate.	53,000 candidates	17,667 cert	5 minutes	1,472 hours.
240.205—Data to EAP Counselor and Furnishing of Records by Employee.	733 railroads	177 records	5 minutes	15 hours.
240.207—Medical Certificate on Hearing/Vision Acuity—Tests and Certificate Issuance.	53,000 candidates	17,667 cert	70 minutes	20,612 hours.
—Written Determination by Medical Examiner Waiving Necessity of Wearing Hearing/Vision Corrective Device.	733 railroads	10 determin	2 hours	20 hours.
240.219—Denial of Certification—Notification to Employee of Adverse Information and Employee Response.	17,667 candidates	30 letters + 30 responses.	1 hour	60 hours
—Notification of Adverse Decision	733 railroads	30 notific.	1 hour	30 hours.
240.229—Requirements for Joint Operations Territory—Notification by Engineer of Non-Qualification to Operate Train on Track Segment.	321 railroads	184 calls	5 minutes	15 hours.
240.309—Railroad Oversight Responsibilities—Instances of Identified Poor Safety Conduct.	15 railroads	6 annotations	15 minutes	2 hours.
TESTING REQUIREMENTS:				
240.209/213—Written Test	53,000 candidates	17,667 tests	2 hours	35,334 hours.
240.211/213—Performance Test	53,000 candidates	17,667 tests	2 hours	35,334 hours.
240.303—Annual Op. Monit. Obs. Test	53,000 candidates	53,000 tests	2 hours	106,000 hrs.
—Annual Operating Rules Compliance Test	53,000 candidates	53,000 tests	1 hour	53,000 hours.
RECORDKEEPING REQUIREMENTS:				
240.215—Recordkeeping—Certification of Locomotive Engineers.	733 railroads	17,667 record	30 minutes	8,834 hours.

CFR section/subject	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
240.305—Engineer's Non-Qualification Notice.	53,000 candidates	100 notific	5 minutes	8 hours.
—Engineer's Notice to RR—Loss of Qualification.	1,060 candidates	2 letters	30 minutes	1 hour.
240.307—Notice to Engineer of Disqualification	733 railroads	900 notific. letters	1 hour	900 hours.
240.309—Railroad Oversight Responsibilities	51 railroads	51 reviews	40 hours	2,040 hours.
—Performance of Annual Reviews/Analysis	51 railroads	12 reports	1 hour	12 hours.
—Railroad Report of Findings.				

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. For information or a copy of the paperwork package submitted to OMB, contact Robert Brogan at 202–493–6292 or Kimberly Toone at 202–493–6132.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: FRA Desk Officer. Comments may also be sent via e-mail to the Office of Management and Budget at the following address: *oira_submissions@omb.eop.gov.*

OMB is required to make a decision concerning the collection of information requirements contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

FRA cannot impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of this final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

4. Federalism Implications

Executive Order 13132, ''Federalism'' (64 FR 43255, Aug. 10, 1999), requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are 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.'' Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. This rule will not have a substantial effect on the States or their political subdivisions; it will not impose any compliance costs; and it will not affect the relationships between the Federal government and the States or their political subdivisions, or the distribution of power and responsibilities among the various levels of government. Consequently, FRA concludes that this rule has no federalism implications.

5. International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

This rule is purely domestic in nature and is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

6. Environmental Impact

FRA has evaluated this rule in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this rule is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. *See* 64 FR 28547 (May 26, 1999). Section 4(c)(20) reads as follows:

(c) Actions categorically excluded. Certain classes of FRA actions have been determined to be categorically excluded from the requirements of these Procedures as they do not individually or cumulatively have a significant effect on the human environment.

* * * * *

The following classes of FRA actions are categorically excluded:

* * * * *

(20) Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions or air or water pollutants or noise or increased traffic congestion in any mode of transportation.

In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this rule is not a major Federal action significantly affecting the quality of the human environment.

7. Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the

private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $141,300,000 or more in any one year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. This final rule will not result in the expenditure, in the aggregate, of $141,300,000 or more in any one year, and thus preparation of such a statement is not required.

8. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355 (May 22, 2001). Under the Executive Order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this rule in accordance with Executive Order 13211. FRA has determined that this rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this rule is not a ''significant energy action'' within the meaning of Executive Order 13211.

9. Privacy Act

Anyone is able to search the electronic form of all comments or petitions for reconsideration received into any agency docket by the name of the individual submitting the comment or petition for reconsideration (or signing the comment or petition for reconsideration, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://www.regulations.gov/search/footer/privacyanduse.jsp.*

List of Subjects in 49 CFR Part 240

Administrative practice and procedure, Penalties, Railroad employees, Railroad operating procedures, Railroad safety, Reporting and recordkeeping requirements.

The Rule

■ For the reasons discussed in the preamble, FRA amends Part 240 of chapter II, subtitle B of title 49 of the Code of Federal Regulations as follows:

PART 240—[AMENDED]

■ 1. The authority citation for part 240 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20135, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49.

■ 2. Section 240.7 is amended by revising paragraph (1) of the definition of ''*Locomotive engineer*'' to read as follows:

§ 240.7 Definitions.

* * * * *

Locomotive engineer * * *

(1) A person who moves a locomotive or group of locomotives within the confines of a locomotive repair or servicing area as provided for in 49 CFR 218.5 and 218.29(a)(1); or

* * * * *

■ 3. Section 240.101 is amended by revising paragraphs (a), (b) and (c) introductory text to read as follows:

§ 240.101 Certification program required.

(a) Each railroad subject to this part shall have in effect a written program for certifying the qualifications of locomotive engineers.

(b) Each railroad shall have such a program in effect prior to commencing operations.

(c) Each railroad shall have a certification program approved in accordance with § 240.103 that includes:

* * * * *

■ 4. Section 240.107 is amended by adding a new paragraph (e) to read as follows:

§ 240.107 Criteria for designation of classes of service.

* * * * *

(e) A railroad shall not reclassify the certification of any type of certified engineer to a more restrictive class of certificate or a student engineer certificate during the period in which the certification is otherwise valid.

■ 5. Section 240.109 is amended by revising paragraph (e) to read as follows:

§ 240.109 General criteria for eligibility based on prior safety conduct.

* * * * *

(e) When evaluating a person's motor vehicle driving record or a person's railroad employment record, a railroad shall not consider information concerning motor vehicle driving incidents or prior railroad safety conduct that occurred at a time other than that specifically provided for in § 240.115, § 240.117 or § 240.119 of this subpart.

* * * * *

■ 6. Section 240.111 is amended by revising paragraph (a) introductory text to read as follows:

§ 240.111 Individual's duty to furnish data on prior safety conduct as motor vehicle operator.

(a) Except for persons covered by § 240.109(h), each person seeking certification or recertification under this part shall, within 366 days preceding the date of the railroad's decision on certification or recertification:

* * * * *

■ 7. Section 240.113 is amended by revising paragraph (a) introductory text to read as follows:

§ 240.113 Individual's duty to furnish data on prior safety conduct as an employee of a different railroad.

(a) Except for persons covered by § 240.109(h), each person seeking certification under this part shall, within 366 days preceding the date of the railroad's decision on certification or recertification:

* * * * *

■ 8. Section 240.117 is amended by revising paragraph (e)(3) and by removing paragraphs (g)(4), (i), and (j) to read as follows:

§ 240.117 Criteria for consideration of operating rules compliance data.

* * * * *

(e) * * *

(3) Failure to adhere to procedures for the safe use of train or engine brakes when the procedures are required for compliance with the Class I, Class IA, Class II, Class III, or transfer train brake test provisions of 49 CFR part 232 or when the procedures are required for compliance with the Class I, Class IA, Class II, or running brake test provisions of 49 CFR part 238;

* * * * *

■ 9. Section 240.127 is amended by adding new paragraphs (e) and (f) to read as follows:

§ 240.127 Criteria for examining skill performance.

* * * * *

(e) Each railroad's program shall indicate the types of actions the railroad will take in the event that a person fails an initial examination or a reexamination of his or her performance skills in accordance with the procedures required under § 240.211.

(f) Each railroad's program shall describe the scoring system used by the railroad during a skills test administered in accordance with the procedures required under § 240.211. The description shall include the skills to be tested and the weight or possible score that each skill will be given.

■ 10. Section 240.129 is amended by revising paragraphs (c)(2) and (e) and adding new paragraphs (f) and (g) to read as follows:

§ 240.129 Criteria for monitoring operational performance of certified engineers.

* * * * *

(c) * * *

(2) Be designed so that each engineer shall be monitored each calendar year by a Designated Supervisor of Locomotive Engineers, who does not need to be qualified on the physical characteristics of the territory over which the operational performance monitoring will be conducted;

* * * * *

(e) The testing and examination procedures selected by the railroad for the conduct of a monitoring program shall be:

(1) Designed so that each locomotive engineer shall be given at least one unannounced test each calendar year;

(2) Designed to test:

(i) Engineer compliance with provisions of the railroad's operating rules that require response to signals that display less than a ''clear'' aspect, if the railroad operates with a signal system that must comply with part 236 of this chapter;

(ii) Engineer compliance with provisions of the railroad's operating rules, timetable or other mandatory directives that require affirmative response by the locomotive engineer to less favorable conditions than that which existed prior to initiation of the test; or

(iii) Engineer compliance with provisions of the railroad's operating rules, timetable or other mandatory directives violation of which by engineers were cited by the railroad as the cause of train accidents or train incidents in accident reports filed in compliance with part 225 of this chapter in the preceding calendar year;

(3) Designed so that the administration of these tests is effectively distributed throughout whatever portion of a 24-hour day that the railroad conducts its operations; and

(4) Designed so that individual tests are administered without prior notice to the engineer being tested.

(f) Each railroad's program shall indicate the types of actions the railroad will take in the event that it finds deficiencies with a locomotive engineer's performance during an operational monitoring observation or unannounced compliance test administered in accordance with the procedures required under § 240.303.

(g) Each railroad's program shall describe the scoring system used by the railroad during an operational monitoring observation or unannounced compliance test administered in accordance with the procedures required under § 240.303.

■ 11. Section 240.201 is revised to read as follows:

§ 240.201 Implementation.

(a) Each railroad shall designate in writing any person(s) it deems qualified as a designated supervisor of locomotive engineers. Each person so designated shall have demonstrated to the railroad through training, testing or prior experience that he or she has the knowledge, skills, and ability to be a designated supervisor of locomotive engineers.

(b) Each railroad shall designate in writing all persons that it will deem to be qualified as certified locomotive engineers for the purpose of initial compliance with paragraph (d) of this section, except as provided for in paragraph (h) of this section.

(1) Each person so designated shall have demonstrated to the railroad through training, testing or prior experience that he or she has the knowledge and skills to be a certified locomotive engineer.

(2) Each railroad shall issue a certificate that complies with § 240.223 to each person that it designates as qualified under the provisions of paragraph (b) of this section.

(c) No railroad shall permit or require a person, designated as qualified for certification under the provisions of paragraph (b) of this section, to perform service as a certified locomotive or train service engineer for more than a 36-month period unless that person has been determined to be qualified in accordance with procedures that comply with subpart C.

(d) No railroad shall permit or require any person to operate a locomotive in any class of locomotive or train service unless that person has been certified as a qualified locomotive engineer and issued a certificate that complies with § 240.223.

(e) No Class I railroad (including the National Railroad Passenger Corporation) or railroad providing commuter service shall designate any person it deems qualified as a designated supervisor of locomotive engineers or initially certify or recertify a person as a locomotive engineer in either locomotive or train service unless that person has been tested, evaluated, and determined to be qualified in accordance with procedures that comply with subpart C.

(f) No Class II railroad shall designate any person it deems qualified as a designated supervisor of locomotive engineers or initially certify or recertify a person as a locomotive engineer in any class of locomotive or train service unless that person has been tested, evaluated and determined to be qualified in accordance with procedures that comply with subpart C.

(g) No Class III railroad (including a switching and terminal or other railroad not otherwise classified) shall designate any person it deems qualified as a designated supervisor of locomotive engineers or initially certify or recertify a person as a locomotive engineer in any class of locomotive or train service unless that person has been tested, evaluated and determined to be qualified in accordance with procedures that comply with subpart C.

(h) Each person designated as a locomotive engineer shall be issued a certificate that complies with § 240.223 prior to being required or permitted to operate a locomotive.

■ 12. Section 240.203 is amended by revising paragraph (a) introductory text to read as follows:

§ 240.203 Determinations required as a prerequisite to certification.

(a) Except as provided in paragraph (b), each railroad, prior to initially certifying or recertifying any person as an engineer for any class of service, shall, in accordance with its FRA-approved program determine in writing that:

* * * * *

■ 13. Section 240.205 is amended by revising paragraph (a) to read as follows:

§ 240.205 Procedures for determining eligibility based on prior safety conduct.

(a) Each railroad, prior to initially certifying or recertifying any person as an engineer for any class of service, shall determine that the person meets the eligibility requirements of § 240.115 involving prior conduct as a motor vehicle operator, § 240.117 involving prior conduct as a railroad worker, and § 240.119 involving substance abuse disorders and alcohol/drug rules compliance.

* * * * *

■ 14. Section 240.207 is amended by revising paragraph (a) to read as follows:

§ 240.207 Procedures for making the determination on vision and hearing acuity.

(a) Each railroad, prior to initially certifying or recertifying any person as an engineer for any class of service, shall determine that the person meets the standards for visual acuity and hearing acuity prescribed in § 240.121.

* * * * *

■ 15. Section 240.209 is amended by revising paragraph (a) to read as follows:

§ 240.209 Procedures for making the determination on knowledge.

(a) Each railroad, prior to initially certifying or recertifying any person as an engineer for any class of train or locomotive service, shall determine that the person has, in accordance with the requirements of § 240.125 of this part, demonstrated sufficient knowledge of the railroad's rules and practices for the safe operation of trains.

* * * * *

■ 16. Section 240.211 is amended by revising paragraph (a) to read as follows:

§ 240.211 Procedures for making the determination on performance skills.

(a) Each railroad, prior to initially certifying or recertifying any person as an engineer for any class of train or locomotive service, shall determine that the person has demonstrated, in accordance with the requirements of § 240.127 of this part, the skills to safely operate locomotives or locomotives and trains, including the proper application of the railroad's rules and practices for the safe operation of locomotives or trains, in the most demanding class or type of service that the person will be permitted to perform.

* * * * *

■ 17. Section 240.213 is amended by revising paragraph (a) to read as follows:

§ 240.213 Procedures for making the determination on completion of training program.

(a) Each railroad, prior to the initial issuance of a certificate to any person as a train or locomotive service engineer, shall determine that the person has, in accordance with the requirements of § 240.123 of this part, the knowledge and skills to safely operate a locomotive or train in the most demanding class or type of service that the person will be permitted to perform.

* * * * *

■ 18. Section 240.215 is amended by revising paragraph (a) to read as follows:

§ 240.215 Retaining information supporting determinations.

(a) A railroad that issues, denies, or revokes a certificate after making the determinations required under § 240.203 shall maintain a record for each certified engineer or applicant for certification that contains the information the railroad relied on in making the determinations.

* * * * *

■ 19. Section 240.217 is amended by revising paragraph (a) introductory text to read as follows:

§ 240.217 Time limitations for making determinations.

(a) A railroad shall not certify or recertify a person as a qualified locomotive engineer in any class of train or engine service, if the railroad is making:

* * * * *

■ 20. Section 240.221 is amended by revising paragraphs (a) and (b) to read as follows:

§ 240.221 Identification of qualified persons.

(a) A railroad shall maintain a written record identifying each person designated by it as a supervisor of locomotive engineers.

(b) A railroad shall maintain a written record identifying each person designated as a certified locomotive engineer. That listing of certified engineers shall indicate the class of service the railroad determines each person is qualified to perform and date of the railroad's certification decision.

* * * * *

■ 21. Section 240.225 is amended by revising paragraph (a) introductory text to read as follows:

§ 240.225 Reliance on qualification determinations made by other railroads.

(a) A railroad that is considering certification of a person as a qualified engineer may rely on determinations made by another railroad concerning that person's qualifications. The railroad's certification program shall address how the railroad will administer the training of previously uncertified engineers with extensive operating experience or previously certified engineers who have had their certification expire. If a railroad's certification program fails to specify how to train a previously certified engineer hired from another railroad, then the railroad shall require the newly hired engineer to take the hiring railroad's entire training program. A railroad relying on another's certification shall determine that:

* * * * *

■ 22. Section 240.303 is amended by revising paragraphs (a) and (d) to read as follows:

§ 240.303 Operational monitoring requirements.

(a) Each railroad to which this part applies shall, prior to FRA approval of its program in accordance with § 240.201, have a program to monitor the conduct of its certified locomotive engineers by performing both operational monitoring observations and by conducting unannounced operating rules compliance tests.

* * * * *

(d) The unannounced test program shall:

(1) Test engineer compliance with:

(i) One or more provisions of the railroad's operating rules that require response to signals that display less than a ''clear'' aspect, if the railroad operates with a signal system that must comply with part 236 of this chapter;

(ii) One or more provisions of the railroad's operating rules, timetable or other mandatory directives that require affirmative response by the locomotive engineer to less favorable conditions than that which existed prior to initiation of the test; or

(iii) Provisions of the railroad's operating rules, timetable or other mandatory directives the violations of which by engineers were cited by the railroad as the cause of train accidents or train incidents in accident reports filed in compliance with part 225 of this chapter for the preceding year;

(2) Be conducted that so that the administration of these tests is effectively distributed throughout whatever portion of a 24-hour day that the railroad conducts its operations;

(3) Be conducted so that individual tests are administered without prior notice to the locomotive engineer being tested; and

(4) Be conducted so that the results of the test are recorded on the certificate and entered on the record established under § 240.215 within 30 days of the day the test is administered.

■ 23. Section 240.305 is amended by removing the introductory text and

revising paragraph (a)(3) to read as follows:

§ 240.305 Prohibited conduct.

(a) * * *

(3) Operate a locomotive or train without adhering to procedures for the safe use of train or engine brakes when the procedures are required for compliance with the Class I, Class IA, Class II, Class III, or transfer train brake test provisions of 49 CFR part 232 or when the procedures are required for compliance with the class 1, class 1A, class II, or running brake test provisions of 49 CFR part 238;

* * * * *

■ 24. Section 240.307 is amended by revising paragraphs (a) and (j) introductory text to read as follows:

§ 240.307 Revocation of certification.

(a) Except as provided for in § 240.119(e), a railroad that certifies or recertifies a person as a qualified locomotive engineer and, during the period that certification is valid, acquires information regarding violations of § 240.117(e) or § 240.119(c) of this chapter, which convinces the railroad that the person no longer meets the qualification requirements of this part, shall revoke the person's certificate as a qualified locomotive engineer.

* * * * *

(j) The railroad shall place the relevant information in the records maintained in compliance with § 240.309 for Class I (including the National Railroad Passenger Corporation) and Class II railroads, and § 240.215 for Class III railroads if sufficient evidence meeting the criteria provided in paragraph (i) of this section, becomes available either:

* * * * *

■ 25. Section 240.309 is amended by revising paragraphs (a) and (e)(3) to read as follows:

§ 240.309 Railroad oversight responsibilities.

(a) No later than March 31 of each year, each Class I railroad (including the National Railroad Passenger Corporation and a railroad providing commuter service) and Class II railroad shall conduct a formal annual review and analysis concerning the administration of its program for responding to detected instances of poor safety conduct by certified locomotive engineers during the prior calendar year.

* * * * *

(e) * * *

(3) Incidents involving noncompliance with the procedures for the safe use of train or engine brakes when the procedures are required for compliance with the Class I, Class IA, Class II, Class III, or transfer train brake test provisions of 49 CFR part 232 or when the procedures are required for compliance with the Class 1, Class 1A, Class II, or running brake test provisions of 49 CFR part 238;

* * * * *

Appendix A to Part 240 [Amended]

26. Appendix A to part 240–Schedule of Civil Penalties is amended by removing the entries for sections 240.203(a); redesignating the entries for sections 240.203(b) as 240.203(a); redesignating the entries for sections 240.203(c) as 240.203(b); and redesignating the entry for section 240.205(d) as 240.205(b).

27. Appendix B is amended by revising the 5th paragraph of *Section 4 of the Submission: Testing and Evaluating Persons Previously Certified* and the last paragraph of *Section 6 of the Submission: Monitoring Operational Performance by Certified Engineers* to read as follows:

Appendix B to Part 240—Procedures for Submission and Approval of Locomotive Engineer Qualification Programs

* * * * *

Section 4 of the Submission: Testing and Evaluating Persons Previously Certified

* * * * *

Section 240.127 provides a railroad latitude in selecting the design of its own testing and evaluation procedures (including the duration of the evaluation process, how each required subject matter will be covered, weighing (if any) to be given to particular subject matter response, selection of passing scores, and the manner of presenting the test information). However, the railroad must describe the scoring system used by the railroad during a skills test administered in accordance with the procedures required under § 240.211. The description shall include the skills to be tested and the weight or possible score that each skill will be given. The section should also provide information concerning the procedures which the railroad will follow that achieve the objectives described in FRA's recommended practices (*see* appendix E) for conducting skill performance testing. The section also gives a railroad the latitude to employ either a Type 1 or a Type 2 simulator (properly programmed) to conduct the test and evaluation procedure. A railroad must describe in this section how it will use that latitude to assure that its engineers will demonstrate their skills concerning the safe discharge of their train operation responsibilities so as to comply with the performance standard set forth in § 240.127.

* * * * *

Section 6 of the Submission: Monitoring Operational Performance by Certified Engineers

* * * * *

Section 240.129 requires that a railroad annually observe each locomotive engineer demonstrating his or her knowledge of the railroad's rules and practices and skill at applying those rules and practices for the safe operation of a locomotive or train. Section 240.129 directs that the observation be conducted by a designated supervisor of locomotive engineers but provides a railroad latitude in selecting the design of its own observation procedures (including the duration of the observation process, reliance on tapes that record the specifics of train operation, and the specific aspects of the engineer's performance to be covered). The section also gives a railroad the latitude to employ either a Type 1 or a Type 2 simulator (properly programmed) to conduct monitoring observations. A railroad must describe in this section how it will use that latitude to assure that the railroad is monitoring that its engineers demonstrate their skills concerning the safe discharge of their train operation responsibilities. A railroad must also describe the scoring system used by the railroad during an operational monitoring observation or unannounced compliance test administered in accordance with the procedures required under § 240.303. A railroad that intends to employ train operation event recorder tapes to comply with this monitoring requirement shall indicate in this section how it anticipates determining what person was at the controls and what signal indications or other operational constraints, if any, were applicable to the train's movement.

* * * * *

Appendix D to Part 240 [Amended]

28. Appendix D is amended by removing the last paragraph.

Issued in Washington, DC, on December 17, 2009.

Karen J. Rae,

Deputy Administrator.

[FR Doc. E9–30439 Filed 12–22–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 2009–0189]

RIN 2127–AK65

Federal Motor Vehicle Safety Standards; Designated Seating Positions

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; partial response to petitions for reconsideration.

SUMMARY: This document responds, in part, to petitions for reconsideration of an October 2008 final rule that amended

the definition of the term, ''designated seating position,'' as used in the Federal motor vehicle safety standards, to clarify which areas within the interior of a vehicle meet that definition.

The final rule made the new definition applicable to vehicles manufactured on and after September 1, 2010. The agency received petitions for reconsideration asking for additional time to comply with the new requirements. This final rule provides one additional year of lead time until the new definition is applicable.

In the regulatory text of that final rule, we included language declaring that any State requirement, including any determination under State tort law, premised on there being more designated seating positions than the number contemplated in our definition, would prevent, hinder or frustrate the accomplishment of the purposes of the Federal Motor Vehicle Safety Standards in Part 571 of this title, and thus would be preempted by this regulation. The petitions for reconsideration sought removal of this preemption language from the regulatory text. This final rule grants that request by removing the portion of the regulatory text stating that State tort law requirements are preempted.

This final rule also makes a technical correction to the regulatory text of the rule setting forth the formula for calculating the number of designated seating positions, the need for which was noted in several of the petitions for reconsideration.

The remaining issues raised in the petitions for reconsideration (clarification or change to the manner in which the number of designated seating positions in a vehicle are calculated, procedural issues regarding measuring seating surfaces, countermeasures, and other technical corrections) will be addressed in a separate notice.

DATES: The effective date of this final rule is February 22, 2010.

Petitions for reconsideration must be received not later than February 8, 2010.

ADDRESSES: Petitions must be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC, 20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may contact Chris Wiacek of the NHTSA Office of Crashworthiness Standards by telephone at (202) 366–4801, and by fax at (202) 493–2290.

For legal issues, you may contact David Jasinski of the NHTSA Office of Chief Counsel by telephone at (202) 366–2992, and by fax at (202) 366–3820.

You may send mail to both of these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Petitions for Reconsideration
III. Agency Response to Petitions for Additional Lead Time
IV. How NHTSA's Regulations May Give Rise to a Judicial Finding of Preemption
V. Agency Response to Petitions Regarding Preemption
VI. Technical Correction
VII. Rulemaking Analyses and Notices

I. Background

On October 8, 2008, we published in the **Federal Register** a final rule (October 2008 final rule) revising the definition of ''designated seating position'' (DSP), as that term is used in the Federal motor vehicle safety standards (FMVSS), and providing a calculation procedure for determining the number of seating positions at a seat location.[1] The revised definition specifies more clearly the areas within the interior of a vehicle that are regarded as being designated seating positions. The rule also established a calculation procedure for determining the number of DSPs at a seat location for trucks and multipurpose passenger vehicles with a gross vehicle weight rating less than 10,000 pounds, passenger cars, and buses.

The designation of a seating position has important safety consequences. Under the FMVSSs, motor vehicle manufacturers must meet various performance requirements for each interior location designated as a seating position. For example, FMVSS No. 208, ''Occupant crash protection,'' requires that each DSP in a light vehicle be provided with the appropriate occupant crash protection system (*e.g.,* air bag, seat belts or both). Clarity in the definition of DSP is important for the purposes of that standard because if a vehicle has fewer DSPs than the number of individuals able to sit in it, one or more of those individuals would not be protected by seat belts and/or other crash protection systems.

In the final rule, the agency stated that the revised definition of ''designated seating position'' added clarity to the existing definition and was not expected to have a substantial impact on current vehicle design. The degree to which seat design exhibited the characteristics that gave rise to the agency's concerns had lessened in the fleet. Manufacturers had either reduced the width of the seating area to more accurately reflect the intended occupancy or had provided additional DSPs.

The October 2008 final rule noted that the inclusion of auxiliary seats in the definition of ''designated seating position'' and the newly established procedure for determining the number of DSPs would require minor redesign of a small number of vehicles. To allow manufacturers the opportunity to make such redesigns, the agency provided approximately two years of lead time, such that, on September 1, 2010, all vehicles would have to comply with the new requirements.

In the preamble to the final rule, we observed that, in *Geier* v. *American Honda Motor Company, Inc.,* the Supreme Court had recognized that State requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law, could stand as an obstacle to the accomplishment and execution of some FMVSSs, and that, where such conflict occurs, the Supremacy Clause of the Constitution could make the State tort law requirements unenforceable.[2] We stated our opinion that State tort law judgments premised on there being more DSPs in a motor vehicle than the number contemplated by the definition in 49 CFR Part 571 could have a negative effect on safety because it would induce manufacturers to equip motor vehicles with an excessive number of seat belts. Because seat belt comfort and convenience (*i.e.,* ease of use) significantly affect the seat belt usage rate, we opined that the installation of an excessive number of seat belts would decrease, not increase, safety, thereby hampering our efforts to promote high seat belt use rates. To make sure that this opinion would be readily available and clear to all, in the October 2008 final rule, we included in the regulatory text of the definition of ''designated seating position'' language stating that any State law requirement, including State tort law, premised on there being more DSPs in a motor vehicle than the number contemplated by the new definition, was preempted.

II. Petitions for Reconsideration

We received ten petitions for reconsideration of the October 2008 final rule. The petitioners are SAE International (SAE), BMW North America (BMW), the Alliance of Automobile Manufacturers (Alliance), Volkswagen of America (Volkswagen), the Association of International Automobile Manufacturers (AIAM), the

[1] 73 FR 58887 (Oct. 8, 2008) (Docket No. NHTSA–2008–0059).

[2] 529 U.S. 861, 870 (2000).

American Association for Justice (AAJ), Safety Research and Strategies, Toyota Motor North America (Toyota), Mitsubishi Motors R&D of America (Mitsubishi), and Public Citizen.[3] Toyota also expressed its support for the Alliance's petition. The petitions filed by SAE International and Toyota were styled both as requests for interpretation and as petitions for reconsideration.

In this notice, we are responding to petitions by the Alliance, AIAM, Mitsubishi, and Volkswagen that sought additional lead time for implementing the new definition of ''designated seating position'' via a phase-in. The October 2008 final rule requires manufacturers to comply with the new definition for all vehicles manufactured after September 1, 2010, without a phase-in; however, each of the petitioners request that the agency move the 100 percent compliance date to September 1, 2011.

We are also responding to the issues relating to preemption. The petitions from the AAJ and Public Citizen requested removal of the language that we incorporated in the text of the final rule stating that any State requirement, including any determination under State tort law, premised on there being more DSPs than the number contemplated in the definition, was preempted. The AAJ asserted that the preemption language contradicted Congressional intent, as discerned in a November 2005 letter signed by two Senators to NHTSA's Deputy Administrator, to allow lawsuits against automobile manufacturers based on State tort law. The AAJ and Public Citizen also objected to our reliance on *Geier* v. *American Honda Motor Co.* to support our statement about preemption of state tort law. The AAJ contends that the DSP definition rulemaking was unlike the passive restraint rulemaking at issue in *Geier* because the DSP rulemaking did not stress the need for vehicle manufacturers to have different compliance options available to them.

Public Citizen disagreed with our conclusion that State tort law could frustrate the accomplishment or purposes of the DSP definition. Public Citizen argued that vehicle manufacturers are unlikely to equip a vehicle with more seat belts than are necessary. Instead, that organization contended, citing statements in our June 22, 2005 Notice of Proposed Rulemaking[4] (June 2005 NPRM) and our October 2008 final rule, that vehicle manufacturers are more likely to respond to a State tort law decision having the effect of requiring more DSPs than the number required by our October 2008 final rule by introducing void spaces or impediments between DSPs rather than designating additional seating positions and installing additional seat belts. Public Citizen also argued that, under the new DSP definition, vehicle manufacturers cannot leave an ambiguous seating surface in the middle of a bench seat, and, if these design features (voids or impediments) are sufficient to discourage excessive occupancy, then State courts would be unlikely to issue tort law judgments premised on there being more DSPs than the number contemplated in the definition. Thus, as a practical matter, no conflict with our regulations would arise.

We are also correcting a technical error. The petitions from SAE International, the Alliance, and AIAM also pointed out a technical error in the regulation setting forth the formula for calculating the number of designated seating positions. These petitions point out that 49 CFR § 571.10(b)(1) and (b)(2) each refer to ''paragraph (d),'' which does not exist, and that the reference was probably intended to refer to § 571.10(c).

Our responses to the other issues raised by the petitioners will be provided in a later notice. The petitions from SAE International, BMW, Volkswagen, AIAM, and Toyota sought clarification of or changes to the formula for determining the number of DSPs at a seat location, procedural concerns regarding measuring seating surfaces, countermeasures, and other technical corrections. The petitions from AIAM and Public Citizen challenged the adequacy of data to support the amendment of the definition of ''designated seating position.''

III. Agency Response to Petitions for Additional Lead Time

The Alliance, AIAM, Mitsubishi, and Volkswagen petitioned the agency to phase-in the requirements to provide additional lead time for some vehicles. The Alliance agreed with the agency's assessment that only a small number of vehicles in the fleet will require a redesign to comply. However, it noted that additional time is needed for non-compliant vehicles to be redesigned to the new DSP definition. Mitsubishi supported the Alliance petition and provided a suggested phase-in schedule. Volkswagen added that a number of its carlines are affected by the new requirements and a phase-in will permit a cost-effective implementation of any required changes.

The AIAM also identified that changes will need to be made in vehicles that have auxiliary seats *(i.e.,* temporary or folding seats) to comply with the FMVSSs because under the new definition, these types of seats are now considered DSPs. For example, it noted that such seats would have to be redesigned to meet the requirements of FMVSS No. 225, ''Child restraint anchorage systems,'' which it suggested would necessitate allocation of significant engineering resources and testing. The AIAM stated that these modifications would be difficult and costly to implement within two years, particularly for existing models.

In response to the petitions, the agency has decided to provide an additional year of lead time. We believe granting an extra year of lead time will address the petitioners' concerns and allow manufacturers more flexibility to allocate their resources better. We agree with the petitioners that some vehicles will need significant redesign to comply with other FMVSSs such as pickup trucks with auxiliary seats that will now have to meet FMVSS Nos. 210, ''Seat belt assembly anchorages'' and 225, ''Child restraint anchorage systems,'' requirements. For some vehicles, structural reinforcement to the vehicle's body may be needed at the attachment location for the seat belt and child restraint anchorage hardware to assure compliance with the respective standards.

We are not persuaded by the petitioners' request for a phase-in of the requirements. Based upon our prior fleet assessment, we continue to believe only a small percentage of vehicles do not comply with the new requirements. Hence, a phase-in based on a manufacturer's complying production volume would add little safety benefit. However, because some vehicles would require considerable redesign to comply with the new definition, we believe that providing an additional year of lead time is a more practical approach.

IV. How NHTSA's Regulations May Give Rise to a Judicial Finding of Preemption

Before addressing the merits of the petitions related to preemption, we review the state of the law concerning the circumstances in which our regulations may give rise to a judicial finding of preemption of State

[3] The AAJ petition was jointly filed by the AAJ, the Association of Trial Lawyers of America—New Jersey, Consumer Attorneys of California, Consumers for Auto Reliability and Safety, the New York State Trial Lawyers Association, the Pennsylvania Association for Justice, and the Washington State Trial Lawyers Association. Public Citizen's petition was filed jointly by Public Citizen and the Consumer Federation of America.

[4] See 70 FR 36094 (June 22, 2005).

requirements. First, the National Traffic and Motor Vehicle Safety Act of 1966 (Safety Act) contains a clause expressly preempting non-identical state statutes and regulations, now codified at 49 U.S.C. 30103(b)(1). This express preemption clause prevents States from enacting safety statutes or administratively issuing safety regulations that address the same aspect of performance as Federal motor vehicle safety standards issued by NHTSA, but are not identical to those Federal standards.

Second, Federal laws and regulations may be found to impliedly preempt State law in two ways. Federal law preempts State law if compliance with both the State and Federal standards are impossible. In addition, Federal law preempts State law if, for example, State tort actions create an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.

In *Geier* v. *American Honda Motor Co.,* the Supreme Court specifically addressed the possible preemptive effect of the Safety Act in combination with one of the FMVSSs issued under that Act, on common law tort claims. The issue before the court was whether the Safety Act, in light of FMVSS No. 208, preempted a lawsuit claiming a 1987 car was defective for lacking a driver air bag. When the car was manufactured, FMVSS No. 208 had required manufacturers to equip some, but not all, of their vehicles with passive (i.e., automatic) restraints.

The conclusions in *Geier* can be summarized as follows:

- The Safety Act's provision expressly preempting state ''standards'' does not preempt common law tort claims. The issue of whether the term ''standards'' includes tort law actions is resolved (in the negative) by another provision in the Safety Act—the ''savings'' clause. That provision states that ''[c]ompliance with'' a Federal safety standard ''does not exempt any person from any liability under common law.'' There would not be any common law tort claims for the provision to save if the ''standards'' in the express preemption provision were read to include those claims.
- The savings clause preserves those tort actions that seek to establish greater safety than the minimum safety achieved by a FMVSS intended to provide a floor.
- The savings clause does not bar the working of conflict preemption principles. Further, neither the express preemption provision nor the saving provision, whether read singly or together, create some kind of ''special burden'' beyond that inherent in ordinary preemption principles that would specially favor or disfavor pre-emption. The two provisions, read together, reflect a neutral policy, not a specially favorable or unfavorable policy, toward the application of ordinary conflict preemption principles.
- The preemption provision and the savings clause are countervailing provisions. The preemption provision reflects a desire to subject the industry to a single, uniform set of FMVSSs. On the other hand, the savings clause reflects a congressional determination that occasional nonuniformity is a small price to pay for a system in which juries not only create, but also enforce, safety standards, while simultaneously providing necessary compensation to victims. Nothing in any natural reading of the two provisions favors one set of policies over the other where a jury-imposed safety standard actually conflicts with a FMVSS.
- A court should not find preemption too readily in the absence of clear evidence of a conflict.
- The Court provided limited guidance, beyond dealing with ''no airbag'' cases, on what types of circumstances could create a conflict under the Safety Act, and how concrete a conflict must be.
- The common-law ''no airbag'' action before the Court was found to be preempted because it actually conflicted with FMVSS No. 208. In reaching that conclusion, the Court devoted considerable attention to the Department of Transportation's detailed explanation of the ''significant considerations'' underlying FMVSS No. 208's regulatory approach, and observed how the standard reflected these considerations. The standard sought a gradually developing variety of passive restraint devices for statutorily relevant reasons including safety and public acceptability. The rule of state tort law sought by the petitioner would have constrained the variety of passive restraint devices by requiring manufacturers of all similar cars to install a single type of device, an air bag, instead of other types of passive restraint systems, thereby presenting an obstacle to the variety and mix of devices that the FMVSS sought.

V. Agency Response to Petitions Regarding Preemption

We find merit in Public Citizen's argument that an actual conflict may never arise with respect to pronouncements in state tort law decisions regarding the appropriate number of designated seating positions. We stated in our October 2008 final rule that a tort law judgment premised on a view that a motor vehicle needed to have more DSPs than the number contemplated by our definition could have a negative safety effect. Such an effect would occur if, in response to such a tort law judgment, manufacturers installed an excessive number of seat belts. We said further that such installation could decrease comfort or make use of seat belts difficult, making it less likely that an occupant would use his or her respective seat belt, thereby reducing overall safety.

However, as Public Citizen noted, in estimating compliance costs in our October 2008 final rule, we opined that, because adding seat belts would be more expensive, manufacturers would be more likely to implement the revised DSP definition by reducing seat width or installing an impediment in affected vehicles to discourage people from sitting between seats.[5] Public Citizen argued that if the manufacturers took either of those two steps, the resulting vehicle designs would not contain ambiguous seating space and thus would be unlikely to give rise to State tort law decisions premised on a view that a motor vehicle was equipped with an insufficient number of seat belts.

We agree. Even if there were State tort law decisions requiring more DSPs than the number contemplated by our definition, we believe that the manufacturers would likely respond in the same way that they will respond to the changes mandated by our October 2008 final rule. That is, because of the higher cost of adding lap/shoulder seat belts, we believe that it is unlikely that a manufacturer will increase the number of DSPs in a vehicle and install an excessive number of seat belts. Instead, we believe the most likely responses by manufacturers will be to either install an impediment or void in vehicles or decrease seating surface width.[6] Because manufacturers' most likely response to an adverse State tort law decision would not be to increase the number of DSPs and install an excessive number of seat belts in vehicles, we believe it is very unlikely that a tort law judgment would actually conflict with our DSP definition.

Moreover, we have no knowledge of any State tort law decision that might conflict with the October 2008 final rule. In the final rule, we noted that no State or local governmental entities submitted comments on our proposed rule. We also contacted organizations representing interests of State and local governments and officials about the

[5] See 73 FR 58887, at 58893.

[6] See 73 FR 58887, at 58893.

rulemaking. We received a response from the National Conference of State Legislatures indicating that they had no comments. We have no knowledge of any pending State tort litigation that could potentially conflict with the October 2008 final rule.

We also observe that that the procedures for measuring seats and calculating the appropriate number of DSPs make it unlikely that a State law or determination could conflict with the new DSP definition. The calculation of the number of DSPs on a bench seat with a seating surface width of less than 1400 mm is generally based upon the number of 5th percentile adult females that could occupy a seat. Thus, for a seat surface width of 1050 mm or more, there would be three DSPs. We believe it unlikely that any State law or determination would require three DSPs in a seating space of less than 1050 mm because it would be difficult for three adults to sit in such a small space.

Thus, we have no reason to believe that any existing State tort law determination conflicts with our manner of calculating the appropriate number of DSPs set forth in the October 2008 final rule, nor do we have any reason to anticipate that a future State tort law decision will create such a conflict. In the absence of such a conflict, there can be no preemption of State tort law. Accordingly, we have removed the regulatory text preempting State law, including State tort law determinations, premised on there being more DSPs than the number contemplated by the new definition.

Petitioner AAJ also sought removal of the regulatory text preempting State law, contending that NHTSA lacks the statutory authority to issue regulations that preempt State tort law. In view of the forgoing discussion, we need not address this contention in the context of this rulemaking.

VI. Technical Correction

The petitions for reconsideration filed by SAE International, the Alliance, and AIAM pointed out a technical error in the regulation setting forth the formula for calculating the number of designated seating positions. These petitions noted that 49 CFR 571.10(b)(1) and (b)(2) each refer to ''paragraph (d),'' which does not exist, and that the reference was probably intended to refer to § 571.10(c). The petitioners are correct. Accordingly, we are amending § 571.10(b)(1) and (b)(2) to correct this error.

VII. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order.

This notice has not been reviewed under Executive Order 12866. NHTSA has considered the impact of this proposed rule and determined that the action is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures. The changes made by this final rule do not affect the costs and benefits estimated for our October 2008 final rule.

B. Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* NHTSA has evaluated the effects of this action on small entities. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. The changes made by this final rule do not affect the costs and benefits estimated for our October 2008 final rule. For these reasons, the agency has not prepared a new or revised regulatory flexibility analysis.

C. Executive Order No. 13132

NHTSA has examined today's final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments, or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rule does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The rule does 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 the responsibilities among the various levels of government.'' Further, no consultation is needed to discuss the issue of preemption in connection with today's rule. For a discussion of that issue, see the main portion of this preamble.

D. Executive Order 12988

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows. The issue of preemption is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit or petition for review of this regulation in court.

E. National Environmental Policy Act

NHTSA has analyzed this final rule for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

F. Paperwork Reduction Act

This amendment does not contain any collection of information requirements requiring review under the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

G. National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), ''all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.'' This final rule does not establish or amend a technical standard.

H. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 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 more than $100 million annually

(adjusted for inflation with base year of 1995). This rulemaking will not result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector in excess of $100 million annually.

J. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

K. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://docketsinfo.dot.gov/.*

List of Subjects in 49 CFR Parts 571

Imports, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, NHTSA amends 49 CFR Part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Amend section 571.3 as follows:

■ a. In paragraphs (1) and (2) of the definition of ''Designated seating position'' in paragraph (b), remove the date ''September 1, 2010'' and add in its place the date ''September 1, 2011''; and

■ b. Remove paragraph (c).

■ 3. Amend section 571.10 by removing from paragraphs (b)(1) and (b)(2) the phrase ''paragraph (d)'' and adding in its place the phrase ''paragraph (c)''.

Issued on: December 11, 2009.

Ronald L. Medford,

Acting Deputy Administrator.

[FR Doc. E9–30440 Filed 12–22–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 090130102–91386–02]

RIN 0648–XT01

Western and Central Pacific Fisheries for Highly Migratory Species; Bigeye Tuna Longline Fishery Closure

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

ACTION: Temporary rule; fishery closure.

SUMMARY: NMFS is closing the U.S. pelagic longline fishery for bigeye tuna in the western and central Pacific Ocean as a result of the fishery reaching the 2009 catch limit.

DATES: Effective December 29, 2009, through December 31, 2009.

FOR FURTHER INFORMATION CONTACT: Tom Graham, NMFS Pacific Islands Region, 808–944–2219.

SUPPLEMENTARY INFORMATION: This rule is also accessible at *www.gpoaccess.gov/fr.*

Pelagic longline fishing in the western and central Pacific Ocean is managed, in part, under the Western and Central Pacific Fisheries Convention Implementation Act (Act). Regulations governing fishing by U.S. vessels in accordance with the Act appear at 50 CFR part 300, subpart O.

NMFS established a limit for calendar year 2009 of 3,763 metric tons (mt) of bigeye tuna (Thunnus obesus) that may be caught and retained in the U.S. pelagic longline fishery in the area of application of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention Area), codified at 50 CFR 300.224 (74 FR 63999, December 7, 2009). NMFS monitored the retained catches of bigeye tuna using logbook data submitted by vessel captains and other available information, and determined that the 2009 catch limit is expected to be reached by December 29, 2009. In accordance with § 300.224(d), this rule serves as advance notification to fishermen, the fishing industry, and the general public that the U.S. longline fishery for bigeye tuna in the Convention Area will be closed from December 29, 2009, through the end of the calendar year. The 2010 fishing year is scheduled to open on January 1, 2010; the 2010 bigeye tuna catch limit will be 3,763 mt. This rule does not apply to the longline fisheries of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands (CNMI), as described below.

During the closure, a U.S. fishing vessel may not retain on board, transship, or land bigeye tuna captured by longline gear in the Convention Area, except that any bigeye tuna already on board a fishing vessel upon the effective date of the restrictions may be retained on board, transshipped, and landed, provided that they are landed within 14 days of the start of the closure (i.e., January 12, 2010). This 14–day landing requirement does not apply to a vessel that has declared to NMFS, pursuant to 50 CFR 665.23(a), that the current trip type is shallow-setting.

Furthermore, bigeye tuna caught by longline gear may be retained on board, transshipped, and landed if the fish are caught by a vessel registered for use under a valid NMFS-issued American Samoa Longline Limited Access Permit or if they are landed in American Samoa, Guam, or the CNMI, under the following conditions:

(1) The bigeye tuna must not have been caught in the portion of the U.S. exclusive economic zone (EEZ) surrounding the Hawaiian Archipelago;

(2) Such retention, transshipment, and/or landing is in compliance with applicable laws and regulations; and

(3) The bigeye tuna must be landed by a U.S. fishing vessel operated in compliance with a valid permit issued under 50 CFR 660.707 or 665.21.

During the closure, a U.S. vessel is also prohibited from transshipping bigeye tuna caught in the Convention Area by longline gear to any vessel other than a U.S. fishing vessel operated with a valid permit issued under 50 CFR 660.707 or 665.21.

The catch limit and this closure do not apply to bigeye tuna caught by longline gear outside the Convention Area, such as in the eastern Pacific Ocean. To ensure compliance with the restrictions related to bigeye tuna caught by longline gear in the Convention Area, however, the following requirements apply:

(1) A U.S. fishing vessel may not be used to fish with longline gear both inside and outside the Convention Area during the same fishing trip, with the exception of a fishing trip that is in progress on December 29, 2009. In that case, the catch of bigeye tuna must be landed by January 12, 2010; and

(2) If a U.S. vessel is used to fish 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 while the vessel is in the Convention Area. 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.

The above two additional prohibitions do not apply to the following vessels:

(1) Vessels on declared shallow-setting trips pursuant to 50 CFR 665.23(a); and

(2) Vessels registered for use under valid American Samoa Longline Limited Access Permits and vessels landing their bigeye tuna catch in American Samoa, Guam, or the CNMI, so long as these vessels conduct fishing activities in accordance with the conditions described above; that is, the bigeye tuna were not caught in the EEZ around Hawaii, the retention, transshipment, and/or landing is in compliance with applicable laws and regulations, and the bigeye tuna are landed by a vessel that has a valid permit issued under 50 CFR 660.707 or 665.21.

This action is required by § 300.224(d) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 6901 *et seq.*

Dated: December 18, 2009.

Emily H. Menashes,

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

[FR Doc. E9–30539 Filed 12–18–09; 4:15 pm]

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Proposed Rules

Federal Register

Vol. 74, No. 245

Wednesday, December 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29060; Directorate Identifier 2007–NE–34–AD]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines (IAE)

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

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This supplemental NPRM revises an earlier proposed airworthiness directive (AD) applicable to IAE V2500–A1, V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, and V2533–A5 turbofan engines. That proposed AD would have required a one-time inspection of certain vortex reducers for cracks, and replacing the reducer and high-pressure (HP) compressor stage 3–8 drum if the reducer is cracked. That proposed AD resulted from reports of fractured vortex reducers found at shop visits. This supplemental NPRM revises the proposed AD to add four engine models and four additional part numbers of HP compressor stage 3–8 drums to the applicability requirement. This proposed AD results from the manufacturer's latest service information containing engine models and drum assembly P/Ns that were not specified in the proposed AD. We are proposing this AD to inspect for cracks in the vortex reducer. Cracks in the vortex reducer could result in an uncontained failure of the HP compressor stage 3–8 drum and subsequent damage to the airplane.

DATES: We must receive any comments on this proposed AD by February 22, 2010.

ADDRESSES: Use one of the following addresses to comment on this proposed AD.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

You can get the service information identified in this proposed AD from International Aero Engines, 400 Main St., East Hartford, CT 06108; telephone (860) 565–5515, fax (860) 565–0600.

FOR FURTHER INFORMATION CONTACT: Kevin Dickert, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: kevin.dickert@faa.gov; telephone* (781) 238–7117; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. 2007–29060; Directorate Identifier 2007–NE–34–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

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 proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Discussion

On April 27, 2009, we issued a proposal to amend part 39 of the Code of Federal Regulations (14 CFR part 39) to add an AD applicable to IAE V2500–A1, V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, and V2533–A5 turbofan engines. The proposed AD published as an NPRM in the **Federal Register** on April 30, 2009 (74 FR 19904). That NPRM proposed to require a one-time fluorescent penetrant inspection of certain vortex reducers for cracks. This condition, if not corrected, could result in an uncontained failure of the HP compressor stage 3–8 drum and subsequent damage to the airplane.

Since we issued that NPRM, IAE has informed us that IAE Alert Service Bulletin (ASB) V2500–ENG–72–A0510, Revision 2, dated December 19, 2007, contains additional engine models and HP compressor Stage 3 to 8 drum P/Ns that must be inspected. Because we expanded the population of affected engines by adding the V2522–A5, V2524–A5, V2525–D5, and V2527–A5 engine models and HP compressor stage 3 to 8 drums, P/Ns 6A4900, 6A7383, 6A7384, and 6A7385, this supplemental NPRM reopens the comment period to include the additional engine models and drum P/Ns.

Comments

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

Request To Add Additional Part Numbers and Engine Models

One commenter, IAE, asks us to add to the applicability of the proposed AD, additional part numbers (P/Ns) for the HP compressor stage 3 to 8 drum, and additional IAE engine models that were not included in the NPRM.

The commenter states that we need to make the AD applicable to the additional P/Ns and engine models to ensure that the proposed AD covers all affected parts.

We agree. We have added P/Ns 6A4900, 6A7383, 6A7384, and 6A7385; and IAE engine models V2522–A5, V2524–A5, V2525–D5, V2527–A5 turbofan engines to the applicability.

Request To Revise Costs of Compliance Section

One commenter, Air Transport Association, asks us to revise the Costs of Compliance section to include six engines operated by Delta Airlines.

We agree. We have changed the Costs of Compliance section to include the six engines operated by Delta, and provided an estimated total cost to the fleet.

Relevant Service Information

We have reviewed and approved the technical contents of IAE ASB V2500–ENG–72–0510, Revision 2, dated December 19, 2007, that describes procedures for inspecting the vortex reducer for cracks.

FAA's Determination and Requirements of the Proposed AD

We evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which will require a one-time fluorescent penetrant inspection of certain vortex reducers for cracks.

Costs of Compliance

We estimate that this proposed AD would affect six IAE turbofan engines installed on airplanes of U.S. registry. We also estimate that it would take about 1 work-hour per engine to perform the proposed actions, and that the average labor rate is $80 per work-hour. No parts are required. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $480.

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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD 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.

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

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

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

3. Would 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 proposed AD. *See* the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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:

International Aero Engines: Docket No. FAA–2007–29060; Directorate Identifier 2007–NE–34–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by February 22, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to International Aero Engines (IAE) V2500–A1, V2522–A5, V2524–A5, V2525–D5, V2527–A5, V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, and V2533–A5 turbofan engines with high-pressure (HP) compressor stage 3–8 drums, part numbers (P/Ns) 6A4900, 6A5467, 6A6473, 6A7383, 6A7384, 6A7385, and 6A7401, installed. These engines are installed on, but not limited to, Airbus A319, A320, and A321 series airplanes and Boeing MD–90 airplanes.

Unsafe Condition

(d) This AD results from reports of fractured vortex reducers found at shop visits. We are issuing this AD to inspect for cracks in the vortex reducer. Cracks in the vortex reducer could result in an uncontained failure of the HP compressor stage 3–8 drum and subsequent 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.

One-Time Fluorescent Penetrant Inspection

(f) Fluorescent penetrant inspect the vortex reducer for cracks when the HPC stage 3–8 drum has between 3,000 and 13,500 cycles-since-new (CSN) if all of the following conditions also apply:

(1) The HPC stage 3–8 drum has ever operated in an engine at the V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, or V2533–A5 thrust ratings,

(2) The vortex reducer had cycles accumulated on it when mated with the HPC stage 3–8 drum, and

(3) The HPC stage 3–8 drum had fewer than 3,000 CSN when mated to the vortex reducer.

(g) If the vortex reducer is cracked, remove both the vortex reducer and the HPC stage 3–8 drum from service.

(h) After the effective date of this AD, do not return to service any HPC stage 3–8 drum that was removed as specified in paragraph (g) of this AD.

Alternative Methods of Compliance

(i) 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

(j) Contact Kevin Dickert, Aerospace Engineer, Engine Certification Office, FAA,

Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: kevin.dickert@faa.gov;* telephone (781) 238–7117; fax (781) 238–7199, for more information about this AD.

Peter A. White,

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

[FR Doc. E9–30508 Filed 12–22–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0302; Directorate Identifier 2009–NE–09–AD]

RIN 2120–AA64

Airworthiness Directives; Turboméca ARRIEL 1B, 1D, 1D1, 2B, and 2B1 Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to revise an existing airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued 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:

During production of Arriel 1 and Arriel 2 Power Turbine (PT) wheels, geometric non-conformances on blade fir tree roots have been detected by Turboméca. Potentially non-conforming PT blades have been traced as having been installed on Module M04 (PT) listed in Mandatory Service Bulletin (MSB) A292 72 0827 for Arriel 1 engines and A292 72 2833 for Arriel 2 engines.

The geometric non-conformities of the blades may potentially lead to a reduction in the fatigue resistance of PT blades to a lower level than their authorized in service use limit. This reduction of fatigue resistance can potentially result in blade release, which could cause an uncommanded in-flight shutdown.

We are proposing this AD to prevent release of PT blades, which could result in an uncommanded in-flight shutdown and emergency autorotation landing.

DATES: We must receive comments on this proposed AD by January 22, 2010.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Contact Turboméca, 40220 Tarnos, France; telephone 33 05 59 74 40 00, fax 33 05 59 74 45 15, for the service information identified in this proposed AD.

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 proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Kevin Dickert, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: kevin.dickert@faa.gov;* telephone (781) 238–7117, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0302; Directorate Identifier 2009–NE–09–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On April 6, 2009, the FAA issued AD 2009–08–08, Amendment 39–15881 (74 FR 17075, April 14, 2009). That AD requires:

- For engines with an affected Module M04 (PT module) which has accumulated 1,000 total PT cycles or more on the effective date of that AD, remove the PT blades from service before further flight.
- For engines with an affected Module M04 (PT module) which has accumulated fewer than 1,000 total PT cycles on the effective date of that AD, remove the PT blades from service before accumulating 1,000 total PT cycles.
- After the effective date of that AD, do not install any PT blades removed as specified in paragraph (e)(1) or (e)(2) of that AD, into any engine.

Actions Since AD 2009–08–08 Was Issued

Since that AD was issued, the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0112R1, dated July 30, 2009 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

Since issuance of initial version of AD 2009–0112 additional information is available:

—The list of Modules M04 concerned by the restriction of the cycle use limit of these PT blades has been updated again: The serial numbers of Modules M04 which have been retrofitted are crossed out. However no new affected Modules M04 have been identified. See figure 1 of the referenced Turboméca MSB.

—Additional testing and analysis had been carried out by Turboméca which allows increasing the cyclic use limit of these PT blades to 5 000 flight cycles.

Therefore this AD revises AD 2009–0112 and requires establishing the cyclic use limit of these PT blades to 5 000 flight cycles.

For PT blades having reached a number of flight cycles superior or equal to 5 000, removal of Module M04, or PT wheel assembly, or PT blades is required prior to next flight.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Turboméca has issued Alert MSB No. A292 72 0827, Version C, dated July 15, 2009, for Arriel 1 series turboshaft engines, and issued Alert MSB No. A292 72 2833, Version C, dated July 15, 2009, for Arriel 2 series turboshaft engines. The power turbine modules M04 having the affected PT blades are listed by serial number (S/N) in Figure 1 of these MSBs, as applicable. We have incorporated by reference these MSBs to identify the affected parts.

Differences Between This 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 required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the AD. These requirements take precedence over the actions copied from the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of France and is approved for operation in the United States. Pursuant to our bilateral agreement with France, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This AD requires removing the affected PT blades from service before exceeding 5,000 flight cycles.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 10 products of U.S. registry. We also estimate that it would take about 8 work-hours per product to comply with this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $43,000 per product. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $436,400.

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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD 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.

For the reasons discussed above, I certify this proposed regulation:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed 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.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 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 removing amendment 39–15881, and adding the following new AD:

Turboméca S.A.: Docket No. FAA–2009–0302; Directorate Identifier 2009–NE–09–AD.

Comments Due Date

(a) We must receive comments by January 22, 2010.

Affected Airworthiness Directives (ADs)

(b) This AD revises AD 2009–08–08, Amendment 39–15881.

Applicability

(c) This AD applies to:

(1) Turboméca Arriel 1B, 1D, and 1D1 turboshaft engines with the power turbine (PT) modules M04 installed, as listed by serial number (S/N) in Figure 1 of Turboméca Alert Mandatory Service Bulletin (MSB) No. A292 72 0827, Version C, dated July 15, 2009; and

(2) Turboméca Arriel 2B, and 2B1 turboshaft engines with the power turbine modules M04 installed, as listed by S/N in Figure 1 of Turboméca Alert MSB No. A292 72 2833, Version C, dated July 15, 2009.

(3) These engines are installed on, but not limited to, Eurocopter AS 350 B, AS 350 BA, AS 350 B1, AS 350 B2, AS 350 B3, and EC 130 B4 helicopters.

Reason

(d) European Aviation Safety Agency (EASA) AD No. 2009–0112R1, dated July 30, 2009, states:

Since issuance of initial version of AD 2009–0112 additional information is available:

—The list of Modules M04 concerned by the restriction of the cycle use limit of these PT blades has been updated again: The serial numbers of Modules M04 which have been retrofitted are crossed out. However no new affected Modules M04 have been identified. See figure 1 of the referenced Turboméca MSB.

—Additional testing and analysis had been carried out by Turboméca which allows increasing the cyclic use limit of these PT blades to 5 000 flight cycles.

We are issuing this AD to prevent release of PT blades, which could result in an uncommanded in-flight shutdown and emergency autorotation landing.

Actions and Compliance

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

(1) For engines with an affected Module M04 (PT module), which has accumulated 5,000 total PT cycles or more on the effective date of this AD, remove the PT blades from service before further flight.

(2) For engines with an affected Module M04, which has accumulated fewer than 5,000 total PT cycles on the effective date of this AD, remove the PT blades from service before accumulating 5,000 total PT cycles.

(3) After the effective date of this AD, do not install any PT blades removed as specified in paragraph (e)(1) or (e)(2) of this AD, into any engine.

FAA AD Differences

(f) Although the compliance section of EASA AD No. 2009–0112R1, dated July 30, 2009, states to replace the Module M04, or PT wheel assembly, or PT blades, this AD states to remove the PT blades from service.

(g) Although EASA AD No. 2009–0112R1, dated July 30, 2009, applies to the Arriel

2B1A engine, this AD does not apply to that model because it has no U.S. type certificate.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(i) Refer to MCAI EASA Airworthiness Directive 2009–0112R1, dated July 30, 2009; and Turboméca Mandatory Service Bulletins (MSBs) A292 72 0827, Version C, dated July 15, 2009; and A292 72 2833, Version C, dated July 15, 2009; for related information.

(j) Contact Kevin Dickert, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: kevin.dickert@faa.gov;* telephone (781) 238–7117, fax (781) 238–7199, for more information about this AD.

Issued in Burlington, Massachusetts, on December 17, 2009.

Peter A. White,

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

[FR Doc. E9–30511 Filed 12–22–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0803; Directorate Identifier 2009–NE–34–AD]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. Auxiliary Power Units Models GTCP36–150(R) and GTCP36–150(RR)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Honeywell International Inc. auxiliary power units (APU) models GTCP36–150(R) and GTCP36–150(RR). This proposed AD would require inspecting the fuel control unit (FCU) differential pressure (Delta P) sleeve bore for erosion, replacing the FCU if it fails the inspection, and installing a fuel deflector on the Delta P sleeve of the FCU. This proposed AD results from eight reports of fuel leakage from the fuel control unit. We are proposing this AD to prevent fuel leakage in the APU compartment, which could lead to ignition of fuel vapor, creating a fire and explosion hazard resulting in injury, and damage to the APU and the airplane.

DATES: We must receive any comments on this proposed AD by February 22, 2010.

ADDRESSES: Use one of the following addresses to comment on this proposed AD.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

FOR FURTHER INFORMATION CONTACT: Roger Pesuit, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; *e-mail: roger.pesuit@faa.gov;* telephone (562) 627–5251, fax (562) 627–5210.

Contact Honeywell International Inc., 111 S. 34th Street, Phoenix, Arizona 85034–2802; Web site: *http://portal.honeywell.com/wps/portal/aero;* telephone No. (800) 601–3099; international telephone No. (601) 365–3099; for a copy of the service information identified in this proposed AD.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2009–0803; Directorate Identifier 2009–NE–34–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

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 proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Discussion

Over a five-year period, we received eight reports of fuel leakage from the fuel control unit housing on APUs, models GTCP36–150(R) and GTCP36–150(RR). Investigation has found that when the Delta P sleeve is incorrectly positioned inside the fuel control unit housing, a high-velocity stream of fuel can hit the housing. This high-velocity stream can cause cavitation, which is a rapid formation and collapse of vapor pockets in very low-pressure regions of the fuel stream exiting the Delta P sleeve. This condition accelerates erosion of the fuel control housing, eventually causing it to leak. Honeywell International Inc. conducted focused inspections on 228 fuel control unit housings, and found that 97 of them had evidence of erosion. This condition, if not corrected, could result in fuel leakage in the APU compartment, which could lead to ignition of fuel vapor, creating a fire and explosion hazard resulting in injury, and damage to the APU and the airplane.

Relevant Service Information

We have reviewed and approved the technical contents of Honeywell International Inc. Service Bulletin No. 3882840–49–7975, Revision 1, dated April 10, 2009, that describes procedures for inspecting the FCU Delta P sleeve bore for erosion, replacing the FCU if it fails the inspection, and installing a fuel deflector on the Delta P sleeve of the FCU. Installing this fuel deflector will prevent erosion and leakage of the fuel control unit housing.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would require inspecting the FCU Delta P sleeve bore for erosion, replacing the FCU if it fails the inspection, and installing a fuel deflector on the Delta P sleeve of the FCU. The proposed AD would require you to use the service information described previously to perform these actions.

Costs of Compliance

We estimate that this proposed AD would affect four APUs installed on airplanes of U.S. registry. We also estimate that it would take about one work-hour per APU to perform the proposed actions, and that the average labor rate is $80 per work-hour. Required parts would cost about $201 per APU. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $1,124.

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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD 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.

For the reasons discussed above, I certify that the proposed 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. Would 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 proposed AD. 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, Incorporation by reference, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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:

Honeywell International Inc. (formerly AlliedSignal Inc., formerly Garrett Auxiliary Power Division): Docket No. FAA–2009–0803; Directorate Identifier 2009–NE–34–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by February 22, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Honeywell International Inc. Auxiliary Power Units (APU) models GTCP36–150(R) and GTCP36–150(RR). These APUs are installed on, but not limited to, Fokker Services B.V. Model F.28 Mark 0100, and F.28 Mark 0070 airplanes.

Unsafe Condition

(d) This AD results from eight reports of fuel leakage from the fuel control unit. We are issuing this AD to prevent fuel leakage in the APU compartment, which could lead to ignition of fuel vapor, creating a fire and explosion hazard resulting in injury, and damage to the APU and the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed at the next shop visit of the APU, or the next shop visit of the APU fuel control unit, or before the APU accumulates an additional 4,000 operating hours, whichever occurs first after the effective date of this AD, unless the actions have already been done.

Inspection of the Fuel Control Unit (FCU) Differential Pressure (Delta P) Sleeve Bore

(f) Inspect the FCU Delta P sleeve bore for erosion. Use paragraphs 3.B.(1) through 3.B.(4) of Honeywell International Inc. Service Bulletin (SB) No. 3882840–49–7975, Revision 1, dated April 10, 2009, to do the inspection:

(1) If the erosion in the Delta P sleeve bore is 0.030 inch or more in depth, replace the FCU housing.

(2) If the erosion in the Delta P sleeve bore is less than 0.030 inch in depth, the FCU housing is acceptable for use.

Installation of Fuel Deflector

(g) Install fuel deflector, part number 70720001–1, onto the Delta P sleeve of the FCU. Use paragraphs 3.B(5) through 3.B.(9) of Honeywell International Inc. SB No. 3882840–49–7975, Revision 1, dated April 10, 2009, to do the installation.

Alternative Methods of Compliance

(h) The Manager, Los Angeles 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

(i) Contact Roger Pesuit, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; *e-mail: roger.pesuit@faa.gov;* telephone (562) 627–5251, fax (562) 627–5210, for more information about this AD.

(j) Contact Honeywell International Inc., 111 S. 34th Street, Phoenix, Arizona 85034–2802; *Web site: http://portal.honeywell.com/wps/portal/aero;* telephone No. (800) 601–3099; international telephone No. (601) 365–3099; for a copy of the service information referenced in this AD.

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

Peter A. White,

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

[FR Doc. E9–30512 Filed 12–22–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0525; Directorate Identifier 2009–NM–027–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier NPRM for the products listed above. This action revises the earlier NPRM by expanding the scope. This proposed 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:

AD CF–2002–12 [which corresponds to FAA AD 2003–04–21, amendment 39–13070] mandated installation of revised overwing emergency exit placards showing that the exit door should be opened and disposed from a seated position. However, it was later discovered that the new placards illustrated an incorrect hand position for removal of the exit upper handle cover. These incorrect instructions could cause difficulty or delay when opening the overwing emergency exit.

As a result, the timely and safe evacuation of passengers and crew may be impeded. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by January 19, 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 proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced 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.

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 proposed 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: Christopher Alfano, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7340; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0525; Directorate Identifier 2009–NM–027–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on 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 proposed AD.

Discussion

We proposed to amend 14 CFR part 39 with an earlier NPRM for the specified products, which was published in the **Federal Register** on June 10, 2009 (74 FR 27474). That earlier NPRM proposed to require actions intended to address the unsafe condition for the products listed above.

Since that NPRM was issued, we have revised the applicability to include all Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes with serial numbers 7003 and subsequent because those serial numbers may have incorrect placards.

Comments

We have considered the following comments received on the earlier NPRM.

Support for the NPRM

Robert Edward Briggs, a private citizen, and Mesa Air support the compliance times in the NPRM. Mr. Briggs states that Bombardier has a 26-week lead time on the new placards, so the compliance time should remain at 24 months from the effective date of the AD. Mesa Air states that it supports the 24-month compliance time because of the 26-week lead time, and because of the requirement to revise and replace the PAX (passenger) briefing cards.

Request To Withdraw NPRM

Rich Rupslauskas, a private citizen, requests that we withdraw the NPRM. Mr. Rupslauskas asserts that the change depicted in the new placard is not necessary and does nothing to enhance safety. The commenter supports his request by having asked four different people to identify the difference between the old and the new placards and they were unable to do so. The commenter asserts that if there was a problem with the placard, it would have already been discovered through training, maintenance, evacuation testing, and actual evacuations.

We do not agree with the commenter's request to withdraw the proposed AD. We find the commenter's sample size too small to constitute a representative statistical sample with which to determine an adequate level of safety. The illustration in the new placard is correct. 14 CFR 25.811(e)(1) requires that ''The location of the operating handle and instructions for opening exits from the inside of the airplane must be shown in the following manner: (1) Each passenger emergency exit must have, on or near the exit, a marking that is readable from a distance of 30 inches * * *'' Incorrect instructions could cause difficulty or delay, especially to persons who are less familiar with the airplane emergency exit door openings. We have not changed the supplemental NPRM in this regard.

Request To Address the Requirements of AD 2003–04–21

Comair Inc. states that AD 2003–04–21 requires actions to be accomplished in accordance with Bombardier Alert Service Bulletin A601R–11–077, Revision A, dated December 11, 2001. That AD required installing a new overwing exit placard, and relocates two other placards: The no-baggage placard and the door weight placard. (The no-baggage placards are the placards that illustrate no baggage, and are identified in Bombardier Service Bulletin as ''Placard No Baggage.'') Comair states that this NPRM requires compliance with Bombardier Service Bulletin 601R–11–088, Revision A, dated March 24, 2009. Comair states that Revision A of the service bulletin addresses only the latest overwing exit placard, and does not address moving the other two placards.

We infer that the commenter is asking for clarification regarding the requirements of this supplemental NPRM for the door weight placards and the no-baggage placards. We have revised paragraph (f) of this supplemental NPRM to clarify that the restated requirements include moving the door weight placards and no-baggage placards.

Request To Shorten Compliance Time

Comair requests that we revise the NPRM to shorten the 24-month compliance time to 9 months. Comair states that the compliance time appears to be based on Canadian Airworthiness Directive CF–2009–02, which concurs with the recommended interval specified in Bombardier Service Bulletin 601R–11–088, Revision 'A,' dated March 24, 2009. Comair states that the 24-month compliance time seems excessive based on the simplicity of the required task. Comair states that nine months should be sufficient to procure parts, write work instructions, and comply with the service bulletin. Comair estimates that one-third of the U.S.-registered fleet is already in compliance.

We disagree with the request to reduce the compliance time from 24 months to 9 months. The proposed compliance time of 24 months was determined to be appropriate in consideration of the safety implications, the average utilization rate of the affected fleet, the practical aspects of an orderly inspection of the fleet during regular maintenance periods, and the availability of required modification parts. We have not changed the AD in this regard.

Request for Credit for Previously Issued AMOCs

Comair requests that we revise the NPRM to allow credit for placards installed according to a previously given AMOC. Comair writes that it received an AMOC, dated December 14, 2007, which allowed it to install overwing exit placards, part numbers S8388–1 and S8389–1, that are specified in Bombardier Service Bulletin 601R–11–088, Revision 'A,' dated March 24, 2009. Comair states that it completed installing these placards on its entire fleet three months before the initial release of the service bulletin.

We agree with the commenter's request. We have revised paragraph (j)(1) of this supplemental NPRM to allow credit for placards installed in accordance with previously issued AMOCs to AD 2003–04–21 issued by the NYACO on December 14, 2007, allowing the installation of the new overwing exit placards, part numbers S8388–1 and S8389–1. These are the same part numbers installed using Bombardier Service Bulletin 601R–11–088, Revision A, dated March 24, 2009.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Certain changes described above expand the scope of the earlier NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this proposed AD.

Differences Between This 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 proposed 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 proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 664 products of U.S. registry.

We estimate that it would take about 1 work-hour per product to comply with the new basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $128 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $138,112, or $208 per product.

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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD 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.

For the reasons discussed above, I certify this proposed regulation:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed 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.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 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 39–13070 (68 FR 9509, February 28, 2003), corrected at 68 FR 14309, March 25, 2003, and adding the following new AD:

Bombardier, Inc. (Formerly Canadair): Docket No. FAA–2009–0525; Directorate Identifier 2009–NM–027–AD.

Comments Due Date

(a) We must receive comments by January 19, 2010.

Affected ADs

(b) This AD supersedes AD 2003–04–21 R1, Amendment 39–13070.

Applicability

(c) This AD applies to Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category, serial numbers 7003 and subsequent.

Subject

(d) Air Transport Association (ATA) of America Code 11: Placards and markings.

Reason

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

AD CF–2002–12 [which corresponds to FAA AD 2003–04–21, amendment 39–13070] mandated installation of revised overwing emergency exit placards showing that the exit door should be opened and disposed from a seated position. However, it was later discovered that the new placards illustrated an incorrect hand position for removal of the exit upper handle cover. These incorrect instructions could cause difficulty or delay when opening the overwing emergency exit. As a result, the timely and safe evacuation of passengers and crew may be impeded. The required action includes replacing the incorrect placards with revised placards.

Restatement of Certain Requirements of AD 2003–04–21 R1

(f) Unless already done, for airplanes identified in Table 1 of this AD, within 12 months after April 4, 2003 (the effective date of AD 2003–04–21 R1), replace the door weight placards, and no-baggage placards with new placards (including cleaning of the applicable surface), as applicable, per Bombardier Alert Service Bulletin A601R–11–077, Revision A, dated December 11, 2001, excluding Service Bulletin Comment Sheet-Facsimile Reply Sheet and CRJ 100/200 Service Bulletin Compliance Facsimile Reply Sheet.

TABLE 1—SERIAL NUMBERS

Serial Nos.
7003 through 7434 inclusive.
7436 through 7442 inclusive.
7444 through 7452 inclusive.
7454 through 7458 inclusive.
7460 through 7497 inclusive.
7499 through 7504 inclusive.

(g) Replacement accomplished before April 4, 2003, per Bombardier Alert Service Bulletin A601R–11–077, dated July 12, 2001, is considered acceptable for compliance with the replacement specified in paragraph (f) of this AD.

New Requirements of This AD

Actions and Compliance

(h) Unless already done, within 24 months after the effective date of this AD, replace the existing overwing emergency exit placards with new placards in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–11–088, Revision 'A,' dated March 24, 2009.

(i) Replacing the overwing emergency exit placards with new placards before the effective date of this AD in accordance with Bombardier Service Bulletin 601R–11–088, dated June 25, 2008, is considered acceptable for compliance with the corresponding action specified in this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: The MCAI applicability includes certain airplanes. This AD expands the applicability to include serial numbers 7003 and subsequent.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office, 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: Christopher Alfano, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7340; fax (516) 794–5531. 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. AMOCs approved previously in accordance with AD 2003–04–21, Amendment 39–13070, are approved as AMOCs for the corresponding provisions of 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 assure 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, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(k) Refer to MCAI Canadian Airworthiness Directive CF–2009–02, dated January 19, 2009; Bombardier Alert Service Bulletin A601R–11–077, Revision A, dated December 11, 2001; and Bombardier Service Bulletin 601R–11–088, Revision 'A,' dated March 24, 2009; for related information.

Issued in Renton, Washington, on December 11, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–30419 Filed 12–22–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Part 62

[Public Notice: 6853]

RIN 1400–AC56

Exchange Visitor Program—Secondary School Students

AGENCY: Department of State.

ACTION: Proposed rule with request for comment.

SUMMARY: The Department of State is proposing to amend and improve the Exchange Visitor Program regulations by providing greater specificity and clarity to sponsors of the Secondary School Student category with respect to the execution of sponsor oversight responsibilities under the exchange visitor programs. This section of the regulations governs Department

designated exchange visitor programs under which foreign secondary school students (ages 15–18½) are afforded the opportunity to study in the United States at an accredited public or private secondary school for an academic semester or an academic year while living with an American host family or residing at an accredited U.S. boarding school. Specifically, the Department is proposing to amend existing regulations regarding the screening, selection, school enrollment, orientation, and monitoring of overall quality assurance on behalf of student participants; and the screening, selection, orientation, and quality assurance monitoring of host families. This program is recognized as one of the Department's most valued exchange initiatives. The Department believes, however, that the lack of sufficient specificity in the regulations or lack of suitable, minimum industry standards may have contributed to the placement of students with unacceptable, or poorly screened, host families thereby putting at risk the health, safety and well-being of this most vulnerable group of exchange visitors. The Department also recognizes that local coordinators, who serve as representatives (employees or volunteers) of the Secondary School Student sponsors and who have responsibility for obtaining school enrollment and locating and recruiting host families, are the critical link to a successful exchange program. Local coordinators exercise a degree of independent judgment when determining whether a potential host family is capable of providing a comfortable and nurturing home environment for a Secondary School Student, whether that family is an appropriate match for the student, and whether they have adequate financial resources to undertake hosting obligations. Accordingly, the Department proposes the adoption of an annual testing and certification program for all local and regional coordinators that will entail, inter alia, specifying more clearly the Department's regulatory requirements as well as all sponsoring organization specific training required by the organization for whom the local and regional coordinators work.

DATES: The Department will accept comments from the public up to February 22, 2010.

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

- Persons with access to the Internet may view this notice and provide comments by going to the regulations.gov Web site at: *http://www.regulations.gov/index.cfm.*
- Mail (paper, disk, or CD–ROM submissions): U.S. Department of State, Office of Designation, SA–5, Floor 5, 2200 C Street, NW., Washington, DC 20522–0505.
- E-mail: *JExchanges@state.gov*. You must include the title and RIN in the subject line of your message.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Deputy Assistant Secretary for Private Sector Exchanges, U.S. Department of State, SA–5, Floor 5, 2200 C Street, NW., Washington, DC 20522–0505; or e-mail at *jexchanges@state.gov*.

SUPPLEMENTARY INFORMATION: The Department has authorized Secondary School Student programs since 1949, following passage of the United States Information and Educational Exchange Act of 1948 and adoption of 22 CFR Part 68—Exchange Visitor Program, establishing a student exchange program (14 FR 4592, July 22, 1949). Over the last 60 years, more than 850,000 foreign exchange students have lived in and learned about America through these Secondary School Student programs.

In 1993, the United States Information Agency, the predecessor agency with oversight of the Exchange Visitor Program, substantially rewrote the regulations governing the Exchange Visitor Program, including the Secondary School Student category. (*See* 58 FR 15196, Mar. 19, 1993, as amended at 59 FR 34761, July 7, 1994, redesignated at 64 FR 54539, Oct. 7, 1999.) Since this time, significant changes in makeup of the American family and widespread access to new technologies have necessitated additional updates to the regulations governing the Secondary School Student Exchange Visitor Program category. In 2006, the Department adopted new regulations set forth at 22 CFR 62.25 to require Secondary School Student program sponsors to complete criminal background checks on all officers, employees, agents, representatives and volunteers acting on their behalf who have direct contact with exchange students and to require program sponsors to contact host families and students monthly. Additionally adopted were the requirements that all adult members of a host family household (age 18 or older) undergo a criminal background check prior to the placement of an exchange student in the home, and that sponsors must report any allegation of sexual misconduct to both the Department and local law enforcement authorities as required in that jurisdiction (*see http://www.childwelfare.gov* for a list by state of child abuse and neglect statutes). (71 FR 16696, April 4, 2006.)

Educational and cultural exchanges are the cornerstone of U.S. public diplomacy and an integral component of American foreign policy. Secondary School Student exchange programs promote mutual understanding by providing foreign students the opportunity to study in American high schools while living with an American host family. Not only are the students themselves transformed by these experiences, but so too are their families, friends, and teachers in their home countries. By studying and participating in daily student life in the United States, Secondary School Student participants gain an understanding of and an appreciation for the similarities and differences between their culture and that of the United States. These students enrich their schools and communities with different perspectives of other cultures and events, providing the local community with new and diverse perspectives. Secondary School Student exchanges also foster enduring relationships and lifelong friendships which help build longstanding ties between the people of the United States and other countries. American Secondary School Students are provided opportunities to increase their knowledge and understanding of the world through these friendships. Participating schools gain from the experience of having international students in the classroom, at after-school activities, and in their community.

The great majority of exchange students who come to the United States to attend high school become more accepting of the democratic values of American society and its cultural differences, grow in independence and maturity, improve their English language skills, and overall enjoy a positive life-changing experience. As with other Exchange Visitor Program categories, the underlying purpose of the Secondary School Student Program is to further U.S. diplomatic and foreign policy goals by encouraging this positive academic and social interaction. Experience has shown that these students will share the knowledge and goodwill derived from their exchanges with their fellow citizens upon return to their home countries.

While most of the Department's nearly 30,000 annual exchanges of secondary school students conclude with positive experiences for both the exchange student and the American

host family, a number of incidents have occurred recently with respect to student placement and oversight which demand the Department's immediate attention. The success of the Secondary School Student program is dependent on the generosity of the American families who support this program by welcoming foreign students into their homes. The Department believes, however, that the current status of the U.S. economy has made it more difficult to find sufficient numbers of suitable host families. The number of qualified foreign students desiring to come to the United States for a year of high school continues to rise and student demand is now placing pressure on the ability of sponsors to identify available and appropriate host family homes. The Department desires to provide the means to permit as many exchange students into the United States as possible so long as we can ensure their safety and well-being, which is our highest priority.

Recent incidents of placement of exchange students with unsuitable host families have brought the Department, Congress, the American public, and members of the exchange community together in an initiative to upgrade this program to ensure a safe and positive exchange experience for every foreign student invited to participate in this exchange program. To achieve this goal, the Department has engaged in a series of actions and outreach to focus the Secondary School Student exchange industry on best practices and continued improvement in selection and monitoring of host families and students.

Prior to the development of this proposed rule, the Department published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** to solicit comments from sponsors and from the general public on current best practices in the industry. (*See* 74 FR 45385, September 2, 2009.) The Notice focused on six areas: (1) The utilization of a standard application form for all host family applications; (2) the requirement for photographs of all host family homes (to include bedrooms, living areas, kitchen, outside of house and grounds) as part of the host family application process; (3) whether the host family application references should include references from family members or local coordinators, and whether one reference should be from the school in which the student is enrolled; (4) whether fingerprint-based criminal background checks should be required of all adult host family members and sponsor officers, employees, representatives, agents and volunteers who come, or may come, into direct contact with the students, and whether guidelines regarding the interpretation of criminal background checks are needed; (5) the establishment of baseline financial resources for potential host families, and (6) the establishment of limitations on the composition of potential host families.

In light of the 97 comments received in response to the ANPRM, the Department has identified six areas that we believe will enhance the safety and well-being of foreign secondary school students studying in the United States. To effectively implement these changes, additional regulations are necessary. The following is an explanation of the proposed regulatory changes:

1. Standard Host Family Application Form

The Department recognizes that many sponsors have invested significantly in technology to develop proprietary host family applications and application processing systems. The application formats used by sponsors vary but most contain uniform information required by the Department. Accordingly, the Department believes that standard information required for all host family applications, but processed in different formats, is preferable to a standard application form required for all potential host families. The required information fields can be found at Appendix F—''Information to be collected on Secondary School Student Host Family Applications''—of this rulemaking.

2. Requiring Photographs of the Host Family Home

The Department finds that photographing potential host family homes is already standard practice with more than half of existing secondary student exchange sponsors. Many of the sponsors who commented on the recent Advance Notice of Proposed Rulemaking indicated that they find providing photographs to be a reasonable requirement and an industry ''best practice'' to prevent secondary school students from being placed in unhealthy environments. The Department concurs and considers this a ''best practice'' and proposes that all sponsors photograph the exterior, kitchen, student's bedroom, bathroom, and family or living room of the potential host family's home.

3. Personal Character References for Host Family Applicants

The Department has determined that personal character references should not include references from host family relatives or a sponsor representative (field staff or volunteers). The Department has also determined that obtaining a character reference from the school was not attainable and would be subject to privacy laws.

4. Measuring Host Family Financial Resources

The Department has determined that regional differences in incomes and standards of living prevent adoption of a requirement that potential host families have a minimum household income. As such, a requirement would not fairly or accurately reflect cost of living differences for families in urban, suburban, exurban and rural areas, or determine the adequacy of the care the student will receive. However, the Department does not deem appropriate the placement of Secondary School Student exchange participants with host families receiving financial needs-based government subsidies for food or housing. Such families, by definition, lack sufficient financial resources to meet fully the financial obligations associated with hosting an exchange student.

To assist sponsors in their required assessment of the host family's ability to undertake hosting obligations, the Department finds it appropriate and necessary for Secondary School Student exchange sponsors to obtain an objective measurement to determine the financial capability of potential families to host an exchange student. The Department believes this objective measurement can be achieved through collecting certain information on the host family application form. Accordingly, the Department proposes that sponsors query potential host families regarding household income and include a box on the host family application form denoting annual household income level (less than $25,000, $25–$50,000, $50,000–$75,000, $75,000 and above). Collection of this information will also provide the Department the option to refine its understanding of the demographic profile of host families. In evaluating host family resources, sponsors need to be mindful of the host family's obligation to provide three quality meals per day and ensure transportation to and from school and school activities.

5. Criminal Background Checks

The Department has conducted significant analysis of this issue and recognizes that no single criminal background check, or combination of background checks, will guarantee that a potential host family member has no

record of any encounters with the U.S. criminal justice system. As the U.S. Attorney General opined in the June 2006 ''Attorney General's Report on Criminal History Background Checks'':

> No single source exists that provides complete and up-to-date information about a person's criminal history. The FBI-maintained criminal history database, however, is one of the better sources because it is based on positive identification and can provide, at a minimum, nationwide leads to more complete information. If provided such access, however, users may not want to rely exclusively on an FBI and state repository check and may also want to check other record sources, such as commercial databases and local courthouses to obtain more complete and up-to-date information in support of criminal history background screening.

http://www.justice.gov/olp/ag_bgchecks_report.pdf

As detailed in the Attorney General's Report, criminal background checks are primarily performed at the county, state and federal (FBI) levels and through private commercial vendors who operate as consumer reporting agencies. Each of these background checks provide certain information that the others do not; yet, collectively and individually, these records can be incomplete. Most crimes occur at the county level, and many, not all, county records are shared with state law enforcement and criminal repository agencies who in turn share some, not all, of these records with the FBI. In turn, the FBI maintains a database that includes all federal crimes in addition to an estimated 70–90% of state crimes. States simply do not report all required crimes to the FBI and many offenses such as DUIs are not required to be reported at all. State criminal history repositories also may not have records of offenses that have not been forwarded to them by local law enforcement agencies.

A number of problems exist with conducting only a basic name and social security number background check through a private vendor, which include a lack of uniformity and comprehensiveness of records. Typically, private vendors purchase or gain access to criminal history information in bulk from county courthouses, state correctional facilities, and state criminal history repositories, creating databases searchable by an individual's name and social security number. Private vendor databases are acknowledged to be incomplete. The scope of criminal history information available to private vendors varies greatly by state and county as several states and counties restrict access to certain records or do not share or sell criminal history information to private vendors. It is important to note that FBI records are not made available to private vendor databases. Further, state and county repositories that sell or share information do not always provide private vendors with timely updates of new or revised records, resulting in outdated records in many private vendor databases.

The Department finds that there is no standard across the industry and individual private vendors maintain their own diverse combinations of contracts with a variety of county and state criminal history repositories. A basic name and social security check by a private vender can also yield a false positive result (an individual's name or social security number is mistaken for that of another individual) or a false negative result (an individual's criminal record is missed because that individual provided a false name or false social security number). An accurate and updated private vendor check will, however, reveal residential information, as well as court, corrections, and sex offender record information. Due to the lack of uniformity of private vendor databases and potential for incomplete or inaccurate records, the Department finds significant potential for incomplete or inaccurate private vendor criminal background checks. Further complicating utilization of basic private vendor-conducted criminal background checks is the confusion arising from the cost associated with various searches. Although the non-governmental organization community is given a preferred rate for a basic name and social security number search, other search levels are available for additional fee (e.g. direct county and state criminal record searches). As noted above, regardless of cost, these private vendor searches suffer from the lack of complete data availability.

An examination of the respective sources for criminal background checks follows:

County Repository Search—Most crimes are prosecuted at the county level so most criminal records are found in county repositories. However, in a highly mobile society, it is very easy for someone to live in one county and commit a crime in another. In such a case, the crime would appear only in the county in which the crime was committed and a simple county of residence search would yield no record.

State Repository Search—State records are considered the most complete source of criminal background records, yet suffer from the same limitations as the county search (a person could reside in one state and commit a crime in another). States also vary substantially in how well they maintain and update their criminal history repositories. Thus, a state search alone is inadequate.

Private Vendor Search—Private vendor checks of an individual's name and Social Security Number can yield misdemeanors and crimes that might not show up at the state or even county level due to inaccurate/insufficient reporting. A private vendor search also yields certain financial information not caught in the county, state or FBI searches.

FBI Fingerprint-based Check—An FBI fingerprint-based search ensures correct identification of an individual and compares that individual's record against the records of the 50 states and territories of the United States to locate crimes committed outside the state of residence or during residence in another state.

In addition to the criminal background checks by private vendors currently required of program sponsors, the Department recognizes the necessity of the FBI fingerprint-based criminal background check, which unlike a commercial name and Social Security background check, guarantees that the individual has accurately identified him/herself. Though states should report arrests to the FBI, many do not fully do so, leaving open the possibility of an arrest or criminal record not appearing in an FBI fingerprint-based criminal background check. However, many misdemeanors and DUI arrests are captured through private vendor Social Security Number and name checks. Thus the Department finds that the safety and well-being of Secondary School Student participants would be best served by requiring the FBI fingerprint-based search supplemented by a private vendor search, and a National Sex Offender Registry check.

The Adam Walsh Child Protection and Safety Act of 2006 (Pub. L. 109–248) requires FBI fingerprint-based checks for all prospective foster care or adoptive parents. Given the closely related nature of the placement of a foreign exchange student aged 15–18 with American host parents to that of a foster care placement or adoption (e.g., long-term residence of a child with a new ''host'' family) the Department proposes to mirror existing adoptive/foster care criminal background check laws. In light of the Adam Walsh Act, the above cited Attorney General's Report, and the direct correlation of a foster parent to an Exchange Visitor Program host parent, we propose to seek the FBI's commitment to conduct

fingerprint-based criminal background checks on host family members. The Department also determined that the best combination of background checks should include:

(1) An FBI fingerprint-based criminal background check;

(2) A basic private vendor Social Security Number and name check; and

(3) A National Sex Offender Registry check.

The Department's goal is to require that these checks be conducted annually on all potential host family members aged eighteen and older, including any family member who will turn eighteen years of age during the exchange visitor's stay, as well as on all officers, employees, representatives, agents, and volunteers acting on a sponsor's behalf.

Though there is a significantly higher cost involved with an FBI fingerprint-based criminal background check (approximately $70 for many state and FBI fingerprint-based searches), than with the currently performed private vendor check of Social Security Number and name (approximately $4 for many non-profit organizations), the Department has determined that the safety of each Secondary School Student invited to participate in this program outweighs the additional costs.

Finally, the Department has been advised that less than 1% of criminal background checks of potential host family members contain any negative information regarding criminal activity. Accordingly, the Department is considering adoption of a standard that will disqualify any potential host family applicant for whom a criminal background check reveals a negative record other than a parking violation.

6. Host Family Composition

The Department does not define what constitutes a family; however, we take administrative notice that a family is considered to be more than one person. To ensure the Secondary School Student program's integrity and original intent, no single adults will be allowed to host Secondary School Students. Families comprised of one adult with a school-aged (K–12) child living full-time in the home and families comprised of two adults will be permitted to host Secondary School Students.

Further, this proposed rule includes three proposed changes and clarifications to existing regulations that will provide greater specificity and oversight improvements to better reflect what the Department deems to be current ''best practices.'' These changes include:

(1) Prohibition of payment to host families;

(2) The requirement that a separate host family orientation be conducted after the host family application process has been completed; and

(3) The requirement that the first monthly visit to the exchange student must be conducted by an organizational representative other than the local coordinator who found the host family and made the placement.

Finally, the Department recognizes that the exercise of good judgment by sponsors' local coordinators is the critical link to a successful exchange program. The Department proposes the adoption of a testing and certification program for all local and regional coordinators to be administered by the sponsors and to include a detailed explanation of the Department's regulatory requirements in addition to individual training by the sponsor organization for whom the local coordinator works. This training will include a minimum of eight hours of instruction to provide a comprehensive understanding of the Exchange Visitor Program, its public diplomacy objectives, and the Secondary School Student category rules and regulations. The training will also include instructions on conflict resolution; how to handle and report emergency situations; sexual conduct codes and appropriate responses; the criteria to be used in screening potential host families; and the exercise of good judgment in determining the suitability of a host family placement. Training is to be conducted by a full-time staff member of the sponsor, and may be rendered in classroom, one-on-one, or via an online platform. If training is conducted online, the sponsor must demonstrate successful completion of the course by the local coordinator via on an online test. The Department will review all training materials and will require that these materials be provided with the sponsor application for designation or redesignation. The Department additionally proposes that local coordinators be required to undergo annual certification and a minimum of three hours of refresher training each year following completion of the original training. The refresher course will include an overview of the same categories of the eight-hour course as well as guidance on any new rules and regulations and current Secondary School Student program-wide issues.

Administrative Procedure Act

While the Department is of the view that the Exchange Visitor Program is not governed by § 553 (Rulemaking) or § 554 (Adjudications) of the Administrative Procedure Act because the Exchange Visitor Program involves a foreign affairs function of the United States, it is nevertheless publishing this rule as a proposed rule, with a 60-day provision for public comments, consistent with the requirements of § 553 of the Administrative Procedure Act.

Regulatory Flexibility Act/Executive Order 13272: Small Business

These proposed changes to the regulations are hereby certified as not expected to have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, 5 U.S.C. 601–612, and Executive Order 13272, section 3(b).

Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Section 5 of Executive Order 13175 do not apply to this rulemaking.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by 5 U.S.C. 804 for the purposes of Congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801–808). This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

The Department of State does not consider this rule to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. In addition, the

Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

Executive Order 12988

The Department has reviewed this regulation in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Orders 12372 and 13132

This regulation 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. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this regulation.

Paperwork Reduction Act

OMB Control Number 1405–0147 (Form DS–7000) applies to this information collection. The Department will seek an amendment to that collection to accommodate the new information to be requested under this rule, consistent with the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 62

Cultural exchange program.

Accordingly, 22 CFR Part 62 is proposed to be amended as follows:

PART 62—EXCHANGE VISITOR PROGRAM

1. The Authority citation for Part 62 is revised to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(J), 1182, 1184, 1258; 22 U.S.C. 1431–1442, 2451 *et seq.;* Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. 105–277, Div. G, 112 Stat. 2681 *et seq.;* Reorganization Plan No. 2 of 1977, 3 CFR, 1977 Comp. p. 200; E.O. 12048 of March 27, 1978; 3 CFR, 1978 Comp. p. 168; the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. 104–208, Div. C, 110 Stat. 3009–546, as amended; Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT ACT), Public Law 107–56, Sec. 416, 115 Stat. 354; and the Enhanced Border Security and Visa Entry Reform Act of 2002, Public Law 107–173, 116 Stat. 543.

2. Section 62.25 is revised to read as follows:

§ 62.25 Secondary school students.

(a) Introduction. This section governs Department of State designated exchange visitor programs under which foreign national secondary school students are afforded the opportunity for up to one year of study in a United States accredited public or private secondary school, while living with an American host family or residing at an accredited U.S. boarding school.

(b) Program sponsor eligibility. Eligibility for designation as a secondary school student exchange visitor program sponsor is limited to organizations:

(1) With tax-exempt status as conferred by the Internal Revenue Service pursuant to section 501(c)(3) of the Internal Revenue Code; and

(2) Which are United States citizens as such term is defined in § 62.2.

(c) Program eligibility. Secondary school student exchange visitor programs designated by the Department of State must:

(1) Require all participants to be enrolled and participating in a full course of study at an accredited educational institution;

(2) Allow entry of participants for not less than one academic semester (or quarter equivalency) nor more than two academic semesters (or quarter equivalency) duration; and

(3) Be conducted on a U.S. academic calendar year basis, except for students from countries whose academic year is opposite that of the United States. Exchange students may begin in the second semester of a U.S. academic year if specifically permitted to do so, in writing, by the school in which the exchange visitor is enrolled. Both the host family and school must be notified prior to the exchange student's arrival in the United States that the placement is for either an academic semester or year, or calendar year program.

(d) Program administration. Sponsors must ensure that all officers, employees, representatives, agents, and volunteers acting on their behalf:

(1) Are adequately trained and supervised, including completion of an eight hour Department-approved training course that provides a comprehensive understanding of the Exchange Visitor Program; its public diplomacy objectives; the Secondary School Student category rules and regulations; sexual conduct codes; the screening of potential host families and the exercising of good judgment to determine what constitutes a suitable host family placement. Training will be conducted by a full-time staff member of the sponsor, and may be rendered in classroom, one-on-one, or via an online platform. Sponsors must demonstrate successful completion of the course by the local and regional coordinators. All sponsor training materials must be submitted to the Department for its review as part of the sponsor application for designation or redesignation. A three hour refresher training course is required for all local and regional coordinators each year following completion of the eight hour training course. The refresher course will include an overview of the same categories of the eight hour course as well as guidance on any new rules and regulations and current Secondary School Student program-wide issues.

(2) Have been vetted annually through an FBI fingerprint-based criminal background check, a private vendor-conducted basic name and social security number check, and a check of the National Sex Offender Registry.

(3) Make no student placement beyond 120 miles of the home of a local organizational representative authorized to act on the sponsor's behalf in both routine and emergency matters arising from an exchange student's participation in the exchange visitor program;

(4) Ensure that the host family undergoes a separate orientation to be conducted at a date after the host family application process concludes;

(5) Ensure that no organizational representative act as both host family and a local coordinator or area supervisor for any single exchange student participant;

(6) Maintain, at minimum, a monthly schedule of personal contact with the student and with the host family, including one in-person and in-private visit with the student, and ensure that the school has contact information (including the name, direct phone number, and email) for the local organizational representative and the program sponsor;

(7) Ensure that the first monthly visit to the Secondary School Student must be conducted by a sponsor representative other than the local coordinator who found the host family and made the placement; and

(8) Adhere to all regulatory provisions set forth in this Part and all additional terms and conditions governing program

administration that the Department may from time to time impose.

(e) Student selection. In addition to satisfying the requirements of § 62.10(a), sponsors must ensure that all participants in a designated secondary school student exchange visitor program:

(1) Are secondary school students in their home country who have not completed more than eleven years of primary and secondary study, exclusive of kindergarten; or are at least 15 years of age but not more than 18 years and six months of age as of the program start date;

(2) Demonstrate maturity, good character, and scholastic aptitude; and

(3) Have not previously participated in an academic year or semester secondary school student exchange program in the United States or attended school in the United States in either F–1 or J–1 visa status.

(f) Student enrollment. (1) Sponsors must secure prior written acceptance for the enrollment of any exchange student participant in a United States public or private secondary school. Such prior acceptance must:

(i) Be secured from the school principal or other authorized school administrator of the school or school system that the exchange student participant will attend; and

(ii) Include written arrangements concerning the payment of tuition or waiver thereof if applicable.

(2) Under no circumstance may a sponsor facilitate the entry into the United States of an exchange student for whom a written school placement has not been secured.

(3) Sponsors must maintain copies of all written acceptances and make such documents available for Department of State inspection upon request.

(4) Sponsors must provide the school with a translated ''written English language summary'' of the exchange student's complete academic course work prior to commencement of school, in addition to any additional documents the school may require. Sponsors must inform the prospective host school of any student who has completed secondary school in his/her home country.

(5) Sponsors may not facilitate the enrollment of more than five exchange students in one school unless the school itself has requested, in writing, the placement of more than five students.

(6) Upon issuance of Form DS–2019 to a prospective participant, the sponsor accepts full responsibility for placing the student, except in cases of voluntary student withdrawal or visa denial.

(g) Student orientation. In addition to the orientation requirements set forth at § 62.10, all sponsors must provide exchange students, prior to their departure from the home country, with the following information:

(1) A summary of all operating procedures, rules, and regulations governing student participation in the exchange visitor program along with a detailed summary of travel arrangements;

(2) A copy of the Department's letter to exchange students;

(3) Age and language appropriate information on how to identify and report sexual abuse or exploitation;

(4) A detailed profile of the host family in which the exchange student is placed. The profile must state whether the host family is either a permanent placement or a temporary-arrival family;

(5) A detailed profile of the school and community in which the exchange student is placed; and

(6) An identification card, which lists the exchange student's name, United States host family placement address and telephone numbers, and sponsor name and main office contact numbers, the name and direct (as well as cellular) telephone number of the local coordinator and area representative and the Department of State office number and Secondary Student toll free number. The identification card must also contain the name of the health insurance provider and policy number. Such cards may be provided in advance of home country departure or immediately upon entry into the United States.

(h) Student extra-curricular activities. Exchange students may participate in school sanctioned and sponsored extra-curricular activities, including athletics, if such participation is:

(1) Authorized by the local school district in which the student is enrolled; and

(2) Authorized by the State authority responsible for determination of athletic eligibility, if applicable.

(i) Student employment. Exchange students may not be employed on either a full or part-time basis but may accept sporadic or intermittent employment such as babysitting or yard work.

(j) Host family selection. Sponsors must adequately screen and select all potential host families and at a minimum must:

(1) Provide potential host families with a detailed summary of the exchange visitor program and the parameters of their participation, duties, and obligations;

(2) Utilize a standard application form that must be signed and dated by all potential host family applicants which provides a detailed summary and profile of the host family, the physical home environment (to include photographs of the host family home's exterior and grounds, kitchen, student's bedroom, student's bathroom, and family and living areas), family composition and community environment. Exchange students are not permitted to reside with relatives of the host family.

(3) Conduct an in-person, individual-by-individual interview with all family members residing in the home;

(4) Ensure that the host family is capable of providing a comfortable and nurturing home environment and that the student's bedroom contains a separate bed for the student, not convertible or inflatable in nature, adequate storage space for the student's clothes and personal belongings, reasonable access to bathroom facilities, study space if not otherwise available in the house and reasonable, unimpeded access to the outside of the house in the event of a fire or similar emergency.

(5) Ensure that the host family has a good reputation and character by securing two personal references from within the community for each host family, which may not be obtained from relatives or representatives of the sponsor (i.e. field staff or volunteers), attesting to the host family's good reputation and character;

(6) Ensure that the host family has adequate financial resources to undertake hosting obligations and are not receiving needs-based government subsidies for food or housing;

(7) Verify that each member of the host family household eighteen years of age and older, or each member of the host family household who will turn eighteen years of age during the exchange student's stay in that household, has undergone an FBI fingerprint-based criminal background check, a private vendor-conducted basic name and social security number check, and a check of the National Sex Offender Registry; and

(8) Maintain a record of all documentation, including but not limited to application forms, background checks, evaluations, and interviews, for all selected host families for a period of three years following completion of the student's exchange program.

(9) Ensure that potential single adult host parents have at least one school-aged child living full-time in the host family home.

(k) Host family orientation. In addition to the orientation requirements set forth in § 62.10, sponsors must:

(1) Inform all host families of the philosophy, rules, and regulations governing the sponsor's exchange visitor program, including examples of ''worst practices'' in the exchange experience;

(2) Provide all selected host families with a copy of Department of State-promulgated Exchange Visitor Program regulations and a copy of the Department of State letter to exchange student host families; and

(3) Advise all selected host families of strategies for cross-cultural interaction and conduct workshops which will familiarize the host family with cultural differences and practices.

(l) Host family placement. (1) Sponsors must secure, prior to the student's departure from his or her home country, a permanent or arrival host family placement for each exchange student participant. Sponsors may not:

(i) Facilitate the entry into the United States for an exchange student for whom a host family placement has not been secured;

(ii) Place more than one exchange student with a host family without the express prior written consent of the Department of State. Under no circumstance may more than two exchange students be placed with one host family.

(2) Sponsors must advise both the exchange student and host family, in writing, of the respective family compositions and backgrounds of each, whether the host family placement is a permanent or temporary placement, and facilitate and encourage the exchange of correspondence between the two prior to the student's departure from the home country.

(3) In the event of unforeseen circumstances which necessitate a change of host family placement, the sponsor must document the reason(s) necessitating such change and provide the Department of State with an annual statistical summary reflecting the number and reason(s) for such change in host family placement in the program's annual report.

(m) Reporting requirements. Along with the annual report required by regulations set forth at § 62.15, sponsors must file with the Department of State the following information:

(1) Sponsors must immediately report to the Department any incident or allegation involving the actual or alleged sexual exploitation or abuse of an exchange student participant. Sponsors must also report such allegations as required by local or state statute or regulation. Failure to report such incidents to the Department and, as required by state law or regulation, to local law enforcement authorities shall be grounds for the summary suspension and termination of the sponsor's Exchange Visitor Program designation.

(2) A summation of all situations which resulted in the placement of exchange student participants with more than one host family or school placement; and

(3) Provide a report of all final academic year and semester program participant placements by August 31 for the upcoming academic year or January 15 for the Spring semester and calendar year. The report must provide at a minimum, the exchange visitor student's full name, Form DS–2019 number (SEVIS ID #), host family placement (current U.S. address), school (site of activity) address, and name of local coordinator.

3. A new Appendix F is added to Part 62, as follows:

Appendix F to Part 62—Information To Be Collected on Secondary School Student Host Family Applications

Information To Be Collected on Secondary School Student Host Family Applications

Basic Family Information:
- a. Host Family Member—Full name & relationship (stays overnight)
- b. DOB
- c. Address
- d. Employment—employer name, job title, and point of contact for each working resident of the home
- e. Is the residence part of a functioning business? (ex: daycare, farm)
- f. Does any resident of the home have physical or mental disabilities? Y/N If yes, describe each disability:

Household Pets:
- a. Type of Pets
- b. Number of Pets

Financial Resources:
- a. Average Annual Income Range: Less than $25,000; $25,000–$50,000; $50,000–$75,000; $75,000 and above
- b. Describe if anyone residing in the home receives any kind of public assistance (financial needs-based government subsidies for food or housing)?
- c. Personal expenses expected to be covered by the student

Diet:
- a. Does anyone in the family follow any dietary restrictions? (Y/N) If yes, describe:
- b. Do you expect the student to follow any dietary restrictions? (Y/N) If yes, describe:
- c. Would you feel comfortable hosting a student who follows a particular dietary restriction (ex. Vegetarian, Vegan, etc.)? (Y/N)

Religious Affiliation:
- a. What is your family's religious affiliation/denomination/congregation?
- b. How often do you attend religious services?
- c. Do you expect the EV to attend religious services with your family*? (Y/N)

*Students cannot be required to attend religious services. However, as part of the exchange, they are encouraged to experience this facet of U.S. culture at their discretion.
- d. Would you feel comfortable hosting a student who attended services other than your own or did not attend religious services?

High School Information:
- a. Name and address of school (private or public school):
- b. Approximate size of the school student body:
- c. Approximate distance of school from your home:
- d. Approximate start date of the school year:
- e. How will the exchange student get to the school?
- f. Would special transportation be necessary for extracurricular activities after school or in the evenings? If yes, how could this be arranged?
- g. Which of your family's children, if any, presently attend this school? If applicable, list sports/clubs/activities, if any, your child(ren) participate(s) in at the school:
- i. Does any member of your household work for the high school in a coaching/teaching/or administrative capacity?
- j. Has any member of your household had contact with a coach regarding the hosting of an exchange student with particular athletic ability? If yes, please describe the contact and sport:

Community Information:
- a. In what type of community do you live (ex: Urban, Suburban, Rural, Farm, etc.)
- b. Population of community:
- c. Nearest Major City (Distance and population):
- d. Nearest Airport (Distance)
- e. City or town Web site:
- f. Briefly describe your neighborhood and community:
- g. What points of interest are near your area (parks, museums, historical sites)?

Home Description:
- a. Describe your type of home (ex: Single family home, Condominium, Duplex, Apartment, Mobile home)
- b. Describe Primary Rooms and Bedrooms:
- c. Number of Bathrooms
- d. Will the exchange student share their room? (Y/N) If yes, with which household resident?
- e. Describe the room where the exchange student will stay:
- f. Describe amenities that student has access to
- g. Utilities

Family Activities:
- a. Language spoken in Home
- b. What type of weather should the student expect for each season?
- c. Please describe activities and/or sports each family members participate in: (ex: Camping, Hiking, Dance, Crafts, Debate, Drama, Art, Music, Reading, Soccer, Baseball, Horseback riding, etc.)
- d. Describe your expectations regarding the responsibilities and behavior of the student while in your home (ex: Homework, Household chores, Curfew

(school night and weekend), Drinking of alcoholic beverages, Driving, Smoking, Computer/Internet/E-Mail)

References:

Dated: December 16, 2009.

Stanley S. Colvin,

Deputy Assistant Secretary for Private Sector Exchanges, Bureau of Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. E9–30274 Filed 12–22–09; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 31

[REG–139255–08]

RIN 1545–BI51

Information Reporting for Payments Made in Settlement of Payment Card and Third Party Network Transactions; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to a notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking (REG–139255–08) that were published in the **Federal Register** on Tuesday, November 24, 2009 (74 FR 61294) relating to information reporting requirements, information reporting penalties, and backup withholding requirements for payment card and third party network transactions.

FOR FURTHER INFORMATION CONTACT: Barbara Pettoni, (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

A notice of proposed rulemaking (REG–139255–08) that is the subject of this document is under sections 3406, 6041, 6050W, and 6051 of the Internal Revenue Code.

Need for Correction

As published, a notice of proposed rulemaking (REG–139255–08) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of a notice of proposed rulemaking (REG–139255–08), which was the subject of FR Doc. E9–28076, is corrected as follows:

§ 1.6050W–1 [Corrected]

1. On page 61302, column 3, paragraph (e) *Example 3.,* lines 1 through 3, the language ''*Example 3. Automated clearinghouse network.* A operates an automated clearinghouse (''ACH'') network that merely'' is corrected to read ''*Example 3. Automated clearing house network.* A operates an automated clearing house (''ACH'') network that merely''.

§ 31.3406–0 [Corrected]

2. On page 61304, column 2, in the instructional paragraphs, first entry of Paragraph 5, the language ''1. Entries for § 31.3406(b)(3)–5(a) and (b) are added.'' is corrected to read ''1. Entries for § 31.3406(b)(3)–5(a), (b) and (c) are added.''.

§ 31.3406(b)(3)–5 [Corrected]

3. On page 61304, column 2, at the bottom of the column, paragraph (c) ''Effective/applicability date.'' is added.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E9–30551 Filed 12–22–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 104, 105, 160

[USCG–2004–19963]

RIN 1625–AA93

Notification of Arrival in U.S. Ports; Certain Dangerous Cargoes

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: On December 16, 2005, the Coast Guard published an interim rule that defined ''certain dangerous cargo residue'' (CDC residue). After reviewing comments on the interim rule, the Coast Guard proposes to change that definition to include certain bulk liquids and liquefied gases in residue quantities. Based on changes to the CDC residue definition, the Coast Guard also proposes to revise the definition of ''certain dangerous cargo.'' Additionally, the Coast Guard intends to adopt changes made to 33 CFR part 104 and 105 by the 2005 interim rule.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before February 22, 2010 or reach the Docket Management Facility by that date. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before February 22, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–2004–19963 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

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

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

Collection of Information Comments: If you have comments on the collection of information discussed in section VI.D. of this notice of proposed rulemaking (NPRM), you must also send comments to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget. To ensure that your comments to OIRA are received on time, the preferred methods are by e-mail to oira_submission@omb.eop.gov (include the docket number and ''Attention: Desk Officer for Coast Guard, DHS'' in the subject line of the e-mail) or fax at 202–395–6566. An alternate, though slower, method is by U.S. mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Lieutenant Sharmine Jones, Office of Vessel Activities, U.S. Coast Guard Headquarters, telephone 202–372–1234. If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

I. Public Participation and Request for Comments
A. Submitting Comments
B. Viewing Comments and Documents
C. Privacy Act
D. Public Meeting
II. Abbreviations

III. Background and Purpose
A. History of This Rulemaking
B. Parallel Rulemaking Affecting This Rulemaking
IV. Discussion of Comments on the Interim Rule
A. CDC Residue
B. NOAs and Port Scheduling
C. Definition of Charterer
D. Foreign Recreational Vessels
V. Discussion of Proposed Rule
A. Proposed Changes to Definitions of CDC and CDC Residue
B. Interim Rule Changes To Be Adopted
C. Interim Rule Changes Affected by Parallel Rulemaking
VI. Regulatory Analysis
A. Regulatory Planning and Review
B. Small Entities
C. Assistance for Small Entities
D. Collection of Information
E. Federalism
F. Unfunded Mandates Reform Act
G. Taking of Private Property
H. Civil Justice Reform
I. Protection of Children
J. Indian Tribal Governments
K. Energy Effects
L. Technical Standards
M. Environment

I. Public Participation and Request for Comments

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

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2004–19963), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://regulations.gov,* insert ''USCG–2004–19963'' in the ''Keyword'' box, and click ''Search''; then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know they have reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period. We may change this proposed rule based on your comments.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* insert ''USCG–2004–19963'' in the ''Keyword'' box, and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

C. Privacy Act

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

D. Public Meeting

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

II. Abbreviations

AIS Automatic identification system
CDC Certain dangerous cargo
CFR Code of Federal Regulations
COI Collection of information
CTAC Chemical Transportation Advisory Committee
DHS Department of Homeland Security
FR **Federal Register**
NOA Notice of arrival
NOAD AIS Vessel Requirements for Notices of Arrival and Departure, and Automatic Identification System
NPRM Notice of proposed rulemaking
OMB Office of Management and Budget
U.S.C. United States Code

III. Background and Purpose

A. History of This Rulemaking

The notice of arrival (NOA) is a process by which a vessel submits required information—including data about the vessel, cargo and crew—before the vessel arrives at a port or place in the United States. The information contained in the NOA allows the Coast Guard to implement appropriate safety and security measures, including security screening and escort into port.

In 2003, the Coast Guard became concerned about the potential security hazards of bulk Ammonium nitrate and propylene oxide cargoes transported on U.S. waters. After consultation with the Chemical Transportation Advisory Committee (CTAC) and Towing Safety Advisory Committee, the Coast Guard determined that these substances should be considered ''certain dangerous cargoes'' (CDCs). Regulations at 33 CFR 160.204 specifically define CDCs, but, in general terms, CDCs are substances or materials that pose an unreasonable risk to health, safety, and property if improperly handled. Existing regulations require most vessels carrying CDCs to submit NOAs.

The Coast Guard published a temporary final rule on August 18, 2004, titled ''Notification of Arrival in U.S. Ports; Certain Dangerous Cargoes; Electronic Submission'' (69 FR 51176). That temporary final rule changed the definition of ''certain dangerous cargo (CDC)'' to include: ammonium nitrate, in bulk; ammonium nitrate based fertilizers, in bulk; and propylene oxide, alone or mixed with ethylene oxide, in bulk. The temporary final rule also updated 33 CFR parts 104 and 105 on vessel and facility security to include these new CDCs. In addition, the temporary final rule implemented two new optional formats for electronic submittal of NOAs.

The Coast Guard published an interim rule on December 16, 2005, titled ''Notification of Arrival in U.S. Ports; Certain Dangerous Cargoes; Electronic Submission'' (70 FR 74663). That interim rule made permanent the definition of CDC as implemented in the 2004 temporary final rule. The interim rule also made permanent the application of vessel security requirements at 33 CFR part 104 to barges carrying CDCs. However, the interim rule removed the remainder of the temporary changes made to 33 CFR parts 104 and 105 because they were no longer necessary.

The interim rule also added changes that had not been included in the 2004

temporary final rule. First, the interim rule added another optional method for electronic submittal of NOAs. Second, the interim rule clarified that 33 CFR part 160 on NOAs does not apply to U.S. recreational vessels under 46 U.S.C. 4301. Third, the interim rule added a definition of ''CDC residue'' that, in effect, exempted certain vessels carrying CDC residue from the same NOA requirements imposed on vessels carrying CDCs. The 2005 definition of CDC residue is limited to residue quantities of bulk ammonium nitrate or ammonium nitrate fertilizer remaining onboard after the vessel discharges all saleable cargo; no other cargo residues fall within the current definition of ''CDC residue.''

In response to the 2005 interim rule, the Coast Guard received comments from the Chemical Transportation Advisory Committee (CTAC) suggesting the Coast Guard revise the definition of CDC residue to include some bulk liquids and liquefied gases. The Coast Guard tasked CTAC's Hazardous Cargoes Transportation Security Subcommittee with reviewing the current requirement that a CDC vessel remain a CDC vessel until the removal of all bulk liquid and liquefied gas CDC cargoes, including residue quantities of such cargoes, from the vessel. The Committee completed its recommendation on August 24, 2006, and submitted it to the Coast Guard for review and consideration. The Coast Guard concurs with CTAC and, with this NPRM, proposes to amend the definitions of CDC and CDC residue consistent with CTAC's recommendation.

B. Parallel Rulemaking Affecting This Rulemaking

Concurrent with this proposal to amend the definition of CDC residue, a parallel rulemaking effort has proposed to renumber relevant paragraphs and change some of the provisions implemented by the 2005 interim rule. That parallel rulemaking is ''Vessel Requirements for Notices of Arrival and Departure, and Automatic Identification System'' (NOAD AIS). The Coast Guard published an NPRM on December 16, 2008, and the comment period closed on April 15, 2009 (73 FR 76295). Section V.C., ''Interim Rule Changes Affected by Parallel Rulemaking,'' discusses the impact of this NOAD AIS proposal on specific provisions implemented by the 2005 interim rule. You may read the NOAD AIS proposal, and public comments on it, at docket USCG–2005–21869.

IV. Discussion of Comments on the Interim Rule

The Coast Guard received two letters commenting on the 2005 interim rule: one submitted by an advisory committee and the other submitted by a trade association. The letter from the advisory committee addressed several issues associated with CDC residue and NOAs. The letter from the trade association addressed the clarification made by the interim rule with regard to applicability of 33 CFR part 160. The Coast Guard received no comments on the interim rule as it affected 33 CFR parts 104 and 105 or the electronic submission of NOAs.

A. CDC Residue

One commenter sought to provide information on industry practices relevant to vessel transport of CDCs. In particular, the commenter described the manner in which chemical cargo residues are diluted by washing the tanks with water or by loading another cargo over the residue. The commenter suggested that these practices, as well as the practice of carrying multiple cargoes on one vessel, reduce the risk of an intentional incident involving CDC residues. The commenter suggested the Coast Guard undertake further study of CDC residues in order to avoid expending Coast Guard and industry resources on unnecessary security precautions. The Coast Guard agreed with this recommendation and tasked the Chemical Transportation Advisory Committee (CTAC) with providing recommendations on CDC residue. The Committee's recommendations form the basis of the Coast Guard's proposal in this NPRM.

The same commenter suggested that the definition of ''CDC residue'' implemented by the interim rule be renamed ''Ammonium Nitrate Residue'' to avoid implying that all CDCs carried in residue quantities satisfy the definition. With this NPRM, the Coast Guard proposes to broaden the definition of ''CDC residue'' to include cargo residue other than ammonium nitrate, thereby removing the possibility of confusion.

B. NOAs and Port Scheduling

One commenter described the difficulty of complying with NOA requirements when vessels plan to call at multiple berths in the same port. The commenter indicated that the minimum notice required before transit to another berth causes delays and unnecessary ship movements, contributing to traffic congestion in busy ports. This proposed rule is likely to reduce the number of intra-port transits requiring NOAs because it broadens the definition of CDC residue. However, the general issues of port congestion and NOAs for intra-port transit are outside the scope of the interim rule and this NPRM, neither of which addresses the time for the submission of NOAs. We have forwarded these comments to the appropriate program staff for further consideration and appropriate action.

The same commenter suggested that the Coast Guard use Vessel Traffic Service systems and/or Automatic Identification System coverage to track vessel movements in the port area, instead of requiring NOAs. In this proposed rule, the Coast Guard is revising the definition of CDC and CDC residue in its NOA regulations. Because the Coast Guard escorts vessels carrying CDC in ports, this proposed change would allow the Coast Guard to focus on vessels that are loaded with a CDC cargo and free it from having to escort vessels that are only transporting CDC residue. This proposed rule would also relieve some vessels that do not operate in VTS areas from having to submit NOAs. This commenter's recommendation goes beyond the scope of this rulemaking so we are forwarding it to the appropriate program staff for consideration in the NOAD AIS rulemaking.

C. Definition of Charterer

One commenter suggested that requiring NOAs to include the identity of the vessel charterer provides minimal value to the Coast Guard. In addition, this commenter indicated that individual companies submitting NOAs identify the vessel charterer differently because the definition of ''charterer'' is confusing. Regulations at 33 CFR 160.204 define the term charterer to mean ''the person or organization that contracts for the majority of the carrying capacity of a ship for the transportation of cargo to a stated port for a specified period. This includes 'time charterers' and 'voyage charterers'.'' However, the use of the information collected in the NOA is outside the narrow scope of the interim rule and this NPRM. We have forwarded these comments to the appropriate program staff for further consideration and appropriate action.

D. Foreign Recreational Vessels

One commenter expressed concern that the term ''foreign recreational vessels'' could create confusion between foreign-made vessels and foreign-owned vessels. Specifically, the commenter recommended inserting a reference to the definition of ''vessel of the United States'' found in 46 App. U.S.C. 1903(b).

The Coast Guard agrees that the phrase ''U.S. recreational vessels under 46 U.S.C. 4301 et seq.'' could create some confusion, as it does not directly refer to definitions found in Title 46 of the United States Code. As discussed below, the provision that concerns this commenter is addressed in the parallel NOAD AIS rulemaking proceeding.

As part of the separate NOAD AIS rulemaking mentioned earlier in this preamble, the Coast Guard has proposed to delete the provision that is the subject of the comment, revise the remaining language on applicability of 33 CFR part 160, and add a definition of ''foreign vessel'' to Part 160. The proposed revisions should clarify the issues identified by the commenter concerned about § 160.202(b). Interested parties may review the NOAD AIS proposal at docket USCG–2005–21869.

V. Discussion of Proposed Rule

A. Proposed Changes to Definitions of CDC and CDC Residue

The Coast Guard proposes to amend the definition of CDC residue to include certain bulk liquids and liquefied gases that remain onboard in a cargo system after discharge and are not accessible through normal transfer procedures. A vessel carrying only CDC residue may qualify for an NOA exemption for vessels not carrying CDC, provided it meets criteria in § 160.203(b). Changing the definition of CDC residue will allow the Coast Guard to better allocate resources to vessels that are carrying CDCs and not just CDC residue.

In formulating this proposal, the Coast Guard considered aspects of the transportation industry and chemical properties to decide which chemicals to include in the definition. These aspects included: Real-life workings of vessels in handling residues; methods of pumping material; the quantity of cargo remaining onboard after discharge, including stripping, cleaning tanks, etc.; the relative hazard of CDCs; physical properties of the chemicals; vapor pressures of the chemicals; toxicity of the chemicals; and exposure guidelines for the chemicals.

The Coast Guard believes that expanding the definition of CDC residue is appropriate for several reasons. First, discharging a typical chemical cargo leaves a minimal amount of cargo in the tank that is not accessible using the normal pumping system. Second, preparing the tank for a new cargo effectively removes the potential hazard of the previous cargo due to dilution or removal of the potential hazard. Third, with specific respect to liquefied gases, gas tankers carry residue at a pressure well below its vapor pressure, which mitigates the hazard.

The Coast Guard also proposes that a few bulk liquid and liquefied gas cargoes should remain CDCs even when carried in residue quantities. We base this proposal primarily on the relative hazard created by the vapor pressure of the cargo and its potential impact to health and safety. Therefore, the Coast Guard proposes to amend the definition of CDC residue to specify that the following cargoes remain CDCs at all times, even when only residue quantities remain onboard: anhydrous ammonia, chlorine, ethane, ethylene oxide, methane (LNG), methyl bromide, sulfur dioxide, and vinyl chloride. Under this proposal, vessels carrying residue quantities of these cargoes will remain CDC vessels.

B. Interim Rule Changes To Be Adopted

The 2005 interim rule made changes to 33 CFR parts 104 and 105 dealing with vessel security regulations for CDC vessels. In particular, the interim rule adopted the change, first made in the 2004 temporary final rule, specifying that 33 CFR part 104 applies to barges carrying CDCs in bulk and engaged on international voyages. Additionally, the 2005 interim rule removed all other changes made to parts 104 and 105 by the 2004 temporary final rule, because those paragraphs were no longer necessary. The Coast Guard proposes to adopt these part 104 and 105 changes introduced by the interim rule as final.

C. Interim Rule Changes Affected by Parallel Rulemaking

The 2005 interim rule also updated electronic submission options by adding the eNOAD system as an optional method for electronically submitting NOAs under 33 CFR part 160. However, an NPRM published in the parallel NOAD AIS rulemaking proposes to revise § 160.210 to require that all NOAs be submitted electronically.

Separately, the 2005 interim rule added a new paragraph, § 160.202(b), clarifying that the NOA provisions in Part 160 do not apply to U.S. recreational vessels. The NOAD AIS rulemaking proposes to remove § 160.202(b), renumber § 160.202 as § 160.203, and revise the new § 160.203(a) to read: ''This subpart applies to U.S. vessels in commercial service and all foreign vessels that are bound for or departing from ports or places of the United States.'' Similarly, the NOAD AIS proposal would renumber § 160.204 as § 160.202, and add definitions of ''commercial service'' and ''foreign vessel.''

In light of the NOAD AIS proposal to remove or revise these two sections affected by the 2005 interim rule, the Coast Guard does not expect to address either section in the final rule to follow this NPRM. Interested parties may review the relevant sections in the NOAD AIS docket at USCG–2005–21869.

VI. Regulatory Analysis

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

A. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review. OMB has not reviewed it under that Order.

As discussed in the ''Background and Purpose'' section of this proposed rule, the Coast Guard published an interim rule in 2005 that changed the definition of certain dangerous cargo (CDC) to include ammonium nitrate, in bulk; ammonium nitrate based fertilizers, in bulk; and propylene oxide, alone or mixed with ethylene oxide, in bulk. In the regulatory analysis for the interim rule, the Coast Guard presented the costs and impacts associated with changing the definition of CDC (70 FR 74663).

After publication of the interim rule, the Coast Guard received comments and recommendations from the Chemical Transportation Advisory Committee (CTAC). Based on these recommendations, the Coast Guard proposes to change the definition of CDC so that residue quantities of some chemicals are not CDC. CTAC defined residue as the cargo that remains onboard in a cargo system after discharge that is not accessible through normal transfer procedures. Currently, vessel operators affected by the interim rule are required to submit a notice of arrival (NOA) when transporting CDC, regardless of quantity (including residue amounts). If the Coast Guard adopts this change, some vessel operators would no longer be required to submit NOAs when transporting residue quantities of CDCs. Some chemicals will continue to be considered CDCs in residue amounts (see the ''Discussion of Proposed Rule'' section for more details). Vessel owners carrying these chemicals will continue submitting NOAs when transporting these chemicals in residue amounts, which is the current practice under the interim rule.

Due to the proposed change in the definition of CDC, we expect there

would be a reduction in the cost and reporting burden for vessel owners who transport CDCs in residue amounts. The Coast Guard does not have precise estimates of how many vessel trips or vessel owners will no longer be subject to the NOA requirement. Under current requirements, there is no distinction made for shipments of CDC in residue status.

Based on data from the Coast Guard Ship Arrival Notification System (SANS), we estimate there are on average 2,800 vessels currently carrying CDC that make approximately 25,000 port arrivals a year. Under the current interim rule baseline, each of these vessel arrivals involving CDCs in any amount would require an NOA. Under the proposed rule, some of these vessel arrivals would no longer require an NOA if the vessel is carrying certain CDCs in residue quantity. Based on information from the Coast Guard Office of Vessel Activities, we estimate that there will be at least a five-percent annual reduction in the number of NOA submittals as a result of this proposed rule. Changes in vessel operations and the demand for marine transportation of bulk CDC shipments may affect these estimates.

Based on data in the existing collection of information ''Advance Notice of Vessel Arrival,'' OMB Control Number 1625–0100, we estimate the NOA preparation time to be about 30 minutes (0.5 hours). We estimate the cost for an NOA submission to be about $17.50 ((0.5 hours × $31 labor rate/hour) + $2 transmittal fee).[1] Therefore, we consider a five-percent annual reduction in NOA submissions to be equivalent to a $22,000 decrease in cost burden for vessel operators that transport certain CDCs in residue status.[2] This would also result in a reduction in the NOA information the Coast Guard would need to process.

The Coast Guard carefully considered chemical properties and aspects of the transportation industry in determining which chemicals to include or exclude from the definition of CDC residue. The Coast Guard excluded chemicals that may pose an unreasonable risk in residue quantities from the proposed changes to the definition of CDC residue.

B. Small Entities

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

This proposed rule would not increase the NOA reporting costs to vessel operators shipping CDC. This rulemaking would reduce the burden to vessel operators shipping residue quantities of certain CDCs. Therefore, the Coast Guard certifies that under 5 U.S.C. 605(b) this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rulemaking would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rulemaking would economically affect it.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Lieutenant Sharmine Jones, Office of Vessel Activities (CG–5432), Coast Guard, telephone 202–372–1234. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

D. Collection of Information

This proposed rule does not require a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). It would modify an existing collection under OMB Control Number 1625–0100, Advance Notice of Vessel Arrival.

As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Due to the proposed change in the definition of CDC, we expect that this rulemaking would reduce the annual burden for vessel operators who transport certain CDCs. Regulations would no longer require vessel operators to submit NOAs when transporting residue quantities of certain CDCs. This proposed rule would result in a reduction of the total number of annual respondents and responses in the existing collection under OMB Control Number 1625–0100. The following is a summary of the changes to the existing collection as a result of this proposed rule and updated ship arrival data. The Coast Guard based most of the information on estimates discussed in the ''Regulatory Planning and Review'' section and data from the Coast Guard Ship Arrival Notification System (SANS).

Title: Advance Notice of Vessel Arrival.

OMB Control Number: 1625–0100.

Summary of the Collection of Information: The Coast Guard requires pre-arrival notices from certain vessels entering a port or place in the United States. These vessels include those carrying a CDC as defined in 33 CFR 160.204. This proposed rule would change the definition of CDC so that residue quantities of some chemicals would no longer be considered CDC. As a result, the Coast Guard would no longer require vessel operators to submit NOAs when transporting residue quantities of certain CDCs.

Need for Information: To ensure port safety and security and to ensure the uninterrupted flow of commerce.

[1] Sources for time, labor rate and transmittal fee estimates: (1) Collection of Information, OMB Control Number 1625–0100, ''Advance Notice of Vessel Arrival,'' Supplementary Document ''1625–0100 eNOAD NPRM R1,'' January 14, 2009; and (2) Notice of Proposed Rulemaking, ''Vessel Requirements for Notices of Arrival and Departure, and Automatic Identification System'' docket number USCG–2005–21869.

[2] The figure $22,000 is rounded from $21,875 = $17.50 NOA cost × 25,000 arrivals × 0.05 [the 5% reduction in NOA].

Proposed Use of Information: The Coast Guard would use the information to enhance maritime domain awareness.

Description of the Respondents: Respondents are the owners, agents, masters, operators, or persons in charge of a vessel that carries a CDC and arrives at a port or place in the United States.

Number of Respondents: The total number of respondents for the collection of information is 31,594 per year. The number of these respondents or vessels (the subset of the total number of vessels) affected by this rulemaking is 2,800 per year.

Frequency of Response: The frequency or number of responses associated with the collection of information is 170,866 per year. The number of these responses associated with CDC transits affected by this rulemaking is about 25,000 per year. This rulemaking would decrease that number of responses by about 5 percent or 1,250 per year [25,000 X 0.05 (the 5% reduction in NOA)].

Burden of Response: The burden of response associated with the collection of information is approximately 30 minutes or 0.5 hours per response. This rulemaking would not change the burden of response. It would reduce the number of responses.

Estimate of Total Annual Burden: The total annual burden for the collection of information is 163,994 hours per year for all NOA respondents. We estimate this proposed rule would reduce the total annual burden by 625 hours per year.[3]

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information. We ask for public comment on the collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection. If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**. You need not respond to a collection of information unless it displays a currently valid control number from OMB.

[3] 625 hours per year reduction = 1,250 less NOA responses per year × 0.5 hours per NOA.

E. Federalism

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

F. Unfunded Mandates Reform Act

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

G. Taking of Private Property

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

H. Civil Justice Reform

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

I. Protection of Children

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

J. Indian Tribal Governments

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

K. Energy Effects

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

L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

M. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f) and have made a preliminary determination that this action is one of a category of actions which does not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this preamble. This rule involves editorial or procedural regulations, such as those updating addresses or establishing applications procedures and regulations concerning manning, documentation, admeasurement, inspection, and

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

List of Subjects

33 CFR Part 104

Maritime security, Reporting and recordkeeping requirements, Security measures, and Vessels.

33 CFR Part 105

Maritime security, Reporting and recordkeeping requirements, and Security measures.

33 CFR Part 160

Administrative practice and procedure, Harbors, Hazardous materials transportation, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Vessels, and Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to adopt the amendments to 33 CFR parts 104 and 105, introduced by the interim rule published at 70 FR 74669 on December 16, 2005, as final, and to amend 33 CFR part 160 as follows:

PART 160—PORTS AND WATERWAYS SAFETY–GENERAL

1. The authority citation for part 160 continues to read as follows:

Authority: 33 U.S.C. 1223, 1231; 46 U.S.C. Chapter 701; Department of Homeland Security Delegation No. 0170.1. Subpart D is also issued under the authority of 33 U.S.C. 1225 and 46 U.S.C. 3715.

2. In § 160.204, revise paragraphs (7) through (9) of the definition for ''Certain dangerous cargo (CDC)'' and the entire definition of ''Certain dangerous cargo residue (CDC residue)'' to read as follows:

§ 160.204 Definitions.

* * * * *

Certain dangerous cargo (CDC) includes any of the following:

* * * * *

(7) All bulk liquefied gas cargo carried under 46 CFR 151.50–31 or listed in 46 CFR 154.7 that is flammable and/or toxic and that is not carried as certain dangerous cargo residue (CDC residue).

(8) The following bulk liquids except when carried as CDC residue:

(i) Acetone cyanohydrin;
(ii) Allyl alcohol;
(iii) Chlorosulfonic acid;
(iv) Crotonaldehyde;
(v) Ethylene chlorohydrin;
(vi) Ethylene dibromide;
(vii) Methacrylonitrile;
(viii) Oleum (fuming sulfuric acid); and
(ix) Propylene oxide, alone or mixed with ethylene oxide.

(9) The following bulk solids:

(i) Ammonium nitrate listed as a Division 5.1 (oxidizing) material in 49 CFR 172.101 except when carried as CDC residue; and

(ii) Ammonium nitrate based fertilizer listed as a Division 5.1 (oxidizing) material in 49 CFR 172.101 except when carried as CDC residue.

Certain dangerous cargo residue (CDC residue) includes any of the following:

(1) Ammonium nitrate in bulk or ammonium nitrate based fertilizer in bulk remaining after all saleable cargo is discharged, not exceeding 1,000 pounds in total and not individually accumulated in quantities exceeding two cubic feet.

(2) For bulk liquids and liquefied gases, the cargo that remains onboard in a cargo system after discharge that is not accessible through normal transfer procedures, with the exception of the following bulk liquefied gas cargoes carried under 46 CFR 151.50–31 or listed in 46 CFR 154.7:

(i) Ammonia, anhydrous;
(ii) Chlorine;
(iii) Ethane;
(iv) Ethylene oxide;
(v) Methane (LNG);
(vi) Methyl bromide;
(vii) Sulfur dioxide; and
(viii) Vinyl chloride.

* * * * *

Dated: December 15, 2009.

Kevin S. Cook,

Rear Admiral, U.S. Coast Guard, Director of Prevention Policy.

[FR Doc. E9–30347 Filed 12–22–09; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 380

[Docket No. 2005–1 CRB DTRA]

Digital Performance Right in Sound Recordings and Ephemeral Recordings

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Royalty Judges are publishing for comment proposed regulations governing the statutory minimum fees to be paid by Commercial Webcasters under two statutory licenses, permitting certain digital performances of sound recordings and the making of ephemeral recordings, for the period beginning January 1, 2006, and ending on December 31, 2010.

DATES: Comments and objections, if any, are due by no later than January 22, 2010.

ADDRESSES: Comments and objections may be sent electronically to *crb@loc.gov.* In the alternative, send an original, five copies and an electronic copy on a CD either by mail or hand delivery. Please do not use multiple means of transmission. Comments and objections may not be delivered by an overnight delivery service other than U.S. Postal Service Express Mail. If by mail (including overnight delivery), comments and objections must be addressed to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977. If hand delivered by a private party, comments and objections must be brought to the Copyright Office Public Information Office, Library of Congress, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000, between 8:30 a.m. and 5 p.m. If delivered by a commercial courier, comments and objections must be delivered between 8:30 a.m. and 4 p.m. to the Congressional Courier Acceptance Site located at 2nd and D Street, NE., Washington, DC, and the envelope must be addressed as follows: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, Room LM–403, 101 Independence Avenue, SE., Washington, DC 20559–0600.

FOR FURTHER INFORMATION CONTACT: Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor, by telephone at (202) 707–7658 or by e-mail at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2007, the Copyright Royalty Judges published in the **Federal Register** their determination of royalty rates and terms under the statutory licenses under Sections 112(e) and 114 of the Copyright Act for the period 2006 through 2010 for a digital public performance of sound recordings by means of an eligible nonsubscription transmission or a transmission by a new subscription service. 72 FR 24084. In *Intercollegiate Broadcast System, Inc.*v. *Copyright Royalty Board,* 574 F.3d 748 (D.C. Cir. 2009), the United States Court of Appeals for the District of Columbia Circuit affirmed the Judges' determination in the main but remanded to the Judges the matter of setting the minimum fee to be paid by both Commercial Webcasters and Noncommercial Webcasters under

Sections 112(e) and 114 of the Copyright Act. *Id.* at 762, 767. By order dated October 23, 2009, the Judges established a period commencing November 2, 2009, and concluding on December 2, 2009, for the parties to negotiate and submit a settlement of the minimum fee issue that was the subject of the remand. On December 2, 2009, SoundExchange, Inc. and the Digital Media Association (''DiMA'') submitted a settlement regarding the statutory minimum fee to be paid by Commercial Webcasters.[1] Having received such a settlement, the Judges now publish for comment the proposed change in the rule that is necessary to implement that settlement pursuant to order of remand from the United States Court of Appeals for the District of Columbia Circuit.

List of Subjects in 37 CFR Part 380

Copyright, Sound recordings.

Proposed Regulations

For the reasons set forth in the preamble, the Copyright Royalty Judges propose to amend part 380 of title 37 of the Code of Federal Regulations as follows:

PART 380—RATES AND TERMS FOR CERTAIN ELIGIBLE NONSUBSCRIPTION TRANSMISSIONS, NEW SUBSCRIPTION SERVICES AND THE MAKING OF EPHEMERAL REPRODUCTIONS

1. The authority citation for part 380 continues to read as follows:

Authority: 17 U.S.C. 112(e), 114(f), 804(b)(3).

2. Section 380.3 is amended by revising paragraph (b) to read as follows:

§ 380.3 Royalty fees for the public performance of sound recordings and for ephemeral recording.

* * * * *

(b) *Minimum fee*—(1) *Commercial Webcasters.* Each Commercial Webcaster will pay an annual, nonrefundable minimum fee of $500 for each calendar year or part of a calendar year of the period 2006–2010 during which it is a Licensee pursuant to 17 U.S.C. 112(e) or 114. This annual minimum fee is payable for each individual channel and each individual station maintained by Commercial Webcasters, and is also payable for each individual Side Channel maintained by Broadcasters who are Commercial Webcasters, provided that a Commercial Webcaster shall not be required to pay more than $50,000 per calendar year in minimum fees in the aggregate (for 100 or more channels or stations). The minimum fee payable under 17 U.S.C. 112 is deemed to be included within the minimum fee payable under 17 U.S.C. 114. Upon payment of the minimum fee, the Commercial Webcaster will receive a credit in the amount of the minimum fee against any royalty fees payable in the same calendar year.

(2) *Noncommercial Webcasters.* Each Noncommercial Webcaster will pay an annual, nonrefundable minimum fee of $500 for each calendar year or part of a calendar year of the license period during which they are Licensees pursuant to licenses under 17 U.S.C. 114. This annual minimum fee is payable for each individual channel and each individual station maintained by Noncommercial Webcasters and is also payable for each individual Side Channel maintained by Broadcasters who are Licensees. The minimum fee payable under 17 U.S.C. 112 is deemed to be included within the minimum fee payable under 17 U.S.C. 114. Upon payment of the minimum fee, the Licensee will receive a credit in the amount of the minimum fee against any additional royalty fees payable in the same calendar year.

Dated: December 18, 2009.

James Scott Sledge,

Chief U.S. Copyright Royalty Judge.

[FR Doc. E9–30572 Filed 12–22–09; 8:45 am]

BILLING CODE 1410–72–P

[1] Since the settlement does not include Noncommercial Webcasters, the Judges, on remand of the DC Circuit, will determine the minimum fee for Noncommercial Webcasters pursuant to the October 23, 2009, order. *See Order Regarding Conduct and Scheduling of the Remand Proceeding,* Docket No. 2005–1 CRB DTRA (October 23, 2009); *see also Order Denying in Part and Granting in Part Joint Motion to Modify Scheduling Order,* Docket No. 2005–1 CRB DTRA December 23, 2009. The Judges note that the proposed change is to § 380.3(b), which currently addresses the minimum fee for Commercial and Noncommercial Webcasters in a single paragraph. For sake of clarity, the Judges have proposed a new § 380.3(b)(1), which sets forth the proposed minimum fee for Commercial Webcasters per the settlement between SoundExchange and DiMA and a new § 380.3(b)(2), which sets forth the minimum fee for Noncommercial Webcasters and retains the language in the current § 380.3(b) except all references to Commercial Webcasters have been deleted.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 156

[EPA–HQ–OPP–2009–0635; FRL–8803–3]

RIN 2070–AJ62

Public Availability of Identities of Inert Ingredients in Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: In response to two petitions seeking disclosure of selected inert ingredients on pesticide labels, based on hazard, EPA is initiating rulemaking to increase public availability of the identities of the inert ingredients in pesticide products. This action would assist consumers and users of pesticides in making informed decisions and reduce the presence of potentially hazardous ingredients in pesticides.

DATES: Comments must be received on or before February 22, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0635, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–0635. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line 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 regulations.gov or e-mail. The regulations.gov website 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT:

Kerry B. Leifer, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8811; fax number: (703) 605–0781; e-mail address: *leifer.kerry@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you engage in activities related to the registration of pesticide products. Potentially affected entities may include, but are not limited to, engaging in the formulation and preparation of agricultural and household pest control chemicals or pesticide and other agricultural chemical manufacturing (NAICS) code 32532.

You may also be affected by this action if you are a consumer or user of pesticides, or if you are exposed to pesticides.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through 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:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. 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.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Discussion

A. What Action is the Agency Taking?

EPA is seeking comment on options for increasing the public availability of the identities of inert ingredients in pesticides registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq*. This action is in response to two petitions filed in 2006 that identified a set of over 350 pesticide inert ingredients as hazardous and requested that EPA act to require that these inert ingredient identities appear on the labels of products that include these ingredients in their formulations (Refs. 1 and 2).

On September 30, 2009, EPA partially granted the petitions, committing to initiate rulemaking to increase the public availability of the identities of inert ingredients (beginning with this ANPR), but seeking comment on a range of options to achieve this goal (Ref. 3.)

B. Background

1. *Statutory background*. In enacting FIFRA, Congress chose to distinguish between active and inert ingredients in pesticides. Section 2(a)(1) defines ''active ingredient'' to include an ingredient ''which will prevent, destroy, repel, or mitigate any pest.'' Section 2(m) defines ''inert ingredient'' as an ingredient which is ''not active.''

FIFRA does not directly regulate active and inert ingredients *per se*. Rather, by means of a registration process, the statute regulates the sale, distribution, use and labeling of the pesticide products (often referred to in shorthand as ''pesticides'') that contain these ingredients. An applicant who seeks to register a pesticide must demonstrate that, among other things, ''when used in accordance with widespread and commonly recognized practice it will not generally cause unreasonable adverse effects on the environment.'' FIFRA section 3(c)(5)(D). An applicant who seeks to register a pesticide must also submit or cite test and other data to demonstrate the safety (and in some cases the efficacy) of the pesticide. See FIFRA section 3(c)(1)(F) and 40 CFR part 158. Among other information, EPA requires a complete description of the composition of a pesticide formulation, including the identity of each active ingredient, intentionally added inert ingredient, each impurity present in an amount greater than 0.1% of the technical grade material, and each other impurity of toxicological significance.

In order to determine if a pesticide product meets the unreasonable adverse effects standard, EPA conducts risk assessments for pesticide products in accordance with guidelines developed by the National Academy of Sciences (NAS)/National Research Council (NRC). The NRC risk assessment guidelines consist of four general steps:

Hazard identification, dose-response assessment, exposure assessment, and risk characterization. In the case of an inert ingredient, information on its hazard (the ability to cause adverse health and/or environmental effects) informs the risk assessment process but by itself is not sufficient to determine the risk (the likelihood that an adverse health effect will result from exposure) associated with a particular product.

Active ingredients must be identified by name and percentage on the pesticide's ingredient statement, which is a necessary component of the pesticide product label under FIFRA section 2(q)(2)(A). By contrast, only the total percentage of all inert ingredients in the pesticide must be contained on the ingredient statement. FIFRA section 2(n)(1). There is no statutory requirement that the names of all inert ingredients be contained on the ingredient statement.

Confidentiality of information submitted under FIFRA is governed by section 10 (with additional provisions in sections 7 and 12). With certain limited exceptions, FIFRA section 10(b) bars EPA from disclosing information ''which in the Administrator's judgment contains or relates to trade secrets or commercial or financial information obtained from a person and privileged or confidential.''

Among the exceptions to confidentiality in section 10 is the requirement in FIFRA section 10(d)(1) to make safety and efficacy data available to the public. Safety and efficacy data constitute much of the information provided to EPA to support pesticide registration.

Though FIFRA section 10(d)(1) is important to public understanding of the risks and benefits of specific pesticides, the provision is sometimes misunderstood in its effect on the confidentiality of inert ingredients. Section 10(d)(1) excludes three categories of information from the mandatory disclosure requirement for health and safety data:

> (A) manufacturing or quality control processes, (B) methods for testing, detecting, or measuring the quantity of inert ingredients, and (C) the identity or percentage quantity of inert ingredients.

The FIFRA section 10(d)(1)(C) exclusion for inert ingredient information has been taken by some to mean that any disclosure of inert ingredients is prohibited by statute, regardless of whether the information meets the confidentiality test in FIFRA section 10(b), but in fact the information must meet the FIFRA section 10(b) standard in order to be eligible for confidential treatment. See *Northwest Coalition for Alternatives to Pesticides (NCAP) v. Browner*, 941 F. Supp. 197, 201 (D.D.C. 1996).

FIFRA section 12(a)(2)(D) provides authority for limited disclosures of confidential information, such as to medical professionals for evaluation and treatment purposes.

2. *EPA treatment of inert ingredient identities.* Even with the limitations on confidentiality in section 10 of FIFRA, EPA is required by its confidentiality regulations at 40 CFR part 2, subpart B to protect information claimed as confidential until and unless the Agency makes a final determination that the information is not entitled to confidentiality. Moreover, under certain circumstances, if EPA possesses information for which an affected business might be expected to assert a confidentiality claim if it knew EPA proposed to disclose it, EPA must contact the submitter regarding any possible confidentiality claims prior to public release of the information. See 40 CFR 2.204(c)(2); 2.201(d).

Inert ingredient identities are often claimed as confidential by pesticide applicants and registrants. In addition, registrants often include in pesticide formulations proprietary inert ingredients or proprietary mixtures of inert ingredients whose identities are not disclosed to the registrants by the manufacturers of these products. The complete chemical identities of proprietary inert ingredients and proprietary mixtures of inert ingredients are reported to EPA by the manufacturers rather than by the registrants, and EPA normally does not disclose these identities to the registrants.

Therefore the identities of inert ingredients are often difficult for pesticide users and other interested persons to obtain. Pesticide registrants may in certain circumstances be willing to provide such information directly to those who ask for it, and EPA, when necessary, provides inert ingredient information to medical professionals treating persons in connection with exposure to a pesticide in accordance with FIFRA section 12(a)(2)(D), as discussed previously. Nonetheless, the identities of inert ingredients in pesticides are not as a matter of course available to consumers in the way that, for example, cosmetic ingredients are disclosed.

In some cases, however, EPA has determined that in order to meet the requirements of FIFRA certain inert ingredient identities must be disclosed on the labels of products in which they are present. In 1975, EPA promulgated 40 CFR 156.10(g)(7), which provides that ''[t]he Administrator may require the name of any inert ingredient(s) to be listed in the ingredient statement if he determines that such ingredient(s) may pose a hazard to man or the environment.'' When the provision was promulgated (originally as 40 CFR 162.10(g)(7)), EPA discussed the provision as implementing ''the Administrator's basic obligation under the amended FIFRA of determining the risks which may be posed by a pesticide and imposing the necessary regulatory requirement to adequately control an unreasonable risk. Depending on the risk involved, the Administrator is authorized by the amended FIFRA to: (1) Deny registration or cancel an existing registration, (2) classify the pesticide for restricted use, or (3) require specific label statements.'' (40 FR 28252, July 3, 1975).

Additionally, in 1987, EPA published a **Federal Register** notice (52 FR 13305, April 22, 1987) announcing ''certain policies designed to reduce the potential for adverse effects from the use of pesticide products containing toxic inert ingredients.'' This notice announced, among other things, that the identities of ''inerts of toxicological concern,'' otherwise known as List 1 inert ingredients, would be required to be listed on pesticide labels. Approximately 50 ingredients were put onto List 1, based on data demonstrating ''carcinogenicity, adverse reproductive effects, neurotoxicity or other chronic effects, or developmental toxicity (birth defects)'' as well as ''ecological effects and the potential for bioaccumulation.'' The notice also indicated that EPA intended to require the registrants of products containing List 1 ingredients to generate additional data to support the continued registration of the products. After publication of the notice, most List 1 ingredients disappeared from pesticide formulations. The notice created additional categories of inert ingredients, including List 2 ingredients, ''which the Agency believes are potentially toxic and should be assessed for effects of concern. . . .Many of these inert ingredients are structurally similar to chemicals known to be toxic; some have data suggesting a basis for concern about the toxicity of the chemical.''

3. *Petitions for disclosure of inert ingredients.* In August 2006, EPA received two similar petitions, one from a group of 22 non-governmental organizations (NGOs) and the other from the Attorneys General of 15 U.S. States and territories. These petitions identified inert ingredients that were contained within the categories listed later in this section, which the

petitioners stated were indicators that the inert ingredients met the standard for 40 CFR 156.10(g)(7) and should therefore be required to be listed on pesticide labels. The NGO petition argued, among other things, that disclosing inert ingredients that may be hazardous ''is in the public interest by supporting the public's ability to make informed consumer decisions, enabling faster and more accurate medical diagnoses after exposure to pesticides, and providing an incentive for manufacturers to use less toxic ingredients.'' Similarly, the state petition stated that ''EPA should require that pesticide product labels disclose the identity of all hazardous ingredients used in the formulation of the product, for whatever purpose they are used in that product, in order to adequately protect the public and fulfill the purposes of FIFRA.''

Following are the categories specified in the petitions:

- Organic pesticide active ingredients listed in 40 CFR part 455, Table 1, in conjunction with section 304 of the Clean Water Act (CWA).
- Inert ingredients on List 2.
- Extremely Hazardous Substances - Emergency Planning and Community Right-to-Know Act (EPCRA) section 302(a).
- Chemicals on the Toxics Release Inventory (TRI)--EPCRA section 313.
- Chemicals regulated under section 6 of the Toxic Substances Control Act.
- Listed and characteristic wastes regulated under the Resource Conservation and Recovery Act and EPA regulations at 40 CFR part 261, including F, P, and U wastes.
- Chemicals regulated under CWA section 311: Discharges to navigable waters or adjoining shorelines.
- Chemicals regulated under CWA section 307: Pretreatment standards for indirect dischargers whose waste water passes through publicly owned treatment plants.
- Chemicals regulated under Clean Air Act (CAA) section 112: Hazardous air pollutants.
- Chemicals regulated under CAA section 112(r): Substances known to cause death, injury, or serious adverse effects to human health or the environment.
- Chemicals regulated under CAA section 202(a): Motor vehicle pollutants.
- Chemicals designated as hazardous mixtures consistent with section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).
- Chemicals designated under CERCLA section 104(i)(2) as priority list chemicals.
- Chemicals subject to the Occupational Safety and Health Administration's (OSHA) Occupational Safety and Health Standards at 29 CFR part 1910.
- Chemicals contained in the American Conference of Governmental Industrial Hygienists' Threshold Limit Values for Chemical Substances and Physical Agents in the Work Environment (see *http://www.acgih.org/TLV/PolicyStmt.htm*).

On September 30, 2009, EPA partially granted the petitions by committing to initiate rulemaking to broaden the public availability of inert ingredient identities but reserving the scope and details of such rulemaking. The Agency agrees with the petitioners that inert ingredient disclosure should be greatly increased (EPA's policy considerations are discussed in this document), and believes that rulemaking is the most practical and efficient means to bring about such disclosure. Because there remain a number of significant questions regarding the scope and nature of such disclosure, as well as the means by which such disclosure should be achieved, and because the changes involved will require significant input from persons that could be affected by such a rule, the Agency is initiating this rulemaking via an ANPR.

4. *Current efforts to increase public availability of the identities of ingredients in consumer products.* EPA's efforts to increase public availability of the identities of ingredients in consumer products build on the substantial work done by the Inert Disclosure Stakeholder Workgroup (IDSW) which has helped shape the Agency understanding of the complex nature of inert disclosure issues. In 1999, the Pesticide Program Dialogue Committee (PPDC, established under the Federal Advisory Committee Act to advise EPA regarding pesticide matters) approved the establishment of the subgroup, the IDSW, a diverse workgroup of members from public health, environmental, industry, academic and state government organizations, as well as EPA, to create proposals for submission to the PPDC regarding enhanced disclosure to the public of information about inert ingredients in pesticides products. (This examination was spurred in part by earlier petitions from essentially the same groups of petitioners regarding disclosure of inert ingredients.)

The IDSW compiled a final report in 2002 (Ref. 4). This report helped the Agency identify target audience groups and their informational needs regarding inert ingredients, documented several different proposals to enhance inert disclosure, and published position papers covering topics such as reverse engineering, response to medical emergencies, ingredient information readily available to the medical community, identification of inert ingredients, and labeling changes. The final report also discusses other Federal regulatory schemes for handling the confidentiality of ingredient information implemented by the Food and Drug Administration, OSHA, and the Consumer Product Safety Commission.

The IDSW discussions and final report continue to inform the Agency as EPA contemplates rulemaking to increase public availability of inert ingredients.

5. *Problem statement.* EPA believes that the lack of information available to consumers and users about the inert ingredients in pesticide products results in a market failure that causes pesticide products to contain inert ingredients that are more hazardous than is efficient. Consumers may prefer to use pesticide products with non-hazardous inert ingredients. In general, however, pesticide producers currently do not publicly disclose the identities of inert ingredients. Consequently, consumers cannot base their decisions about which pesticides to use or whether the pesticides contain hazardous inert ingredients. If this information were available, it could influence consumers' decisions on which pesticides to purchase and use. Moreover, if consumers prefer pesticides without hazardous inert ingredients, their ability to choose such pesticides would create incentives for producers of pesticide products to offer products without hazardous inert ingredients. The current lack of information about inert ingredients interferes with the fair and efficient functioning of the market by adversely affecting consumers' ability to exercise individual choice or express preferences and thus the market-driven incentives for producers and suppliers of pesticide products. As a result, pesticide products may contain levels of hazardous ingredients that are higher than society needs or wants and/or people may use a pesticide product or combination of products that lead to more adverse health or environmental outcomes than would otherwise occur.

In this section, the use of the term ''consumer'' is not intended to limit this discussion to individuals purchasing or using pesticide ''consumer products'' that are marketed for residential use but also includes consumers of other kinds of pesticide products such as those used in agricultural and institutional settings. As such, the term goes beyond the usual point-of-sale consumer to include a

wide range of individuals, entities and organizations that purchase or use different kinds of pesticide products. This wide range of consumers, represent a complex and diverse range of knowledge and understanding about pesticides. Consumer knowledge is not limited to an individual's understanding of specific chemicals. Such knowledge may be supplemented via training, websites or other independent sources of pesticide information. In addition, purchasers or users of pesticides for agricultural and institutional settings often rely on organizational knowledge and preferences to inform their decisions.

There is an overall societal benefit from individual choice. This is one reason that legislation has favored informing consumers about products in commerce through product labeling. For example, the Fair Packaging and Labeling Act, 15 U.S.C. 1450 *et seq.*, states that ''Informed consumers are essential to the fair and efficient functioning of a free market economy.'' (Ref. 6). When consumers are knowledgeable about the product choices available to them, they are better able to compare the products and vote with their pocketbook by selecting that product which best satisfies their needs and/or preferences. For example, consumers of pesticide products may have specific preferences related to reducing potential exposures to chemicals due to allergies or concerns over potential hazards to human health or the environment.

Increased public disclosure of inert ingredients in pesticides, particularly hazardous inert ingredients, could enable consumers and users of pesticides to make more informed decisions when choosing or using pesticide products. It could also provide important information regarding the use of a pesticide, potentially enabling the consumer to avoid choosing a particular product to use in a situation where one or more of the inert ingredients might have an adverse health or ecological impact (e.g., using a pesticide containing a specific inert ingredient where a person with a known sensitivity to that ingredient might be exposed to the product, or where the inert ingredient might adversely affect non-target organisms).

By interfering with the consumers' ability to fully express their preferences through informed purchasing, the lack of information on inert ingredients in pesticide products also adversely affects the potential for market-driven incentives for pesticide producers to provide products that better meet the needs and/or preferences of the consumer. For example, where consumers that have a preference for pesticide products with less hazardous inert ingredients are able to fully express that preference, pesticide producers have a market-based incentive to select less hazardous inert ingredients for the product formulations.

Ultimately, by enabling more informed consumer choices, disclosure of inert ingredients in pesticides, particularly hazardous inert ingredients, may lead the market to provide more product choices that could reduce overall exposures to potentially hazardous chemicals. For example, public disclosure of the presence of a potentially hazardous inert ingredient in a specific pesticide formulation may lead to less exposure to that hazardous inert ingredient because consumers will likely choose products informed by the label and pesticide producers will likely respond by producing products with less hazardous inert ingredients. The ability of public disclosure of information as a market-driver to reduce the use of potentially hazardous chemicals has been demonstrated by publication of the TRI under EPCRA section 313 (Ref. 5).

On the other hand, mandatory inert ingredient disclosure could have potential negative effects on innovation in the pesticide market. Producers of pesticides invest in developing formulations that are effective. Public disclosure of ingredients could give competitors the ability to ''free ride'' on another company's investment in research and development required to bring a pesticide product to the market. The presence of such ''free riders'' could deter further investments needed to bring new, improved products to the market in the future. However, as discussed in Unit II.C.2., the Agency believes a closer examination of those circumstances under which confidentiality of inert ingredient identities is necessary for preserving manufacturers' returns to research and development investments will reveal situations where public availability of inert ingredient identities may occur without significant detriment to innovation in the pesticides market.

EPA believes in the value of transparency to consumers and users of pesticides, above and beyond those issues pertaining to potentially hazardous inert ingredients. EPA is also mindful of potential ''label clutter,'' i.e., the inclusion of so much information in the labeling of a product that it becomes difficult for a user to find the relevant information necessary to use the pesticide safely, effectively, and legally.

The Agency therefore wishes to explore what avenues are available to maximize the public availability of inert ingredient identities generally. In addition to the policy considerations raised in the discussion in Unit II.C., EPA is specifically interested in comments on the relationship of inert ingredient labeling to the fair and efficient functioning of the market.

C. Possible Approaches

EPA is considering two general types of approaches to increasing public availability of inert ingredient identities. One would mandate disclosure only of potentially hazardous ingredients, and the other would promote or mandate public availability of most or all inert ingredient identities, regardless of hazard. Each approach has variations and issues associated with it. Further, EPA solicits ideas for alternative approaches, both regulatory and non-regulatory.

1. *Require the identities of potentially hazardous inert ingredients to be listed on pesticide labels.* This approach involves identifying a set of potentially hazardous inert ingredients and amending labeling regulations in 40 CFR part 156 to require that pesticides containing those ingredients list them in the ingredient statement. There are a number of issues that would need to be resolved in order to implement this option; EPA solicits comment on these issues:

a. How should the list of potentially hazardous ingredients be identified? EPA is interested in comments on three potential approaches.

(1) EPA could by rule require disclosure of the identity of an ingredient if the ingredient appeared on specified lists; this is the approach advocated by the petitioners. The petitions identify a variety of statutory, regulatory, and other listings that relate in some way to hazard. Some of the ingredients have been placed on these listings by Congress, and some have been included based on EPA or other agency evaluations of hazard (which may or may not be in a specific exposure context).

(2) EPA could by rule establish objective criteria for determining whether to require disclosure, applying those criteria on an ingredient-by-ingredient basis. Unit II.E. of this ANPR contains an example of possible criteria.

(3) EPA could by rule list specific chemicals used as inert ingredients that would trigger a disclosure requirement. While approach number 2 would present criteria to use on a case-by-case basis, this approach would present a list of chemicals. In developing this list,

EPA could use approach number 1 or 2 or a combination of both approaches to identify the individual chemicals to include on the list and would need to identify a process for revisions to the list.

EPA considers the set of ingredients and categories identified in the petitions to be a useful starting point for discussion, but desires input regarding the categories and the chemicals contained within them. For example, should chemicals placed in the TRI by Congress be considered presumptively hazardous for purposes of label disclosure? In addition, EPA solicits suggestions for other hazard criteria to be used as a basis for identifying ingredients to be listed in the ingredient statement.

b. How should specific ingredients be added to or removed from the disclosure requirements? EPA could add (or remove) individual ingredients via regulation, or, at least for those categories established and amended via statute or regulation, could simply require that all ingredients in the category be subject to the disclosure requirement. EPA desires comment on both science and process implications of these two alternatives, as well as additional ideas.

c. Should EPA consider the amount of an ingredient in a product in determining whether to require disclosure, and if so how? Should there be a *de minimis* concentration, below which a potentially hazardous inert ingredient would not be required to appear in the ingredient statement? EPA is initially inclined not to use the quantity of an inert ingredient—including any *de minimis* threshold—as a factor in determining what information should be disclosed. EPA is concerned that using a quantity factor could interfere with the consumers' ability to fully express their choices through informed purchasing and thereby adversely affect the potential for market-driven incentives for pesticide producers to provide products with less hazardous inert ingredients. It could also compromise the consumers' ability to limit their total exposure to a hazardous substance. In providing comments on using a quantity factor, please also provide suggestions for how EPA might address these concerns.

d. Does disclosing the identities of hazardous inert ingredients on the label without further information provide consumers and users with information that is useful? EPA is soliciting comments on additional disclosure approaches to provide such information, including the effectiveness of such an approach, as well as the associated costs and benefits. EPA also seeks comment as to the possible positive or negative impacts of each such approach on the development of new pesticide products, in providing for more informed consumer decision-making, and in providing an incentive for manufacturers to use less hazardous inert ingredients.

e. Should potentially hazardous impurities be required to appear on the label? While inert ingredients are intentionally added to a product, impurities are not. See 40 CFR 158.300. Impurities are often leftover reactants from the manufacturing process, and their disclosure thus might in some cases reveal sensitive manufacturing process information. What are the pros and cons of including impurities in a disclosure requirement? Should impurities have a *de minimis* concentration threshold, even if inert ingredients ultimately do not? Note that impurities below a concentration of 0.1% are not normally reported to EPA unless the impurity is of toxicological significance. See 40 CFR 158.320. Would a 0.1% threshold make sense for impurities? How should the Agency determine which impurities need to be identified on the label?

2. *Require all or most inert ingredients to be listed on pesticide labels.* In addition to the hazard-based disclosure discussed previously, EPA is also interested in broader availability of inert ingredient identities. Many consumer products, such as food products and cosmetics and, to an increasing extent, other household products, disclose some information about their ingredients. The Agency believes that consumers and users of pesticides should have comparable kinds of ingredient information available to them about pesticides as they do regarding many other, often less hazardous products. Such information assists consumers in making informed choices.

Requiring disclosure of all inert ingredients would be possible if inert ingredients as a class were not entitled to confidential treatment under FIFRA section 10(b). Though confidentiality is normally determined on a case-by-case basis, see *NCAP v. Browner*, 941 F. Supp. 197 (D.D.C. 1996), EPA desires input on an issue pertinent to the confidentiality of inert ingredients in general. Among the factors in determining eligibility for confidential treatment is whether competitors could reverse engineer the product to obtain the information on their own, without undue cost. Though this question is itself normally answered on a case-by-case basis, EPA solicits comment regarding whether analytical techniques have increased in accuracy and decreased in cost to the extent that essentially complete analysis of competitors' products is now both routinely performed and successful when attempted in the pesticide industry.

Do registrants and inert ingredient manufacturers know (or can they easily find out) what is in their competitors' products? Do they believe that their own products are safe from reverse engineering due to the limits of analytical techniques or prohibitive cost? To what extent do patents or other public sources of information provide this kind of information? Are there types of products or ingredients where reverse engineering is more or less likely to be performed or successful? Are there characteristics of a formulation (e.g., concentration of certain ingredients) that can make reverse engineering economically infeasible? Do other countries disclose this information and if so under what circumstances? When commenting on this issue please distinguish qualitative analysis (determining which ingredients are present) from quantitative analysis (determining the concentrations of ingredients). In addition, bear in mind the distinction between disclosure of the chemical name of an inert ingredient and disclosure of the identity of a particular vendor of the ingredient. Please also comment upon whether these questions would be answered differently for impurities.

Are there classes or sectors where the identities of inert ingredients are generally known among competitors? The Agency assumes that there would be no substantial competitive harm from the disclosure of inert ingredients where the technology is generally known among competitors. EPA solicits comment on these questions.

EPA is not only seeking input from knowledgeable persons regarding the factors that influence whether competitors are aware of one another's formulations, but is also challenging registrants and inert ingredient manufacturers to reexamine their own assumptions about the competitive landscape for their products. What role does confidentiality of inert ingredient identities play today in product competitiveness? Are there sectors of the industry where this role is enhanced or diminished?

Even to the extent that particular inert ingredients are entitled to confidential treatment under FIFRA section 10(b), EPA can amend its regulations to increase the public availability of inert ingredient identities. As discussed previously, Agency practice results in sparse disclosure of inert ingredient

identities because there is seldom a clear indication up front of which ingredient identities are claimed as confidential. Where specific identities are not claimed as confidential by the registrant or inert ingredient manufacturer, EPA could make the information public without further analysis. EPA therefore solicits comment regarding whether the Agency should require the identities of all inert ingredients (and perhaps impurities) to be specifically claimed as confidential upon submission to the Agency, such that in the absence of a confidentiality claim the name will be required to appear on the label (or elsewhere) as discussed in Unit II.C.3.i.). EPA also solicits comment on requiring that all confidentiality claims for inert ingredient identities be accompanied by a substantiation of the confidentiality claim in order to help ensure that the confidentiality claims have substance. See 40 CFR 2.204(e)(4) for EPA's standard substantiation questions. If EPA were to require up-front substantiation of confidentiality claims, what kinds of information in addition to the questions in 40 CFR 2.204(e)(4) would be of value to assess the merits of a confidentiality claim for inert ingredient information?

EPA also notes some policy tension between the two approaches: Hazard-based disclosure is intended to reduce the prevalence of hazardous ingredients by highlighting their presence, and to the extent that the Agency achieves a broader (non-hazard-based) disclosure of inert ingredients, that highlighting would be absent. By knowing the ingredients in a product, motivated users and consumers could research the hazard, but this information would not be readily apparent simply from the ingredient list. EPA would appreciate comment on the interaction between these policy objectives.

The following issues apply to broad public availability of inert ingredient identities:

a. Are there classes of ingredients that should be identified only by the name of the class? Examples might be functional (e.g., fragrances, surfactants), a chemical class (e.g., clay, modified starch), or otherwise. When would the use of chemical classes be appropriate or inappropriate? Note that EPA is considering allowing substitution of fragrances in a formulation without requiring the reporting of the individual fragrance ingredients which comprise the fragrance, provided that the ingredients are on the Fragrance Ingredient List and that the fragrance meets concentration and other conditions in EPA's Fragrance Notification Program such as was described as part of the Pesticide Fragrance Notification Pilot Program (*http://www.epa.gov/opprd001/inerts/fragrancenote.pdf*).

b. Should impurities potentially appear on the label regardless of hazard? See Unit II.C.1.e., for more discussion of impurities.

3. *Common issues*. EPA also solicits comment on the following issues, which apply to both hazard-based and non-hazard-based disclosure:

a. How might consumers respond to the disclosure approaches presented previously? Would there be any difficulty in interpreting the information? How would consumers judge risks from hazardous inert ingredients that have broader environmental impacts as opposed to risks that are borne more directly by the user? What evidence exists regarding how disclosure affects consumer decisions and market outcomes in similar contexts? How should disclosure be designed to achieve better user decision-making?

b. If inert ingredients are required to be listed on the label, would consumers and users be able to weigh the risk from the listed inert ingredients against that from the active ingredients, which often pose greater risks than the disclosed inert ingredients? What steps would assist consumers and users in taking into account all risks posed by the pesticide?

c. What are the possible positive or negative impacts of the approaches described in Unit II.C. on the development of new pesticide products?

d. Should the concentration of ingredients be disclosed, along with their identities? How might the concentration inform the decision-making of the consumer or user? Is there sufficient benefit to consumers and users to do so? What are the interests of registrants and manufacturers of proprietary inert ingredients and proprietary mixtures of inert ingredients in concentration information?

e. Should inert ingredients be listed in order of concentration? Although specific concentrations are not provided for food products and cosmetics, the ingredients are typically listed in order of concentration as instructed at 21 CFR 101.4 and 21 CFR 701.3, respectively, under FDA regulations implementing the Federal Food, Drug, and Cosmetic Act. How might listing the inert ingredients in order of concentration inform the decision-making of the consumer and user? What would be the value of this type of listing for pesticide consumers and users? Could listing inert ingredients in order of concentration mislead consumers or users regarding the safety of the formulation?

f. EPA has on occasion rejected pesticide labels with partial disclosure of inert ingredient identities as misleading under FIFRA section 2(q)(1)(A) on the theory that emphasizing ingredients widely considered innocuous can mislead consumers as to the overall safety of the formulation. What features of a label (or other disclosure) could help avoid this outcome?

g. In PR Notice 97–6, *http://www.epa.gov/opppmsd1/PR_Notices/pr97-6.html*, EPA allowed and encouraged pesticide registrants to replace the designation ''inert ingredients'' with ''other ingredients'' on pesticide labels, because inert ingredients may in some cases be associated with hazard, and the term ''inert ingredients'' might therefore be confusing. Under a full or partial disclosure of inert ingredients, should EPA discontinue to allow the substitution of the term ''other ingredients'' for ''inert ingredients'' on product labels?

h. Should inert ingredients continue to be listed in a separate location from active ingredients? Current EPA guidelines contained in the Label Review Manual specify that active ingredients be listed on the product label separately from inert ingredients. Should EPA preserve this distinction between inert and active ingredients? Should the inert ingredient listing be divided into hazardous and non-hazardous sections?

i. Should disclosure of the inert ingredient identities be made elsewhere than on the label, such as in accompanying labeling materials, by a registrant-operated toll free telephone system, or on an EPA-maintained website? What information would be useful to provide on a website? What other alternative ways of communicating information to users about ingredients and safety of pesticides might be effective? What are the advantages and disadvantages of such alternatives?

j. Should unique procedures apply to products containing proprietary inert ingredients or proprietary mixtures of inert ingredients? Because registrants may not know the identity of a proprietary inert ingredient or the identities of all the ingredients in a proprietary mixture of inert ingredients, there may be confidentiality concerns when informing registrants of new requirements applying to their pesticide products, and such registrants might face additional barriers to adjusting to a

disclosure requirement. In addition, manufacturers of proprietary inert ingredients and proprietary mixtures of inert ingredients might raise confidentiality and other issues that do not apply to registrants.

k. Should disclosure of the identity of inert ingredients apply to all types of pesticide products or should EPA exempt certain types of products, e.g., manufacturing use products, plant-incorporated protectants, biopesticides, products intended only for use in industrial settings such as wood preservative treatment facilities, from disclosure rules?

l. What form of ingredient identity should appear on the label? There are a variety of ways to identify an ingredient, such as Chemical Abstracts Service (CAS) name, CAS Registry Number, trade name, and common chemical name (of which there may be several). Which form would be most useful to consumers and users of pesticides? See 40 CFR 156.10(g) for requirements regarding common names for active ingredients, and Pesticide Registration (PR) Notice 97-5: Use of Common Names for Active Ingredients on Pesticide Labeling, *http://www.epa.gov/opppmsd1/PR__Notices/pr97-5.html*, for Agency policy and guidance.

m. How would a non-regulatory approach, such as voluntary disclosure of inert ingredients by pesticide registrants, affect consumer decisions and market outcomes? What would be the advantages and disadvantages of voluntary disclosure versus required disclosure in considering the issues noted in items a. through l. of this unit?

n. What lead time should be given before the effective date of any regulatory changes, and should there be any special process for approving new labels? Registrants and manufacturers of proprietary inert ingredients/proprietary mixtures of inert ingredients may wish to reformulate rather than continue with a formulation where potentially hazardous ingredients are listed in the ingredient statement. Since EPA normally requires acute toxicity data on each new formulation of a pesticide, any large-scale movement toward reformulation of pesticides could result in a significant amount of additional animal toxicity studies. Further, the logistics of widespread label change or possible product reformulation may present special challenges for EPA, States and the regulated community. What procedures would minimize disruption? Are there alternatives to requiring the testing of products reformulated to eliminate hazardous inert ingredients?

o. Are there other regulatory approaches that may promote the use of less hazardous inert ingredients that might be considered in lieu of inert ingredient disclosure? For example, what would be the potential impacts on consumers, pesticide manufacturers, and the general public if EPA were to limit or prohibit the use of any hazardous inert ingredient in a pesticide product?

D. What is the Agency's Authority for Taking this Action?

The authority to require public availability of potentially hazardous inert ingredients (on the ingredient statement or elsewhere) can be found in the registration requirements of FIFRA section 3, the definition of ''unreasonable adverse effects on the environment'' in FIFRA section 2(bb), and EPA's rulemaking authority under FIFRA section 25(a). The safety of the formulation, including all its ingredients, is a critical factor in whether the pesticide ''will perform its intended function without unreasonable adverse effects on the environment.'' FIFRA section 3(c)(5)(C). Under FIFRA section 2(bb), the term ''unreasonable adverse effects on the environment'' takes into account ''the economic, social, and environmental costs and benefits of the use of any pesticide.'' The FIFRA section 2(bb) definition thus highlights cost/benefit comparisons pertaining to use of a particular pesticide in the consideration of its eligibility for registration.

While there is no definition for hazardous inert ingredients in FIFRA (and this document asks for comment regarding how to define such ingredients for the purpose of this rulemaking), hazardous inert ingredients can in general be described as those that may pose physical hazards (e.g., flammability, explodibility), health hazards (i.e., adverse acute/chronic health effects), or environmental hazards (e.g., adverse ecological effects, persistence, bioaccumulation). Use of any pesticide will involve some exposure to persons and the environment, and if the formulation contains potentially hazardous inert ingredients there will be some exposure to those ingredients, and therefore some level of risk resulting from this exposure. And though EPA reviews data regarding the entire formulation to ensure that this risk of a particular pesticide is not unreasonable, formulations that contain hazardous inert ingredients as a general matter may have a less favorable cost/benefit ratio than similar formulations that perform the same function and do not contain potentially hazardous inert ingredients. Therefore, under FIFRA section 2(bb), any risk from hazardous ingredients, however small, should in general be less reasonable than the risk from a formulation not containing potentially hazardous ingredients, even though the risk from a particular formulation is not itself unreasonable so that the registration standard is met.

EPA solicits comment on the contribution to risk from hazardous inert ingredients. For example, are there situations where the presence of a particular hazardous inert ingredient results in a lower application rate than could be achieved through the use of a less hazardous ingredient?

EPA could address relative levels of risk on a case-by-case basis via label reviews, approvals of specific formulations, or even cancellation under FIFRA section 6 where appropriate, but such actions would be very slow and resource-intensive. It is more efficient to use the authority provided in FIFRA section 25(a)(1) ''to prescribe regulations to carry out the provisions of [FIFRA]. Such regulations shall take into account the difference in concept and usage between various classes of pesticides. . . and differences in environmental risk.'' EPA considers pesticides containing potentially hazardous inert ingredients to be in a separate class from formulations that do not contain such ingredients, and believes it appropriate to use its FIFRA section 25(a) rulemaking authority to take action to reduce the presence of potentially hazardous ingredients.

As to requiring public availability of inert ingredients on a basis other than hazard, EPA has such authority where inert ingredient identities are not subject to claims of confidentiality or where such information is not entitled to confidential treatment under law.

E. Suggested Hazard Criteria

The following are the suggested hazard criteria as discussed in Unit II.C.1.a. that could be used as a basis for identifying ingredients to be listed in the ingredient statement.

Physical Hazards

- Extremely flammable or combustible
- Explosive
- Pyrophoric
- Strong organic peroxide
- Strong oxidizer

Health Hazards

Acute Toxicity

- Acute oral, dermal, and/or inhalation toxicity study resulting in assignment to EPA Toxicity Category I (40 CFR 156.62)

- Skin corrosion
- Eye damage
- Strong skin and/or respiratory sensitizer

Mutagenicity

- Known to induce heritable germ cell mutations in humans
- Positive result(s) from *in vivo* heritable germ cell mutagenicity tests in mammals

Carcinogenicity

- Known or presumed human carcinogen
- Classified as: Group 1 or Group 2 by the International Agency for Research on Cancer (IARC); having evidence of carcinogenic activity by the National Toxicology Program (NTP) and/or the Environmental Protection Agency (EPA); and/or a Category I Potential Carcinogen by the Occupational Safety and Health Administration (OSHA)

Reproductive and Developmental Toxicity

- Known or presumed human reproductive or developmental toxicant
- Clear evidence of adverse effects on reproductive ability or capacity and/or development of the offspring in peer-reviewed experimental animal studies

Target Organ/Systemic Toxicity

- Causes hepatotoxicity, nephrotoxicity, neurotoxicity, hematopoetic effects, immunotoxic effects, pulmonary toxicity, thyroid toxicity, cutaneous toxicity or other specific target organ/systemic toxicity in peer-reviewed experimental animal studies at doses below 50 mg/kg/day

Environmental Hazard

- Highly toxic to avian and mammals (acute oral toxicity <50 mg/kg) based on peer-reviewed studies
- Highly toxic to aquatic organisms at concentrations of 1 ppm or below based on peer-reviewed studies
- Highly toxic in avian dietary studies (<50 ppm) based on peer-reviewed studies
- Very slow biodegradation (<30% degradation in >28 days) in an EPA Office of Prevention, Pesticides and Toxic Substances (OPPTS) Harmonized Test Guideline Test 835.3110, Organisation for Economic Co-operation and Development (OECD) Guideline Test 301, or equivalent for biodegradability
- Partition coefficient (n-octanol/water) value (P) of log P ≥4 in OPPTS Harmonized Test Guideline 830.7550, OECD Guideline 117, or equivalent study
- Fish Bioconcentration Factor (BCF) of ≥1,000 in OPPTS Harmonized Test Guideline 850.1730 (draft), OECD Guideline 305, or equivalent study
- Class I/Class II Ozone-depleting Substance or High Global Warming Potential Gas

III. Statutory and Executive Order Reviews

Under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this action was submitted to the Office of Management and Budget (OMB) for review. Any changes to the document that were made in response to OMB comments received by EPA during that review have been documented in the docket as required by the Executive Order.

Since this document does not impose or propose any requirements, and instead seeks comments and suggestions for the Agency to consider in possibly developing a subsequent proposed rule, the various other review requirements that apply when an agency imposes requirements do not apply to this action. Nevertheless, as part of your comments on this document, you may include any comments or information that you have regarding the various other review requirements.

In particular, EPA is interested in any information that would help the Agency to assess the potential impact of a rule on small entities pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*); to consider voluntary consensus standards pursuant to 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); to consider environmental health or safety effects on children pursuant to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997); or to consider human health or environmental effects on minority or low-income populations pursuant to Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

The Agency will consider such comments during the development of any subsequent proposed rule as it takes appropriate steps to address any applicable requirements.

IV. References

1. Petition of New York, et al., Requesting that the United States Environmental Protection Agency Amend Its Rules Governing the Disclosure of ''Inert'' Ingredients on Pesticide Product Labels to Require the Disclosure of Ingredients for Which Federal Determinations of Hazard Have Already Been Made, August 2006.
2. Petition of Northwest Coalition for Alternatives to Pesticides, et al., To Require Disclosure of Hazardous Inert Ingredients on Pesticide Product Labels, August 2006.
3. EPA's Response to Petitions Requesting Disclosure of Inert Ingredients, September 30, 2009, *http://www.epa.gov/opprd001/inerts/petitionresponse.pdf*.
4. Final Report to the Pesticide Program Dialogue Committee on the Activities of the Inert Disclosure Stakeholder Workgroup, March 2000 through April 2002, *http://www.epa.gov/oppfead1/cb/ppdc/inert-finalreport.html*.
5. How Are the Toxics Release Inventory Data Used? -- Government, business, academic and citizen uses. EPA–260–R–002–004 (May 2003), *http://www.epa.gov/TRI/guide__docs/pdf/2003/2003__datausepaper.pdf*.
6. Fair Packaging and Labeling Act, 15 U.S.C. 1450 et seq. *http://www.fda.gov/RegulatoryInformation/Legislation/ucm148722.htm*.

List of Subjects in 40 CFR Part 156

Environmental protection, Pesticides and pests.

Dated: December 14, 2009.

Lisa Jackson,

Administrator.

[FR Doc. E9–30408 Filed 12–22–09; 8:45 am]

BILLING CODE 6560–50–S

Notices

Federal Register

Vol. 74, No. 245

Wednesday, December 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

Submission for OMB Review; Comment Request

December 17, 2009.

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

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

Rural Business-Cooperative Service

Title: Advance Biofuel Payment Program—Section 9005.

OMB Control Number: 0570–0057.

Summary of Collection: Section 9005 of Title IX of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill), authorizes the Agency to enter into contracts to make payments to eligible entities to support and ensure an expanding production of advanced biofuels. Entities eligible to receive payments under the Program are producers of advanced biofuels that meet all of the requirements of the Program. The Program is appropriated funding for fiscal years 2009 through 2012.

Need and Use of the Information: Advanced biofuel producers who participate in the Program, enroll in the Program by submitting an application (Form RD 9005–1) that includes specific information about the producer and the producer's advanced biofuel biorefineries. The information is used to determine whether the advanced biofuel producer was eleigible to participate in the Program and whether the advanced biofuel being produced was eligible for payments under the program. Failure to collect proper information could result in improper determination of eligibility and improper payments.

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

Number of Respondents: 159.

Frequency of Responses: Reporting: Quarterly, Monthly, Annually.

Total Burden Hours: 658.

Rural Business-Cooperative Service

Title: Repowering Assistance Payments to Eligible Biorefineries.

OMB Control Number: 0570–0058.

Summary of Collection: This program is authorized under Title IX, Section 9004, of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246). The program is to provide financial incentives to biorefineries in existence on the date of the enactment of the 2008 Farm Bill, to replace the use of fossil fuels used to produce heat or power at their facilities by installing new systems that use renewable biomass, or to produce new energy from renewable biomass.

Need and Use of the Information: Applicants must submit a complete application including relevant data to allow for technical analysis of existing facilities. Rural Business Service will use the information collected to determine the eligibility of biorefineries to participate in the program. Payments will be made based on ranking of applicants in relation to project cost, cost-effectiveness, availability of renewable biomass and the reduction of fossil fuel usage resulting from the installation of a renewable biomass system.

Description of Respondents: Business or other for-profits; State, Local and Tribal Governments; Individuals.

Number of Respondents: 16.

Frequency of Responses: Reporting: Quarterly, Monthly, Annually.

Total Burden Hours: 1,381.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–30474 Filed 12–22–09; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request, Correction

December 17, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget

(OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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

Food Safety and Inspection Service

Title: Be Food Safe Campaign Pilot Survey.

OMB Control Number: 0583–New.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031 *et seq.*). These statutes mandate that FSIS protect the public by verifying that meat and poultry products are safe, wholesome, unadulterated, and properly labeled and packaged. FSIS has established the *Be Food Safe* campaign to educate consumers about the importance of safe food handling and how to reduce the risks associated with foodborne illness. As a part of the *Be Food Safe* campaign, the Agency plans to purchase advertising in Oklahoma City mass media outlets to promote safe food handling messages to consumers and to measure consumer awareness and response. The Campaign will be targeted at women, aged 25 to 49, who are caregivers for children under the age of 10 or for older adults. FSIS will collect information using two surveys (pre and post).

Need and Use of the Information: The data collected in the surveys will allow FSIS to examine what knowledge members of the target audience had about food safety before the campaign, whether they were aware of the campaign and, if they were, whether they changed any food preparation behaviors as a result. The information collected will be used to refine the campaign's messages, materials, and approaches in order to improve its overall effectiveness.

Description of Respondents: Individuals or households.

Number of Respondents: 800.

Frequency of Responses: Reporting: Other (once).

Total Burden Hours: 88.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–30475 Filed 12–22–09; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council will meet in Washington, DC, January 27–28, 2010. The purpose of the meeting is to discuss emerging issues in urban and community forestry, work on Council administrative items and hear public input related to urban and community forestry.

DATES: The meeting will be held on January 27–28, 2010, 9 a.m. to 5 p.m. or until Council business is completed.

ADDRESSES: The meeting will be held at the Franklin Court Building, 1099 14th Street, NW., Suite 5500 W, Washington, DC 20005–3402, *Phone:* 202–273–4695. Written comments concerning this meeting should be addressed to Nancy Stremple, Executive Staff to National Urban and Community Forestry Advisory Council, 201 14th Street SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151. Comments may also be sent via e-mail to *nstremple@fs.fed.us,* or via facsimile to 202–690–5792.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at 201 14th Street SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151. Visitors are encouraged to call ahead to 202–205–1054 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Mary Dempsey, Staff Assistant to National Urban and Community Forestry Advisory Council, 201 14th Street, SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151, phone 202–205–1054.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Those interested in attending should contact Mary Dempsey to be placed on the list at lobby security desk. Council discussion is limited to Forest Service staff and Council members; however, persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements with the Council staff (201 14th Street, SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151, *e-mail: nstremple@fs.fed.us*) before or after the meeting. Public input sessions will be provided at the meeting. Public comments will be compiled and provided to the Secretary of Agriculture along with the Council's recommendations.

Dated: December 17, 2009.

Robin L. Thompson,

Associate Deputy Chief, State and Private.

[FR Doc. E9–30524 Filed 12–22–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Fee Site; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: Bighorn National Forest, USDA Forest Service.

ACTION: Notice of New Fee Site.

SUMMARY: The Bighorn National Forest, Powder River Ranger District, is proposing to charge a $10.00 per vehicle fee (Standard Amenity Recreation Fee) for use of the site amenities at West Tensleep Trailhead. All of the amenities are in place except for trash pickup. This amenity would be in place prior to fee implementation. This trailhead is the most heavily visited access point for the Cloud Peak Wilderness on the Bighorn National Forest. Funds from the fee will be used for the continued operation and maintenance of this site including, but not limited to: restroom cleaning and maintenance, trash pickup, sign maintenance, and law enforcement presence.

DATES: If this proposal is approved fee collection would begin in the summer of 2010. Send any comments about these fee proposals by February 28, 2010 so

comments can be compiled, and analyzed prior to implementation.

ADDRESSES: Forest Supervisor, Bighorn National Forest, 2013 Eastside Street, Sheridan, WY 82801.

FOR FURTHER INFORMATION CONTACT: Craig Cope, Powder River Ranger District Recreation Staff Office, 307–684–7806.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established. The Bighorn National Forest currently does not charge a fee at this location. The need for Standard Amenity Fees at West Tensleep Trailhead was identified during the Recreation Facility Analysis process completed in June 2008 and is proposed to be $10.00 per vehicle. All requirements for the collection of fees as stipulated in the Federal Recreation Lands Enhancement Act will be met for this site prior to fee implementation. Comments may be submitted to ''*comments-bighorn@fs.fed.us*'' with ''West Tensleep Trailhead Fee Proposal'' in the subject line.

Dated: December 14, 2009.

William T. Bass,

Forest Supervisor, Bighorn National Forest.

[FR Doc. E9–30312 Filed 12–22–09; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Membership of the USCCR Performance Review Board

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of membership of the USCCR Performance Review Board.

SUMMARY: This notice announces the appointment of the Performance Review Board (PRB) of the United States Commission on Civil Rights. Publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The PRB provides fair and impartial review to the U.S. Commission on Civil Rights' Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance awards to the Staff Director, U.S. Commission on Civil Rights for the FY 2009 rating year.

FOR FURTHER INFORMATION CONTACT: Myrna Hernandez, Human Resources Specialist, U.S. Commission on Civil Rights, 624 9th Street, NW., Washington, DC 20425, (202) 376–8364.

USCCR Performance Review Board Members

Mary Johnson, Esq., General Counsel, National Mediation Board.

William D. Spencer, Clerk of the Board, Merit Systems Protection Board.

David M. Capozzi, Executive Director, U.S. Access Board.

TinaLouise Martin, Director, Office of Management, U.S. Commission on Civil Rights.

Dated: December 17, 2009.

David P. Blackwood,

General Counsel.

[FR Doc. E9–30447 Filed 12–22–09; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Proposed Information Collection; Comment Request; Application for Investment Assistance; Community Trade Adjustment Assistance Program

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Notice.

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

DATES: Written comments must be submitted on or before February 22, 2010.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Jamie Lipsey, Room 7005, Economic Development Administration, Washington, DC 20230, telephone (202) 482–3467, facsimile (202) 482–5671 (or via the Internet at *jlipsey@eda.doc.gov*.).

SUPPLEMENTARY INFORMATION:

I. Abstract

EDA's mission is to lead the federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. To accomplish this mission, EDA administers several programs authorized under the Public Works and Economic Development Act of 1965 ((42 U.S.C. 3121 *et seq.*) (PWEDA) and under chapters 3, 4, and 5 of the Trade Act of 1974 (19 U.S.C. 2341 *et seq.*) (Trade Act)).

The Trade and Globalization Adjustment Assistance Act (TGAAA), part of the American Recovery and Reinvestment Act of 2009, amended chapter 4 of the Trade Act to establish the Community Trade Adjustment Assistance (Community TAA) Program, which is designed to assist U.S. communities suffering negative effects from trade impacts and will be administered by EDA.

The amended Trade Act requires that a community have a Cognizable Certification, which is a certification by the Secretaries of Labor, Commerce, or Agriculture under the TAA for Workers, Firms, or Farmers programs, respectively and petition for EDA to make an Affirmative Determination that a community is significantly affected by the threat to, or loss of, jobs associated with the Cognizable Certification as a threshold before receiving a grant under the program. EDA plans to make such petitions as minimally burdensome as possible and to process petitions using the OMB-approved Application for Federal Assistance (Form SF–424) to reduce confusion and ensure standard information. EDA intends to request that a petitioning community complete Items 1–16 and 21 of Form SF–424. For Item 15, recipients will be required to complete a formula provided by EDA using their Civilian Labor Force (CLF) data, which is readily available from the Bureau of Labor Statistics, and provide a brief narrative describing the threat to, or loss of, jobs associated with a Cognizable Certification.

Applicants also must identify the applicable Cognizable Certification upon which the community bases its petition or petition-application. For TAA Workers Cognizable Certifications, the applicant community must provide the TAA petition number associated with the Department of Labor's certification decision. For TAA for Firms certifications, the applicant community must provide the name of the firm certified under the program and locator number in the official notification letter provided by the Department of Commerce to the certified firm. For TAA for Farmers certifications, the applicant community must provide the name of the certified agricultural commodity and the record identifier provided by the Department of Agriculture. Recipients do not have to

complete Items 17, 18, and 19 of Form SF–424.

Since the implementation portion of the Community TAA Program is similar to EDA's existing economic development planning and construction programs, EDA plans to require communities that have received this Affirmative Determination to use OMB-approved Application for Investment Assistance (Form ED–900), to request planning and/or project implementation assistance.

Form ED–900 also is required to apply for assistance under EDA's other economic development programs authorized under PWEDA. All information collected using Form ED–900 is necessary for EDA to evaluate whether proposed projects satisfy eligibility and programmatic requirements contained in PWEDA, the accompanying regulations codified in 13 CFR chapter III, and the applicable Federal Funding Opportunity (FFO) announcement. As noted above, Form ED–900 also will be used to evaluate whether proposed projects satisfy eligibility and programmatic requirement contained in chapter 4 of the Trade Act, which establishes the Community TAA Program, EDA's regulations as set out at 13 CFR part 313, and the applicable FFO.

Form ED–900 was renewed in March 2009; however, an emergency request was submitted to the Office of Management and Budget due to the eligibility changes in the Trade Adjustment Assistance for Firms Program as specified in the Trade and Globalization Adjustment Assistance Act (TGAAA) of 2009, which reauthorized the program. OMB approved this emergency request on August 12, 2009, and because of the time constraints of the emergency request, a notice for public comment was not processed. The emergency request is valid for six months and this notice will begin the process to extend the approval.

II. Method of Collection

Form ED–900 may be downloaded in Portable Document Format (PDF) from *http://www.grants.gov.* Form ED–900 may be submitted electronically via *http://www.grants.gov* or in hard copy to the applicable EDA regional office that serves the applicant's state.

III. Data

OMB Control Number: 0610–0094.

Form Number(s): ED–900.

Type of Review: Regular submission.

Affected Public: Local, county, or other political subdivision of a State or a consortium of political subdivisions of a State.

Estimated Number of Respondents: 1,225 [Community TAA Program: 350 respondents (of which 300 are expected to go on to file implementation grant applications following receipt of an Affirmative Determination from EDA). EDAP: 875 grant applications].

Estimated Time per Response: 21.35 hours [weighted average of 21.66 hours for 875 EDAP respondents, 2 hours for 50 Community TAA respondents filing petitions but not requesting implementation grant assistance, and 23.66 hours for Community TAA respondents filing petitions and requesting implementation grant assistance].

Estimated Total Annual Burden Hours: 26,150.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

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

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

Dated: December 18, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–30505 Filed 12–22–09; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–896]

Magnesium Metal from the People's Republic of China: Extension of Time for the Preliminary Results of the Antidumping Duty Administrative Review

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

EFFECTIVE DATE: December 23, 2009.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4243.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 2009, the Department of Commerce (''the Department'') published in the **Federal Register** a notice for an opportunity to request an administrative review of the antidumping duty order on magnesium metal from the People's Republic of China (''PRC''). *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 74 FR 14771 (April 1, 2009). Respondent, Tianjin Magnesium International Co., Ltd. (''TMI''), requested a review on April 27, 2009, and Petitioner, US Magnesium LLC (''US Magnesium''), requested a review of TMI on April 30, 2009. The Department published in the **Federal Register** a notice of initiation of an administrative review of TMI for the period April 1, 2008, through March 31, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 74 FR 25711 (May 29, 2009). Currently, the preliminary results of review are due no later than December 31, 2009.

Extension of Time Limit of Preliminary Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to

complete the review within the foregoing time period.

We determine that completion of the preliminary results of this review within the 245-day period is not practicable because the Department requires additional time to analyze information pertaining to the respondent's sales practices, factors of production, and to issue and review responses to supplemental questionnaires. Therefore, we require additional time to complete these preliminary results. As a result, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for completion of the preliminary results of this review by 75 days until March 16, 2010.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: December 16, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–30528 Filed 12–22–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Extension of Time Limit for Final Results of the New Shipper and Fifth Antidumping Duty Administrative Reviews

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

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

FOR FURTHER INFORMATION CONTACT: Javier Barrientos, 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) 482–2243.

Background

On September 4, 2009, the Department of Commerce (''Department'') published the preliminary results of these new shipper and administrative reviews for the period August 1, 2007, through July 31, 2008. *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Preliminary Results of New Shipper Reviews and Fifth Antidumping Duty Administrative Review,* 74 FR 45805 (September 4, 2009) (''*Preliminary Results*''). The final results are currently due on January 2, 2010.

Extension of Time Limits for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''Act''), and 19 CFR 351.213(h)(1) require the Department to issue the final results in an administrative review of an antidumping duty order 120 days after the date on which the preliminary results are published. The Department may, however, extend the deadline for completion of the final results of an administrative review to 180 days if it determines it is not practicable to complete the review within the foregoing time period. *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

The Department finds that it is not practicable to complete the final results in the aligned new shipper and fifth antidumping duty administrative reviews of certain frozen fish fillets from Vietnam within this time limit. *See* Memo to the File re: Alignment of 4th New Shipper Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam with the 5th Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam (March 20, 2009). The Department is extending the deadline because additional time is needed to review interested parties' case and rebuttal briefs. For the reasons noted above, we are extending the time for the completion of the final results of this review by 60 days to March 3, 2010.

This notice is published in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: *December 9, 2009.*

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–30531 Filed 12–22–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by Chicago Deer River Properties, LLC, d/b/a Theodore Industrial Port

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of appeal.

SUMMARY: This announcement provides notice that Chicago Deer River Properties, LLC, d/b/a Theodore Industrial Port (Theodore Industrial Port), has filed an administrative appeal with the Department of Commerce (Department), asking that the Secretary override an objection by the Alabama Department of Environmental Management (Alabama) to the proposed filling of a tidal pond at Theodore Industrial Port facilities in Theodore, Alabama, near Mobile Bay.

DATES: Comments regarding this appeal or requests for a public hearing must be sent in writing to the NOAA, Office of General Counsel for Ocean Services postmarked or e-mailed no later than January 29, 2010.

ADDRESSES: Materials from the appeal record will be available at the NOAA, Office of General Counsel for Ocean Services, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910 and on the following Web site: *http://www.ogc.doc.gov/czma.htm.*

FOR FURTHER INFORMATION CONTACT: Thomas Street, Attorney-Advisor, NOAA, Office of General Counsel, 301–713–7390, or at *gcos.inquiries@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of Appeal

On November 25, 2009, Theodore Industrial Port filed notice of an appeal with the Secretary of Commerce (Secretary), pursuant to the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1451 *et seq.,* and implementing regulations found at 15 CFR part 930, subpart H. The appeal is taken from an objection by Alabama to Theodore Industrial Port's consistency certification for a U.S. Army Corps of Engineers permit for a proposed port enhancement project at the Theodore Industrial Port in Theodore, Alabama. The specific activity sought to be permitted involves the filling of a tidal pond.

Under the CZMA, the Secretary may override Alabama's objection on grounds that the project is consistent with the objectives or purposes of the CZMA or otherwise necessary in the interest of national security. To make the determination that the proposed activity is ''consistent with the objectives or purposes of the CZMA,'' the Department must find that: (1) The proposed activity furthers the national interest as articulated in sections 302 or 303 of the CZMA, in a significant or substantial manner; (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest, when those effects are

considered separately or cumulatively; and (3) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with enforceable policies of the applicable coastal management program. 15 CFR 930.121. Conversely, to make the determination that the proposed activity is ''necessary in the interest of national security,'' the Secretary must find that a national defense or other national security interest would be significantly impaired were the activity not permitted to go forward as proposed. 15 CFR 930.122.

II. Opportunity for Federal Agency and Public Comment

Pursuant to Department of Commerce regulations, the public and interested federal agencies may submit comments on this appeal. Written comments must be sent no later than January 29, 2010 to the attention of Thomas Street, NOAA, Office of General Counsel for Ocean Services, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910 or via e-mail to *gcos.comments@noaa.gov.*

III. Opportunity for a Public Hearing

Pursuant to Department of Commerce regulations, the Secretary may hold a public hearing on this appeal, either in response to a request for a public hearing or at the Secretary's own initiative. If a public hearing is held, it shall be noticed in the **Federal Register**, and the Secretary shall reopen the public and Federal agency comment period for a 10-day period following the hearings. Written requests for a public hearing must be sent no later than January 29, 2010 to the attention of Thomas Street, NOAA, Office of General Counsel for Ocean Services, 1305 East West Highway, Room 6111, Silver Spring, MD 20910 or via e-mail to *gcos.comments@noaa.gov.*

IV. Appeal Documents

NOAA intends to provide the public with access to all publicly available materials and related documents comprising the appeal record on the following Web site: *http://www.ogc.doc.gov/czma.htm;* and during business hours, at the NOAA, Office of General Counsel for Ocean Services. For additional information concerning this appeal, please contact Thomas Street, NOAA, Office of General Counsel for Ocean Services, 301–713–7390 or *gcos.inquiries@noaa.gov.*

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance.]

Dated: December 18, 2009.

Joel La Bissonniere,

Assistant General Counsel for Ocean Services, NOAA.

[FR Doc. E9–30532 Filed 12–22–09; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

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

SUMMARY: The Department of Commerce (''the Department'') has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with November anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received a request to revoke one antidumping duty order in part.

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

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

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing duty orders and findings with November anniversary dates. The Department also received a timely request to revoke in part the antidumping duty order on Fresh Garlic from the People's Republic of China with respect to one exporter.

Notice of No Sales

Under 19 CFR 351.213(d)(3), the Department may rescind a review where there are no exports, sales, or entries of subject merchandise during the respective period of review (''POR'') listed below. If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the POR, it should notify the Department within 30 days of publication of this notice in the **Federal Register.** The Department will consider rescinding the review only if the producer or exporter, as appropriate, submits a properly filed and timely statement certifying that it had no exports, sales, or entries of subject merchandise during the period of review. All submissions must be made in accordance with 19 CFR 351.303 and are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (''the Act''). Six copies of the submission should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy of each request must be served on every party on the Department's service list.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the POR. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within five days of publication of this initiation notice and to make our decision regarding respondent selection within 20 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within 10 calendar days of publication of this **Federal Register** notice.

Separate Rates

In proceedings involving non-market economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by *Final*

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

All firms listed below that wish to qualify for separate-rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate-rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate-rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [1] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[2] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Application will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to the Department no later than 60 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate-rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than November 30, 2010.

Antidumping duty proceedings	Period to be reviewed
Brazil: Polyethylene Terephthalate Film, Sheet, and Strip, A–351–841	11/6/08–10/31/09
Terphane Inc.	
Germany: Lightweight Thermal Paper, A–428–840	11/20/08–10/31/09
Papierfabrik August Koehler AG	
Mitsubishi HiTec Paper Flensburg GmbH, Mitsubishi HiTec Paper Bielefeld GmbH, and Mitsubishi International Corp.	
Mexico: Circular Welded Non-Alloy Steel Pipe and Tube, A–201–805	11/1/08–10/31/09
Mueller Comercial de Mexico, S. de R.L. de C.V.	
Tuberia Nacional, S.A. de C.V.	
Ternium Mexico, S.A. de C.V., and its affiliates, Hylsa, S.A. de C.V., Ternium Grupo IMSA SAB de C.V., and Galvak S.A. de C.V.	
Republic of Korea: Certain Circular Welded Non-Alloy Steel Pipe, A–580–809	11/1/08–10/31/09
SeAH Steel Corporation	
Hyundai HYSCO	
Husteel Co., Ltd.	
Nexteel Co., Ltd.	
Kumkang Industrial Co., Ltd.	
A–JU Besteel Co., Ltd.	
The People's Republic of China: Certain Cut-to-Length Carbon Steel Plate,[3] A–570–849	11/1/08–10/31/09
Hunan Valin Xiangtan Iron & Steel Co., Ltd.	
The People's Republic of China: Fresh Garlic,[4] A–570–831	11/1/08–10/31/09
American Pioneer Shipping	
Anhui Dongqian Foods Ltd	
Anqiu Friend Food Co., Ltd.	
Anqiu Haoshun Trade Co., Ltd.	
APS Qingdao	
Chengwu County Yuanxiang Industry & Commerce Co., Ltd.	
Chiping Shengkang Foodstuff Co., Ltd.	
Hangzhou Guanyu Foods Co., Ltd.	
Hebei Golden Bird Trading Co., Ltd.	
Henan Weite Industrial Co., Ltd.	

[1] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceedings (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently complete segment of the proceeding in which they participated.

[2] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Application.

Antidumping duty proceedings	Period to be reviewed
Heze Ever-Best International Trade Co., Ltd. (f/k/a Shandong Heze International Trade and Developing Company)	11/1/08–10/31/09
Hongqiao International Logistics Co.	
IT Logistics Qingdao Branch	
Jinan Solar Summit International Co., Ltd.	
Jinan Farmlady Trading Co., Ltd.	
Jinan Yipin Corporation Ltd.	
Jining Highton Trading Co., Ltd.	
Jining Juilong International Trading Co., Ltd.	
Jining Tiankuang Trade Co., Ltd.	
Jining Yongjia Trade Co., Ltd.	
Jinxian County Huaguang Food Import & Export Co., Ltd.	
Jinxiang Dacheng Food Co., Ltd.	
Jinxiang Dongyun Freezing Storage Co., Ltd. (a/k/a Jinxiang Eastward Shipping Import and Export Limited Company)	
Jinxiang Fengsheng Import & Export co., Ltd.	
Jinxiang Hejia Co., Ltd.	
Jinxiang Jinma Fruits Vegetables Products Co., Ltd.	
Jinxiang Shanyang Freezing Storage Co., Ltd.	
Jinxiang Tianheng Trade Co., Ltd.	
Jinxiang Tianma Freezing Storage Co., Ltd.	
Juye Homestead Fruits and Vegetables Co., Ltd.	
Kingwin Industrial Co., Ltd.	
Laiwu Fukai Foodstuff Co., Ltd.	
Laizhou Xubin Fruits and Vegetables	
Linshu Dading Private Agricultural Products Co., Ltd.	
Linyi City Heding District Jiuli Foodstuff Co.	
Ningjin Ruifeng Foodstuff Co., Ltd.	
Qingdao Apex Shipping Co., Ltd.	
Qingdao Lianghe International Trade Co., Ltd.	
Qingdao Saturn International Trade Co., Ltd.	
Qingdao Sea-Line International Trading Co., Ltd.	
Qingdao Sino-World International Trading Co., Ltd.	
Qingdao Tiantaixing Foods Co., Ltd.	
Qingdao Winner Foods Co., Ltd.	
Qingdao Xintianfeng Foods, Co., Ltd.	
Qingdao Yuankang International	
Qufu Dongbao Import & Export Trade Co., Ltd.	
Rizhao Huasai Foodstuff Co., Ltd.	
Samyoung America (Shanghai) Inc.	
Shandong Chengshun Farm Produce Trading Co., Ltd.	
Shandong Chenhe Int'l Trading Co., Ltd.	
Shandong China Bridge Imports	
Shandong Dongsheng Eastsun Foods Co., Ltd.	
Shandong Garlic Company	
Shandong Jinxiang Zhengyang Import & Export Co., Ltd.	
Shandong Longtai Fruits and Vegetables Co., Ltd.	
Shandong Sanxing Food Co., Ltd.	
Shandong Wonderland Organic Food Co., Ltd.	
Shandong Xingda Foodstuffs Group Co., Ltd.	
Shandong Yipin Agro (Group) Co., Ltd.	
Shanghai Ever Rich Trade Company	
Shanghai Goldenbridge International Co., Ltd.	
Shanghai Great Harvest International Co., Ltd.	
Shanghai LJ International Trading Co., Ltd.	
Shenzhen Fanhui Import & Export Co., Ltd.	
Shenzhen Greening Trading Co., Ltd.	
Shenzhen Xinboda Industrial Co., Ltd.	
T&S International, LLC	
Taian Eastsun Foods Co., Ltd.	
Taian Fook Huat Tong Kee Pte. Ltd.	
Taian Solar Summmit Food Co., Ltd.	
Taiyan Ziyang Food Co., Ltd.	
V.T. Impex (Shandong) Limited	
Weifang Chenglong Import & Export Co., Ltd.	
Weifang Hongqiao International Logistics Co., Ltd.	
Weifang Naike Foodstuffs Co., Ltd.	
Weifang Shennong Foodstuff Co., Ltd.	
WSSF Corporation (Weifang)	
Xiamen Huamin Import Export Company	
Xiamen Keep Top Imp. and Exp. Co., Ltd.	
XuZhou Simple Garlic Industry Co., Ltd.	
You Shi Li International Trading Co., Ltd.	

Antidumping duty proceedings	Period to be reviewed
Zhangzhou Xiangcheng Rainbow Greenland Food Co., Ltd. Zhengzhou Harmoni Spice Co., Ltd. Zhengzhou Yuanli Trading Co., Ltd.	11/1/08–10/31/09
The People's Republic of China: Lightweight Thermal Paper,[5] A–570–920 Guangdong Guanhao High-Tech Co., Ltd. Shanghai Hanhong Paper Co., Ltd. and Hanhong International Limited	11/20/08–10/31/09
The People's Republic of China: Polyethylene Terephthalate Film, Sheet, and Strip,[6] A–570–924 Fuwei Films (Shandong) Co., Ltd. Shaoxing Xiangyu Green Packing Co., Ltd. Tianjin Wanhua Co., Ltd. Sichuan Dongfang Insulating Material Co., Ltd. Shanghai Xishu Electric Material Co., Ltd. Shanghai Uchem Co., Ltd.	11/6/08–10/31/09
United Arab Emirates: Polyethylene Terephthalate Film, Sheet, and Strip, A–520–803 Flex Middle East FZE JBF RAK LLC	11/6/08–10/31/09
Countervailing Duty Proceedings	
The People's Republic of China: Lightweight Thermal Paper, C–570–921 Guangdong Guanhao High-Tech Co., Ltd.	11/20/08–12/31/08

Suspension Agreements

None.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States,* 291 F.3d 806 (Fed. Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

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

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed in 19 CFR 351.101(d)).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: December 17, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–30529 Filed 12–22–09; 8:45 am]

BILLING CODE 3510–DS–P

[3] If the above-named company does not qualify for a separate rate, all other exporters of certain cut-to-length carbon steel plate from the People's Republic of China (''PRC'') who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[4] If one of the above-named companies does not qualify for a separate rate, all other exporters of fresh garlic from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[5] If one of the above-named companies does not qualify for a separate rate, all other exporters of lightweight thermal paper from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[6] If one of the above-named companies does not qualify for a separate rate, all other exporters of polyethylene terephthalate film, sheet, and strip from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–945]

Prestressed Concrete Steel Wire Strand From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value

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

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

SUMMARY: The Department of Commerce (''the Department'') preliminarily determines that prestressed concrete steel wire strand (''PC strand'') from the People's Republic of China (''PRC'') is being, or is likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Tariff Act of 1930, as amended (''Act''), for the period of investigation (''POI'') October 1, 2008, through March 31, 2009. The estimated margins of sales at LTFV are shown in the ''Preliminary Determination'' section of this notice. Interested parties are invited to comment on this preliminary determination.

FOR FURTHER INFORMATION CONTACT: Alan Ray or Alexis Polovina, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; *telephone:* (202) 482–5403 or (202) 482–3927, respectively.

SUPPLEMENTARY INFORMATION:

Initiation

On May 27, 2009, the Department received an antidumping duty (''AD'') petition concerning imports of PC strand from the PRC filed in proper form by American Spring Wire Corp., Insteel Wire Products Company, and Sumiden Wire Products Corp., (collectively, ''Petitioners''). *See* Petitions for the Imposition of Antidumping and Countervailing Duties: Prestressed Concrete Steel Wire Strand from the People's Republic of China, dated May 27, 2009 (''Petition''). The Department initiated this investigation on June 23, 2009. *See Prestressed Concrete Steel Wire Strand From the People's Republic of China: Initiation of Antidumping Duty Investigation,* 74 FR 29665 (June 23, 2009) (''*Initiation Notice''*).

On July 17, 2009, the United States International Trade Commission (''ITC'') issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from the PRC of PC strand. The ITC's determination was published in the **Federal Register** on July 17, 2009. *See Investigation Nos. 701–TA–464 and 731–TA–1160 (Preliminary) Prestressed Concrete Steel Wire From China,* 74 FR 34782 (July 17, 2009); *see also Prestressed Concrete Steel Wire From China: Investigation Nos. 701–TA–464 and 731–TA–1160 (Preliminary),* USITC Publication 4086 (July 2009).

Scope Comments

In accordance with the preamble to our regulations, we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice. See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997). *See also Initiation Notice,* 74 FR at 29665. We did not receive any scope comments.

Period of Investigation

The POI is October 1, 2008, through March 31, 2009. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (May 2009). *See* 19 CFR 351.204(b)(1).

Respondent Selection

In the *Initiation Notice,* the Department stated that it intended to select respondents based on quantity and value (''Q&V'') questionnaires. *See Initiation Notice,* 74 FR at 29668. On June 23, 2009, the Department requested Q&V information from the 22 companies that Petitioners identified as potential exporters or producers of PC strand from the PRC. *See* Petition at Vol. 1., Exhibit General-4. Additionally, the Department also posted the Q&V questionnaire for this investigation on its Web site at *http://ia.ita.doc.gov/ia-highlights-and-news.html.*

The Department received timely Q&V responses from eight exporters/producers that shipped merchandise under investigation to the United States during the POI.

On July 28, 2009, the Department selected Tianjin Shengte and Silvery Dragon PC Steel Products Group Co., Ltd. (''Silvery Dragon Steel'') as mandatory respondents in this investigation. *See* July 28, 2009, Memorandum to the File, from Alexis Polovina, Analyst, through Alex Villanueva, Program Manager, to James C. Doyle, Director, regarding the Antidumping Investigation of Prestressed Concrete Steel Wire Strand from the People's Republic of China: Respondent Selection (''Respondent Selection Memo''). The Department sent its antidumping duty questionnaire to Tianjin Shengte and Silvery Dragon Steel on July 31, 2009. On August 7, 2009, Silvery Dragon Steel filed a letter stating that it would not participate as a mandatory respondent in this investigation. *See* August 7, 2009, Letter to the Department from Silvery Dragon Steel. On August 10, 2009, the Department received a letter from Wuxi Jinyang Metal Products Co. (''WJMP'') requesting to participate as a voluntary respondent in the investigation. On August 14, 2009, the Department selected Xinhua Metal Products Co., Ltd. (''Xinhua Metal'') as an additional mandatory respondent, as Xinhua Metal was the next largest exporter in terms of volume. *See* August 14, 2009, Memorandum to the File, from Alan Ray, Analyst, through Alex Villanueva, Program Manager, regarding Replacement Respondent Selection (''Replacement Respondent Selection Memo''). On August 24, 2009, Tianjin Shengte did not comply with the Department's procedures in attempting to file a Section A questionnaire response. On August 27, 2009, the Department sent a letter to Tianjin Shengte that granted it a one week extension to properly resubmit their Section A questionnaire response. Tianjin Shengte failed to do so. On September 11, 2009, due to the time constraints of the investigation, the Department decided to select WJMP as the voluntary respondent, rather than select another mandatory respondent. *See* September 11, 2009, Memorandum to the File, from Alan Ray, Analyst, through Alex Villanueva, Program Manager, regarding Replacement of Mandatory Respondent (''Replacement of Mandatory Respondent Selection Memo''). See the ''Application of Adverse Facts Available'' section below for a discussion on the application of adverse facts available for Tianjin Shengte and Silvery Dragon Steel.

Separate Rates Applications

On August 24, 2009, we received timely filed separate-rate applications (''SRA'') from two companies: Liaonin TongDa Building Material Industry Co., Ltd. (''Tongda'') and Fasten Group Import & Export (''Fasten Group I&E''). On September 10, 2009, the Department issued Tongda a supplemental questionnaire requesting additional information. Tongda did not respond to the supplemental questionnaire, and as such, Tongda is not eligible for a separate rate. See the ''Separate Rates'' section below for further discussion on the eligibility for a separate rate. On September 30 and October 20, 2009, the Department issued Fasten Group I&E two supplemental questionnaires requesting additional information. Fasten Group I&E submitted timely responses to these questionnaires.

Product Characteristics and Questionnaires

In the *Initiation Notice,* the Department asked all parties in this investigation for comments on the appropriate product characteristics for defining individual products. On July 29, 2009, and August 6, 2009, we received comments from Petitioners regarding product characteristics. On July 31, 2009 the Department issued its antidumping duty questionnaire to Tianjin Shengte and Silvery Dragon Steel, and on August 14, 2009, the Department issued its antidumping duty questionnaire to Xinhua Metal. WJMP and Xinhua Metal submitted responses to the Department's questionnaire. As stated above, Tianjin Shengte failed to properly submit questionnaire responses and Silvery Dragon Steel did not submit questionnaire responses.

Surrogate Country Comments

On August 19, 2009, the Department determined that India, the Philippines, Indonesia, Colombia, Thailand, and Peru, are countries comparable to the PRC in terms of economic development. *See* August 19, 2009, Letter to All Interested Parties, regarding Antidumping Duty Investigation of prestressed concrete steel wire strand from the People's Republic of China: Surrogate Country List, attaching August 17, 2009, Memorandum to Alex

Villanueva, Program Manager, Office 9, AD/CVD Operations, from Kelly Parkhill, Acting Director, Office for Policy, regarding Request for List of Surrogate Countries for an Antidumping Duty Investigation of prestressed concrete steel wire strand from the People's Republic of China (''Surrogate Country List'').

On August 19, 2009, the Department requested comments on surrogate country selection from the interested parties in this investigation. On September 2, 2009, Petitioners submitted surrogate country comments. No other interested parties commented on the selection of a surrogate country. For a detailed discussion of the selection of the surrogate country, *see* ''Surrogate Country'' section below.

Surrogate Value Comments

On September 14, 2009 and September 29, 2009, the Department extended the deadline for interested parties to submit surrogate information with which to value the factors of production in this proceeding. On October 13, 2009, Petitioners, WJMP, and Xinhua Metal submitted surrogate value comments. On October 23, 2009, Petitioners and WJMP submitted rebuttal comments on the surrogate values. All the surrogate values placed on the record were obtained from sources in India, with the exception of Petitioner's suggestions for international freight and marine insurance, which were based on U.S. sources.

Postponement of Preliminary Determination

Pursuant to section 733(c) of the Act and 19 CFR 351.205(f)(1), the Department extended the preliminary determination by 30 days. The Department published a postponement of the preliminary determination on October 26, 2009. *See Prestressed Concrete Steel Wire Strand From the People's Republic of China: Postponement of Preliminary Determination of the Antidumping Duty Investigation,* 74 FR 54963 (October 26, 2009). On November 23, 2009, the Department published a second postponement of the preliminary determination, extending the prelimininary determination by an additional 14 days. *See Prestressed Concrete Steel Wire Strand From the People's Republic of China: Postponement of Preliminary Determination of the Antidumping Duty Investigation,* 74 FR 61104 (November 23, 2009). On December 9, 2009, we received pre-preliminary determination comments from Petitioners.[1]

Scope of Investigation

The scope of this investigation consists of PC strand, produced from wire of non-stainless, non-galvanized steel, which is suitable for use in prestressed concrete (both pretensioned and post-tensioned) applications. The product definition encompasses covered and uncovered strand and all types, grades, and diameters of PC strand. PC strand is normally sold in the United States in sizes ranging from 0.25 inches to 0.70 inches in diameter. PC strand made from galvanized wire is only excluded from the scope if the zinc and/or zinc oxide coating meets or exceeds the 0.40 oz./ft^2 standard set forth in ASTM–A–475. The PC strand subject to this investigation is currently classifiable under subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Non-Market Economy Country

For purposes of initiation, Petitioners submitted LTFV analyses for the PRC as a non-market economy (''NME''). *See Initiation Notice,* 74 FR 29665 (June 23, 2009). The Department considers the PRC to be a NME country. *See Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 30758, 30760 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 60632 (October 25, 2007) (''*CFS Paper*''). In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. No party has challenged the designation of the PRC as an NME country in this investigation. Therefore, we continue to treat the PRC as an NME country for purposes of this preliminary determination and calculated normal value in accordance with Section 773(c) of the Act, which applies to all NME countries.

Surrogate Country

When the Department investigates imports from an NME country and available information does not permit the Department to determine normal value (''NV'') pursuant to section 773(a) of the Act, then, pursuant to section 773(c)(4) of the Act, the Department bases NV on an NME producer's factors of production (''FOPs''), to the extent possible, in one or more market-economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. The Department determined that India, the Philippines, Indonesia, Colombia, Thailand, and Peru, are countries comparable to the PRC in terms of economic development. *See* Surrogate Country List. The sources of the surrogate values we have used in this investigation are discussed under the ''Normal Value'' section below.

Based on publicly available information placed on the record, the Department determines India to be a reliable source for surrogate values because India is at a comparable level of economic development pursuant to section 773(c)(4) of the Act, is a significant producer of subject merchandise, and has publicly available and reliable data. Accordingly, the Department has selected India as the surrogate country for purposes of valuing the FOPs because it meets the Department's criteria for surrogate country selection.

Affiliations

Section 771(33) of the Act, provides that:

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

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

(B) Any officer or director of an organization and such organization.

(C) Partners.

(D) Employer and employee.

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

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

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

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

[1] *See* Petitioner's December 9, 2009, Letter to the Department.

WJMP

Based on WJMP's statement[2] that they are affiliated with Corus Americas, Inc., (''CAI'') and based on the evidence presented in WJMP's questionnaire responses, we preliminarily find that WJMP is affiliated with CAI, which was involved in WJMP's sales process pursuant to sections 771(33)(E), (F) and (G) of the Act, based on ownership and common control.

Separate Rates

In proceedings involving NME countries, there is a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. *See Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 55039, 55040 (September 24, 2008) (''*PET Film LTFV Final*''). It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. *See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588 (May 6, 1991) (''*Sparklers*''); *see also Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China,* 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''), and section 351.107(d) of the Department's regulations.

In the *Initiation Notice,* the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME investigations. *See Initiation Notice,* 74 FR at 29665. The process requires exporters and producers to submit a separate-rate status application. The Department's practice is discussed further in *Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,* (April 5, 2005), (''*Policy Bulletin 05.1*''), available at *http://ia.ita.doc.gov/policy/bull05–1.pdf.*[3]

We have considered whether each PRC company that submitted a complete application or complete Section A Response as a mandatory respondent, is eligible for a separate rate. The Department's separate rate test is not concerned, in general, with macroeconomic/border-type controls, *e.g.,* export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China,* 63 FR 72255, 72256 (December 31, 1998). The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See Notice of Final Determination of Sales at Less than Fair: Value Certain Cut-to-Length Carbon Steel Plate from Ukraine,* 62 FR 61754, 61758 (November 19, 1997), and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 62 FR 61276, 61279 (November 17, 1997).

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the merchandise under investigation under a test arising from the *Sparklers,* as further developed in *Silicon Carbide.* In accordance with the separate rate criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of *De Jure* Control

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

The evidence provided by WJMP supports a preliminary finding of *de jure* absence of governmental control based on the following: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) the applicable legislative enactments decentralizing control of the companies; and (3) any other formal measures by the government decentralizing control of companies. *See* WJMP's August 21, 2009, Separate Rate Application at 4–8.

Petitioners questioned Xinhua Metal's eligibility for a separate rate. Petitioners argued that a business proprietary note in Xinhua Metal's financial statement indicated government control.[4] Additionally, Petitioners allege Xinhua Metal's parent company is state owned, based on a statement on the parent company's Web site.[5]

We have determined, however, that the evidence provided by Xinhua Metal supports a preliminary finding of *de jure* absence of governmental control based on the following: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) the applicable legislative enactments decentralizing control of the companies; and (3) any other formal measures by the government decentralizing control of companies. *See* Xinhua Metal's August 24, 2009, Separate Rate Application (''SRA'') at 6–10; October 23, 2009, 1st Supplemental A&C Questionnaire at 2–12; and November 23, 2009, 2nd Supplemental A Questionnaire at 1–8. This determination is consistent with recent prior Department analyses of *de jure* control. *See Notice of Preliminary Results of New Shipper Review: Cut-to Length Carbon Steel Plate From the People's Republic of China,* 73 FR 67124 (November 13, 2008).

Petitioners also questioned Fasten Group I&E's eligibility for a separate rate. Petitioners argued that, Fasten Group I&E is controlled by the parent company, Fasten Group Corporation, and in turn, the parent company is owned by the government, based on the business license and an annual report.[6]

Again, we have determined that the evidence provided by Fasten Group I&E supports a preliminary finding of *de jure* absence of government control based on the following: (1) An absence of restrictive stipulations associated

[2] *See* WJMP's August 21, 2009, Separate Rate Application at 4.

[3] The *Policy Bulletin 05.1* states: ''{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise *both* exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.'' *See Policy Bulletin 05.1* at 6.

[4] [5] *See* Petitioners' September 22, 2009, Letter to the Department; and Petitioners' December 9, 2009, Letter to the Department.

[6] *See* Petitioners' September 18, 2009, Letter to the Department.

with the individual exporter's business and export licenses; (2) the applicable legislative enactments decentralizing control of the companies; and (3) any other formal measures by the government decentralizing control of companies. *See* Fasten Group I&E's August 24, 2009, SRA at 7–10, and November 3, 2009, SRA Second Supplemental Response at 1–6.

2. Absence of *De Facto* Control

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

We determine that, for WJMP, Xinhua Metal, and Fasten Group I&E, the evidence on the record supports a preliminary finding of *de facto* absence of governmental control based on record statements and supporting documentation showing the following: (1) Each exporter sets its own export prices independent of the government and without the approval of a government authority; (2) each exporter retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; (3) each exporter has the authority to negotiate and sign contracts and other agreements; and (4) each exporter has autonomy from the government regarding the selection of management. *See* WJMP's August 21, 2009, SRA at 9–14; Xinhua Metal's October 23, 2009, 1st Supplemental A&C Questionnaire at 2–12, and November 23, 2009, 2nd Supplemental A Questionnaire at 1–8; and Fasten Group I&E's November 3, 2009, SRA Second Supplemental at 1–6, and August 24, 2009, SRA at 10–17.

The evidence placed on the record of this investigation by WJMP, Xinhua Metal, and Fasten Group I&E, demonstrates an absence of *de jure* and *de facto* government control with respect to each of the exporter's exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide.* As a result, we have granted the separate company, Fasten Group I&E, a margin based on the experience of the mandatory respondent and excluding any *de minimis* or zero rates or rates based on total adverse facts available (''AFA'') for the purposes of this preliminary determination.

Application of Adverse Facts Available, the PRC-Wide Entity and PRC-Wide Rate

The Department has data that indicate there were more exporters of PC strand from the PRC than those indicated in the response to our request for Q&V information during the POI. *See Respondent Selection Memorandum.* We issued our request for Q&V information to 22 potential Chinese exporters of the merchandise under investigation, in addition to posting the Q&V questionnaire on the Department's Web site. While information on the record of this investigation indicates that there are other exporters/producers of PC strand in the PRC, we received only eight timely filed Q&V responses. Although all exporters were given an opportunity to provide Q&V information, not all exporters provided a response to the Department's Q&V letter. Additionally, as discussed above, Silvery Dragon Steel filed a letter stating that it would not participate as a mandatory respondent, and Tianjin Shengte filed a deficient Section A questionnaire and failed to respond to the Department's request for more information. Therefore, the Department has preliminarily determined that there were exporters/producers of the merchandise under investigation during the POI from the PRC that did not respond to the Department's request for information. We have treated these PRC exporters/producers, as part of the PRC-wide entity because they did not qualify for a separate rate. *See, e.g., Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Preliminary Partial Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China,* 70 FR 77121, 77128 (December 29, 2005), and unchanged in *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China,* 71 FR 29303 (May 22, 2006).

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

Information on the record of this investigation indicates that the PRC-wide entity was non-responsive. Certain companies did not respond to our questionnaire requesting Q&V information or the Department's request for more information. As a result, pursuant to section 776(a)(2)(A) of the Act, we find that the use of facts available (''FA'') is appropriate to determine the PRC-wide rate. *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,* 68 FR 4986 (January 31, 2003), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,* 68 FR 37116 (June 23, 2003).

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

When employing an adverse inference, section 776 indicates that the Department may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate for AFA, the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. It is the Department's practice to select, as AFA, the higher of the (a) highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation. *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Quality Steel Products from the People's Republic of China,* 65 FR 34660 (May 21, 2000) and accompanying Issues and Decision Memorandum at Comment 1. As AFA, we have preliminarily assigned to the PRC-wide entity a rate of 193.55 percent, a rate calculated in the petition which is higher than the highest rate calculated for either of the cooperative respondents. The Department preliminarily determines that this information is the most appropriate from the available sources to effectuate the purposes of AFA.

Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as facts available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. The SAA provides guidance as to what constitutes secondary information. One of the suggested sources of secondary information is ''information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See SAA* at 870. The SAA further suggests that to ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* Independent sources used to corroborate may include, for example, published price lists, official import statistics, and CBP data, and information obtained from interested parties during the particular investigation. *Id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.[7]

The AFA rate selected by the Department is a rate calculated in the petition. Based on our examination of information on the record, including examination of the petition export prices and normal values, we find that, for purposes of this investigation, there is not a sufficient basis to consider that certain petition margins have probative value. However, there is a sufficient basis to find that the petition margin selected does have probative value. In this case, we have selected a margin that is not so much greater than the highest transaction-specific margin calculated for the mandatory respondent that it can be considered not to have probative value. The Department's practice, when selecting an AFA rate from among the possible sources of information, has been to ensure that the margin is sufficiently adverse ''as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil,* 67 FR 55792, 55796 (Aug. 30, 2002); *see also Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909, 8932 (Feb. 23, 1998). As guided by the SAA, the information used as AFA should ensure an uncooperative party does not benefit by failing to cooperate than if it had cooperated fully. *See* SAA at 870. We conclude that using Xinhua Metal's highest transaction specific margin as a limited reference point, the highest petition margin that can be corroborated within the meaning of the statute is 193.55 percent, which is sufficiently adverse so as to induce cooperation that the uncooperative companies do not benefit from their failure to cooperate. Accordingly, we preliminarily find that the rate of 193.55 percent is corroborated within the meaning of section 776(c) of the Act. This method of selecting an AFA dumping margin is consistent with the recent final determination involving kitchen appliance shelving and racks from the PRC. *See* July 20, 2009, Memorandum to the File, from Julia Hancock, Senior Analyst, regarding Corroboration of the PRC-Wide Entity Rate and the Wireking Total AFA Rate for the Final Determination in the Antidumping Duty Investigation of Certain Kitchen Appliance Shelving and Racks From the People's Republic of China. Accordingly, we determine that 193.55 percent is the most appropriate antidumping rate for the PRC-wide entity. The PRC-wide rate applies to all entries of the merchandise under investigation except for entries from WJMP, Xinhua Metal, and Fasten Group I&E.

Margin for the Separate Rate Companies

The Department received a timely and complete separate rate application from the separate rate company, Fasten Group I&E, who is an exporter of PC strand from the PRC, and was not selected as a mandatory respondent in this investigation. Through the evidence in their application and supplemental questionnaire responses, this company has demonstrated its eligibility for a separate rate. *See* the ''Separate Rates'' section above. Consistent with the Department's practice, as the separate rate, we have established a margin for the separate rate company based on the rate we calculated for the mandatory respondent, Xinhua Metal, excluding any rates that are zero, *de minimis,* or based entirely on AFA.[8] The Department did not include WJMP in the calculation of the separate rate because as discussed above in the ''Respondent Selection'' section, WJMP is a voluntary respondent. Fasten Group I&E is the company receiving this rate and is listed in the ''Suspension of Liquidation'' section of this notice.

Date of Sale

Section 351.401(i) of the Department's regulations state that, ''{i}n identifying the date of sale of the merchandise under consideration or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in

[7] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part,* 62 FR 11825 (March 13, 1997).

[8] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 71 FR 77373, 77377 (December 26, 2006) (''PSF''), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 72 FR 19690 (April 19, 2007).

the normal course of business.'' In *Allied Tube,* the Court of International Trade (''CIT'') noted that a ''party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to 'satisf{y}' the Department that 'a different date better reflects the date on which the exporter or producer establishes the material terms of sale.' '' *Allied Tube & Conduit Corp.* v. *United States* 132 F. Supp. 2d at 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)) (''*Allied Tube*''). Additionally, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. *See* 19 CFR 351.401(i); *see also Allied Tube,* 132 F. Supp. 2d at 1090–1092. The date of sale is generally the date on which the parties agree upon all substantive terms of the sale. This normally includes the price, quantity, delivery terms and payment terms. *See Carbon and Alloy Steel Wire Rod from Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review,* 72 FR 62824 (November 7, 2007) and accompanying Issue and Decision Memorandum at Comment 1; *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Turkey,* 65 FR 15123 (March 21, 2000) and accompanying Issues and Decision Memorandum at Comment 1.

WJMP reported that the date of sale was determined by the invoice issued by the affiliated importer to the unaffiliated United States customer. In this case, as the Department found no evidence contrary to WJMP's claims that invoice date was the appropriate date of sale, the Department used invoice date as the date of sale for this preliminary determination.

Xinhua Metal reported that the date of sale was determined by the invoice issued to the unaffiliated United States customer. In this case, as the Department found no evidence contrary to Xinhua Metal's claims that invoice date was the appropriate date of sale, the Department used invoice date as the date of sale for this preliminary determination.

Fair Value Comparison

To determine whether sales of PC strand to the United States by WJMP and Xinhua Metal were made at LTFV, we compared constructed export price (''CEP'') and export price (''EP'') to NV, as described in the ''U.S. Price'' and ''Normal Value'' sections of this notice.

U.S. Price

In accordance with section 772(b) of the Act, we based the U.S. price for WJMP's sales on CEP because these sales were made by WJMP's U.S. affiliate, CAI, which purchased the merchandise under investigation produced by WJMP. In accordance with section 772(c)(2)(A) of the Act, we calculated CEP by deducting, where applicable, the following expenses from the gross unit price charged to the first unaffiliated customer in the United States: foreign movement expenses, and U.S. movement expenses, including U.S. duties, brokerage and handling, AMS charges, and inventory carrying costs. Further, in accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), where appropriate, we deducted from the starting price the following selling expenses associated with economic activities occurring in the United States: credit expenses and other indirect selling expenses. In addition, pursuant to section 772(d)(3) of the Act, we made an adjustment to the starting price for CEP profit. We based movement expenses on either surrogate values or actual expenses. For details regarding our CEP calculations, and for a complete discussion of the calculation of the U.S. price for WJMP, *see* December 17, 2009, Memorandum to the File, from Alan Ray, Case Analyst, through Alex Villanueva, Program Manager, regarding Analysis of the Preliminary Determination of the Antidumping Duty Investigation of Prestressed Concrete Steel Wire Strand from the PRC: WJMP (''WJMP Analysis Memo'').

In accordance with section 772(a) of the Act, the Department calculated the EP for Xinhua Metal's sales to the United States because the first sale to an unaffiliated party was made before the date of importation and the use of CEP was not otherwise warranted. The Department calculated EP based on the price to unaffiliated purchasers in the United States. In accordance with section 772(c) of the Act, as appropriate, the Department deducted from the starting price to unaffiliated purchasers foreign inland freight, foreign inland insurance, and brokerage and handling. Each of these services was provided by an NME vendor. Thus, the Department based the deduction of these movement charges on surrogate values. For a complete discussion of the calculation of the U.S. price for Xinhua Metal, *see* December 17, 2009, Memorandum to the File, from Alexis Polovina, Case Analyst, through Alex Villanueva, Program Manager, regarding Analysis of the Preliminary Determination of the Antidumping Duty Investigation of Prestressed Concrete Steel Wire Strand from the PRC: Xinhua Metal (''Xinhua Metal Analysis Memo'').

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using a FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOP because the presence of government controls on various aspects of non-market economies renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies. *See, e.g., Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products from the People's Republic of China,* 71 FR 19695 (April 17, 2006) (''*CLPP*'') unchanged in *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China,* 71 FR 53079 (September 8, 2006).

As the basis for NV, both WJMP and Xinhua Metal provided FOPs used in each stage for processing PC strand.

Consistent with section 773(c)(1) of the Act, it is the Department's practice to value the FOPs that a respondent uses to produce the merchandise under consideration. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China,* 69 FR 70997 (December 8, 2004) and accompanying Issues and Decision Memorandum at Comment 9(E).

Factor Valuation Methodology

In accordance with section 773(c) of the Act, we calculated NV based on FOP data reported by WJMP and Xinhua Metal. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available surrogate values. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. *See, e.g., Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review,* 67 FR 72139 (December 4, 2002) and accompanying Issues and Decision Memorandum at Comment 6; and *Final Results of First New Shipper Review and First*

Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China, 66 FR 31204 (June 11, 2001) and accompanying Issues and Decision Memorandum at Comment 5. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–08 (Fed. Cir. 1997). For a detailed description of all surrogate values used for WJMP and Xinhua Metal see December 17, 2009, Memorandum to the File, from Alexis Polovina, Case Analyst, through Alex Villanueva, Program Manager, Investigation of Prestressed Concrete Steel Wire Strand from the PRC: Surrogate Values for the Preliminary Determination (''Preliminary Surrogate Value Memorandum'').

For this preliminary determination, in accordance with the Department's practice, we used data from the Indian Import Statistics and other publicly available Indian sources in order to calculate surrogate values for WJMP and Xinhua Metal's raw materials, packing, by-products, and coal. In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, surrogate values which are non-export average values, most contemporaneous with the POI, product-specific, and tax-exclusive. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam,* 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam,* 69 FR 71005 (December 8, 2004). The record shows that data in the Indian Import Statistics, as well as those from the other Indian sources, are contemporaneous with the POI, product-specific, and tax-exclusive. *See* Preliminary Surrogate Value Memorandum. In those instances where we could not obtain publicly available information contemporaneous to the POI with which to value factors, we adjusted the surrogate values using, where appropriate, the Indian Wholesale Price Index (''WPI'') as published in the International Financial Statistics of the International Monetary Fund. *See, e.g., PSF* 71 FR at 77380 and *CLPP* 71 FR at 19704.

Furthermore, with regard to the Indian import-based surrogate values, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China,* 69 FR 20594 (April 16, 2004) and accompanying Issues and Decision Memorandum at Comment 7. Further, guided by the legislative history, it is the Department's practice not to conduct a formal investigation to ensure that such prices are not subsidized. *See* Omnibus Trade and Competitiveness Act of 1988, Conference Report to accompany H.R. Rep. 100–576 at 590 (1988), *reprinted in* 1988 U.S.C.C.A.N. 1547, 1623–24; *see also CFS Paper.* Rather, the Department bases its decision on information that is available to it at the time it makes its determination. *See Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value,* 73 FR 24552, 24559 (May 5, 2008), unchanged in *PET Film LTFV Final.* Therefore, we have not used prices from these countries in calculating the Indian import-based surrogate values. Additionally, we disregarded prices from NME countries. Finally, imports that were labeled as originating from an ''unspecified'' country were excluded from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies. *See id.*

For direct, indirect, and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rate as reported on Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in October 2009. *See Expected Non-Market Economy Wages: Request for Comments on 2009 Calculation,* 74 FR 51555 (October 7, 2009), and *http://ia.ita.doc.gov/wages/index.html.* The source of these wage-rate data on the Import Administration's Web site is the Yearbook of Labour Statistics 2005, ILO (Geneva: 2007), Chapter 5B: Wages in Manufacturing. Because this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by the respondents.

We valued steam using the April 2007—March 2008 financial statement of Hindalco Industries Limited. Since the rates are not contemporaneous with the POI, we inflated the values using the WPI. *See* Preliminary Surrogate Value Memorandum.

We valued diesel using the June 2007 diesel prices across four Indian cities from the Indian Oil Corporation. Since the rates are not contemporaneous with the POI, we inflated the values using the WPI. *See* Preliminary Surrogate Value Memorandum.

We valued electricity using price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India in its publication titled ''Electricity Tariff & Duty and Average Rates of Electricity Supply in India,'' dated March 2008. These electricity rates represent actual country-wide, publicly available information on tax-exclusive electricity rates charged to industries in India. As the rates listed in this source became effective on a variety of different dates, we are not adjusting the average value for inflation.

Because water is essential to the production process of the merchandise under consideration, the Department considers water to be a direct material input, not overhead, and valued water with a surrogate value according to our practice. *See Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings from the People's Republic of China,* 68 FR 61395 (October 23, 2003) and accompanying Issues and Decision Memorandum at Comment 11. The Department valued water using data from the Maharashtra Industrial Development Corporation (*http://www.midcindia.org*) since it includes a wide range of industrial water tariffs. This source provides 386 industrial water rates within the Maharashtra province from June 2003, of which 193 were for the ''inside industrial areas'' usage category and the other 193 were for the ''outside industrial areas'' usage category.

Because the value was not contemporaneous with the POI, we used WPI data to deflate the rate to be contemporaneous to the POI.

We are including dies, drawbench, and lime among the factors of production for this preliminary determination, as they appear to be actual factors used in the production of PC strand and not overhead.[9] We will continue to consider whether they should be included among the factors of production for the final determination.

We valued truck freight expenses using a per-unit average rate calculated from data on the infobanc Web site: *http://www.infobanc.com/logistics/logtruck.htm*. The logistics section of this Web site contains inland freight truck rates between many large Indian cities. Since this value is not contemporaneous with the POI, we inflated the rate using WPI.

We valued rail freight expenses using the 2006–2007 freight rail rate published by Indian Railways. Since this value is not contemporaneous with the POI, we inflated the rate using WPI.

We valued inland shipping expenses using price data for barge freight reported in a March 19, 2007, article published in *The Hindu Business Line.* Since this value is not contemporaneous with the POI, we inflated the rate using WPI.

We valued inland insurance using the public insurance expenses in the submission from Agro Dutch in the sixth administrative review of certain preserved mushrooms from India.[10] Since this value is not contemporaneous with the POI, we inflated the rate using WPI.

We continued our recent practice to value brokerage and handling using a simple average of the brokerage and handling costs that were reported in public submissions that were filed in three antidumping duty cases. Specifically, we averaged the public brokerage and handling expenses reported by Navneet Publications (India) Ltd. in the 2007–2008 administrative review of certain lined paper products from India, Essar Steel Limited in the 2006–2007 antidumping duty administrative review of hot-rolled carbon steel flat products from India, and Himalya International Ltd. in the 2005–2006 administrative review of certain preserved mushrooms from India.[11] Since the resulting value is not contemporaneous with the POI, we inflated the rate using the WPI.

To value factory overhead, selling, general, and administrative (''SG&A'') expenses, and profit, the Department used the audited financial statements of Rajratan Global Wire Ltd.

Both WJMP and Xinhua Metal have claimed by-product offsets to normal value for by-products produced during the production of PC strand and then sold. We are preliminarily granting a by-product offset to WJMP for steel wire rod scrap, semi-finished scrap, and PC strand scrap. We are also preliminarily granting a by-product offset to Xinhua Metal for scrap PC strand, scrap wire, scrap wire rod, and scrap short wire.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

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

Combination Rates

In the *Initiation Notice,* the Department stated that it would calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. *See Initiation Notice,* 74 FR at 29668. This practice is described in *Policy Bulletin 05.1,* available at *http://ia.ita.doc.gov/.*

Preliminary Determination

Preliminary weighted-average dumping margins are as follows:

Exporter	Producer	Weighted-average margin
WJMP	WJMP	37.72
Xinhua Metal	Xinhua Metal	151.44
Fasten Group I&E	Jiangyin Fasten Steel Products Co., Ltd., Jiangyin Walsin Steel Cable Co., Ltd., Jiangyin Hongyu Metal Products Co., Ltd.	151.44
PRC-wide Entity *		193.55

* This rate also applies to Tianjin Shengte, Silvery Dragon Steel, and Tongda.

Disclosure

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

Suspension of Liquidation

In accordance with section 733(d) of the Act, we will instruct CBP to suspend liquidation of all entries of subject PC strand from the PRC as described in the ''Scope of Investigation'' section, entered, or withdrawn from warehouse, for consumption from WJMP, Xinhua Metal, Fasten Group I&E, and the PRC-wide entity on or after the date of publication of this notice in the **Federal Register.**

On November 2, 2009, the Department published the preliminary affirmative countervailing duty determination with respect to PC Strand from the PRC. *See Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Notice of Preliminary Affirmative Countervailing Duty Determination,* 74 FR 56576 (November 2, 2009) (''*PC Strand CVD Preliminary Determination*''). In *PC Strand CVD Preliminary Determination,* the Department found that Xinhua Metal's merchandise benefited from export subsidies. Therefore, we will instruct CBP to require a cash deposit or posting of a bond equal to the weighted-average amount by which normal value exceeds U.S. price for Xinhua Metal, as indicated above, minus the amount determined to constitute an export subsidy. *See, e.g., Notice of Final Determination of Sales at Less Than*

[9] *See* WJMP's October 28, 2009 Supplemental C&D Questionnaire Response; and Xinhua Metal's December 2, 2009, 2nd Supplemental A&C Questionnaire Response.

[10] *See Certain Preserved Mushrooms from India: Final Results of Antidumping Duty Administrative Review,* 71 FR 10646 (March 2, 2006) (''Mushrooms from India'').

[11] *See Certain Lined Paper Products from India: Final Results of Antidumping Duty Administrative Review,* 74 FR 17149 (April 14, 2009); *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Antidumping Duty Review,* 73 FR 31961 (June 5, 2008); and *Certain Preserved Mushrooms from India: Final Results of Antidumping Duty Administrative Review,* 72 FR 5268 (February 5, 2007).

Fair Value: Carbazole Pigment 23 from India, 69 FR 67306, 67307 (November 17, 2007).

With respect to WJMP, the voluntary respondent in this proceeding, the Department did not individually examine its exports of merchandise under investigation in the *PC Strand CVD Preliminary Determination.* As a result, WJMP is captured under the ''All Others'' rate, which is an average of the companies examined in *PC Strand CVD Preliminary Determination.* Therefore, we will instruct CBP to require a cash deposit or posting of a bond equal to the weighted-average amount by which normal value exceeds U.S. price for WJMP, indicated above, minus the amount determined to constitute an export subsidy in the ''All Others'' rate.

With respect to Fasten Group I&E, the separate rate company, we note that the rate applied in this proceeding as a separate rate is derived from the calculated rate received by Xinhua Metal. Therefore, because Xinhua Metal received export subsidies in *PC Strand CVD Preliminary Determination,* we will instruct CBP to require a cash deposit or posting of a bond equal to the weighted-average amount by which normal value exceeds U.S. price for Xinhua Metal, as indicated above, minus the amount determined to constitute an export subsidy.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at less than fair value. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of PC strand, or sales (or the likelihood of sales) for importation, of the merchandise under investigation within 45 days of our final determination.

Public Comment

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

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

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

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

Dated: December 17, 2009.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E9–30536 Filed 12–22–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–955]

Certain Magnesia Carbon Bricks From the People's Republic of China: Preliminary Negative Countervailing Duty Determination

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

SUMMARY: The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are not being provided to producers and exporters of Certain Magnesia Carbon Bricks (Bricks) from the People's Republic of China (PRC).

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

FOR FURTHER INFORMATION CONTACT: Toni Page and Summer Avery, AD/CVD Operations, Office 6, Operations, Import Administration, U.S. Department of Commerce, Room 7867, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–1398 and (202) 482–4052, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On July 29, 2009, the Department received a countervailing duty (CVD) petition concerning Bricks from the People's Republic of China filed in proper form by Resco Products, Inc. (Petitioner). This investigation was initiated on August 18, 2009. *See Certain Magnesia Carbon Bricks from the People's Republic of China: Initiation of Countervailing Duty Investigation,* 74 FR 42858 (August 25, 2009) (*Initiation Notice*), and accompanying Initiation Checklist.[1] On September 15, 2009, the Department selected Liaoning Mayerton Refractories Co., Ltd. (LMR) and RHI Refractories Liaoning Co., Ltd. (RHIL) as mandatory respondents in this investigation. *See* Memorandum from the Team through Barbara Tillman, Director, Office 6, Operations, to John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, Re: Respondent Selection (September 15, 2009).

On September 15, 2009, we issued the initial CVD questionnaire to the Government of the People's Republic of China (GOC), LMR, and RHIL.

On October 2, 2009, pursuant to section 703(c)(1)(A) of the Tariff Act of 1930 as amended (the Act) and 19 CFR 351.205(e), the Department postponed the deadline for the preliminary determination by 55 days to no later than December 16, 2009. *See Certain Magnesia Carbon Bricks From the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation,* 74 FR 51558 (October 7, 2009).

On November 5, 2009, the GOC submitted a response to the initial CVD questionnaire (GOC Questionnaire Response). Also on November 5, 2009, LMR submitted a response for itself and for its affiliate Dalian Mayerton Refractories Co. Ltd. (DMR) (collectively, the Mayerton Companies) (Mayerton Questionnaire Response);

[1] A public version of this document and all public Departmental memoranda are on file in the Central Records Unit (CRU), room 1117 in the main building of the Department.

and RHIL submitted a response for itself and for its affiliates RHI Refractories (Dalian) Co., Ltd. (RHI Dalian) and Liaoning RHI Jinding Magnesia Co., Ltd. (RHI Jinding) (collectively, the RHI Companies) (RHI Questionnaire Response).

On November 17, 2009, the Department sent a letter to the Mayerton Companies requesting the sales information for its companies. The Mayerton Companies submitted the requested sales information on November 20, 2009 (Mayerton Sales Submission). In addition, Petitioner filed comments regarding the questionnaire responses on November 24, 2009. On November 30, 2009, the Department sent a letter requesting the Mayerton Companies to submit their tax information for the 2007 tax year. The Mayerton Companies submitted the requested information on December 4, 2009 (Mayerton Tax Submission).

On December 8, 2009, we issued supplemental questionnaires to the GOC and the respondent companies, for which responses are not due until after the preliminary determination. On December 14, 2009, counsel for Petitioner met with Department officials. *See* Memorandum to the File through Barbara E. Tillman, Director, Office 6, from Toni Page, Case Analyst, Re: Meeting with Counsel for Petitioners: Countervailing Duty Investigation on Certain Magnesia Carbon Bricks from the People's Republic of China (December 14, 2009). Also on December 14, 2009, Petitioner submitted further information regarding the provision of preferential loans to the Bricks industry. According to Petitioner's information, the Bricks under investigation are considered to be refractory materials featuring fine-composition and irregularity. These refractory materials are identified as a supported project in the Directory Catalogue on Readjustment of Industrial Structure (Version 2005), Decree of the National Development and Reform Commission, No. 40. *See* Petitioner's December 14, 2009 Comments.

Scope of the Investigation

Imports covered by this investigation consist of certain chemically bonded (resin or pitch), magnesia carbon bricks with a magnesia component of at least 70 percent magnesia (MgO) by weight, regardless of the source of raw materials for the MgO, with carbon levels ranging from trace amounts to 30 percent by weight, regardless of enhancements, (for example, magnesia carbon bricks can be enhanced with coating, grinding, tar impregnation or coking, high temperature heat treatments, anti-slip treatments or metal casing) and regardless of whether or not anti-oxidants are present (for example, antioxidants can be added to the mix from trace amounts to 15 percent by weight as various metals, metal alloys, and metal carbides).

Certain magnesia carbon bricks that are the subject of this investigation are currently classifiable under subheadings 6902.10.10.00, 6902.10.50.00, 6815.91.00.00, and 6815.99 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and customs purposes, the written description is dispositive.

Scope Comments

In accordance with the Preamble to the Department's regulations, we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of that notice. *See Initiation Notice,* 74 FR at 42858; *see also, Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997). On September 8, 2009, Pilkington North America Inc. (PNA), a U.S. importer of Bricks from China and Mexico, submitted comments on the records of the instant CVD investigation, the antidumping duty (AD) investigation of Bricks from the PRC, and the AD investigation of Bricks from Mexico. In its submission, PNA requested that the Department amend the scope to exclude ceramic bonded magnesia bricks with or without trace amounts of carbon. The Department is currently evaluating PNA's comments and will issue its decision regarding the scope of the investigations prior to the preliminary determinations in the companion AD investigations due on January 5, 2010.

Injury Test

Because the PRC is a ''Subsidies Agreement Country'' within the meaning of section 701(b) the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry. On September 29, 2009, the ITC published its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of allegedly subsidized imports of Bricks from the PRC. *See Certain Magnesia Carbon Bricks From China and Mexico Determinations,* 74 FR 49889 (September 29, 2009); and *Certain Magnesia Carbon Bricks From China and Mexico (Preliminary),* USITC Pub. 4100, Inv. Nos. 701–TA–468 and 731–TA–1166–1167 (September 2009).

Application of the Countervailing Duty Law to Imports From the PRC

On October 25, 2007, the Department published *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 72 FR 60645 (October 25, 2007) (*CFS from the PRC*), and the accompanying Issues and Decision Memorandum (CFS Decision Memorandum). In *CFS from the PRC,* the Department found that, ''given the substantial differences between the Soviet-style economies and the PRC's economy in recent years, the Department's previous decision not to apply the CVD law to these Soviet-style economies does not act as a bar to proceeding with a CVD investigation involving products from the {PRC}.'' *See* CFS Decision Memorandum at Comments 1 and 6.

The Department has subsequently affirmed its decision to apply the CVD law to the PRC, most recently in *Certain Oil Country Tubular Goods From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination,* 74 FR 64045 (December 7, 2009), and the accompanying Issues and Decision Memorandum.

Period of Investigation

The period for which we are measuring subsidies, *i.e.,* the period of investigation (POI), is January 1, 2008 through December 31, 2008.

Subsidy Valuation Information

Allocation Period

Under 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the average useful life (AUL) of the renewable physical assets used to produce the subject merchandise. Pursuant to 19 CFR 351.524(d)(2), there is a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (IRS Tables), as updated by the Department of Treasury. For the subject merchandise, the IRS Tables prescribe an AUL of 15 years. As no interested party has claimed that the AUL of 15 years is unreasonable, we are allocating non-recurring subsidies over a period of 15 years.

Further, for non-recurring subsidies, we have applied the ''0.5 percent expense test'' described in 19 CFR

351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the sales (total sales or total export sales, as appropriate) for the same year. If the amount of subsidies is less than 0.5 percent of the relevant sales, then the benefits are allocated to the year of receipt rather than allocated over the AUL period.

In accordance with the Department's practice, we have determined that we will identify and measure subsidies in the PRC beginning on the date of the country's accession to the World Trade Organization (WTO), *i.e.* December 11, 2001. *See, e.g., Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 73 FR 70961 (November 24, 2008) (*Line Pipe from the PRC*), and accompanying Issues and Decision Memorandum (Line Pipe Decision Memorandum) at ''Allocation Period'' section and Comment 18.

Benchmarks for Short-Term RMB Denominated Loans

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the ''difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.'' Normally, the Department uses comparable commercial loans reported by the company for benchmarking purposes. *See* 19 CFR 351.505(a)(3)(i). If the firm did not have any comparable commercial loans during the period, the Department's regulations provide that we ''may use a national interest rate for comparable commercial loans.'' *See* 19 CFR 351.505(a)(3)(ii).

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. For the reasons explained in *CFS from the PRC,* loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market. *See* CFS Decision Memorandum at Comment 10. Because of this, any loans received by respondents from private Chinese or foreign-owned banks within China would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). Similarly, the significant intervention of the government within the Chinese banking sector prevents the use of a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, the Department is selecting an external market-based benchmark interest rate. The use of an external benchmark is consistent with the Department's practice. For example, in *Softwood Lumber from Canada,* the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada. *See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada,* 67 FR 15545 (April 2, 2002) (*Softwood Lumber from Canada*), and accompanying Issues and Decision Memorandum at ''Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit.''

We are calculating the external benchmark using the regression-based methodology first developed in *CFS from the PRC* and more recently updated in *Lightweight Thermal Paper from the People's Republic of China. See* CFS Decision Memorandum at Comment 10; *see also Lightweight Thermal Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 73 FR 57323 (October 2, 2008) (*LWTP from the PRC*) and accompanying Issues and Decision Memorandum (LWTP Decision Memorandum) at ''Benchmarks and Discount Rates'' section. This benchmark interest rate is based on the inflation-adjusted interest rates of countries with per capita gross national incomes (GNIs) similar to the PRC, and takes into account a key factor involved in interest rate formation, *i.e.* quality of a country's institutions, that is not directly tied to the state-imposed distortions in the PRC banking sector discussed above.

Following the methodology developed in *CFS from the PRC* and as updated by *LWTP from the PRC,* we first determined which countries are similar to the PRC in terms of GNIs, based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. The PRC falls in the lower-middle income category, a group that includes 55 countries as of July 2008. As explained in *OCTG from the PRC,* this pool of countries captures the broad inverse relationship between income and interest rates. *See Certain Oil Country Tubular Goods From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination,* 74 FR 47210, 47216 (September 15, 2009) (*OCTG from the PRC*), unchanged in final determination.

Many of these countries reported lending and inflation rates to the International Monetary Fund and they are included in that agency's international financial statistics (IFS). With the exceptions noted below, we have used the interest and inflation rates reported in the IFS for the countries identified as ''lower-middle income'' by the World Bank. First, we did not include those economies that the Department considered to be non-market economies for antidumping (AD) purposes for any part of the years in question (Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan). Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments. Specifically, Jordan reported a deposit rate, not a lending rate, and the rates reported by Ecuador and East Timor are dollar-denominated rates; therefore, the rates for these three countries have been excluded. Finally, for each year the Department calculated an inflation-adjusted short-term benchmark rate, we have also excluded any countries with aberrational or negative real interest rates for the year in question. *See* Memorandum to File from Nicholas Czajkowski, International Trade Compliance Analyst, Re: Preliminary Determination Calculations Loan Benchmark Analysis (December 16, 2009).

The resulting inflation-adjusted benchmark lending rates are provided in the calculation memorandum for the Mayerton Companies. *See* Memorandum from Nicholas Czajkowski, International Trade Compliance Analyst, Re: Preliminary Determination Calculations for Liaoning Mayerton Refractories Co., Ltd. and Dalian Mayerton Refractories Co. Ltd. (December 16, 2009) (Mayerton Companies Calculation Memorandum). Because these are inflation-adjusted benchmarks, it is necessary to adjust the interest payments made by the Mayerton Companies for inflation. This was done using the PRC inflation figure as reported in the IFS.

Discount Rates

The lending rates reported in the IFS represent short- and medium-term lending. However, there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, the

Department has developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates. *See Light-Walled Rectangular Pipe and Tube From the People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination,* 73 FR 35642 (June 24, 2008) (*LWRP from the PRC*), and accompanying Issues and Decision Memorandum (LWRP Decision Memorandum) at Comment 12, ''Discount Rate'' section. In *Citric Acid from the PRC,* this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where n equals or approximates the number of years of the term of the loan in question. *See Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 74 FR 16836 (April 13, 2009) (*Citric Acid from the PRC*), and accompanying Issues and Decision Memorandum (Citric Acid Decision Memorandum) at Comment 14.

Attribution of Subsidies

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii) provides that when two or more corporations with cross-ownership produce the subject merchandise, the Department will attribute subsidies received by either or both corporations to the products produced by both corporations. Moreover, under 19 CFR 351.525(b)(6)(iv), when there is cross-ownership between an input supplier and a downstream producer, and production of the input is primarily dedicated to production of the downstream product, the Department will attribute subsidies received by the input supplier to the combined sales of the input and downstream products produced by both corporations (excluding the sales between the two corporations).

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This regulation states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. The Preamble to the Department's countervailing duty regulations also states, ''[I]n certain circumstances, a large minority voting interest (for example, 40 percent) or a ''golden share'' may also result in cross-ownership.'' *See Countervailing Duties; Final Rule,* 63 FR 65348, 65401 (November 25, 1998). The Court of International Trade (CIT) has further upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits. *See Fabrique de Fer de Charleroi* v. *United States,* 166 F. Supp. 2d 593, 600–603 (CIT 2001).

Cross-Ownership

The Mayerton Companies

As discussed above, we selected Liaoning Mayerton Refractories Co., Ltd. (*i.e.* LMR) as a mandatory respondent in the instant investigation. LMR reported that it is affiliated with Dalian Mayerton Refractories Co., Ltd. (*i.e.* DMR). Since both companies produce subject merchandise, the Mayerton Companies submitted a response to the Department's questionnaires providing both DMR's and LMR's information. In these responses, DMR and LMR reported that each company is affiliated with numerous companies. Among the other affiliated companies, according to the Mayerton Questionnaire Response, Mayerton Refractories China Ltd. (MRC) is a Chinese company involved in domestic sales (but not production) of Bricks, and thus did not sell Bricks to the United States. Accordingly, the Mayerton companies did not provide a questionnaire response for MRC. We have asked follow-up questions regarding MRC in our supplemental questionnaire.

The Mayerton Questionnaire Response indicates that a single foreign (*i.e.,* non-Chinese) parent company is the majority shareholder in each company.[2] *See* Memorandum from Summer Avery, International Trade Compliance Analyst, Re: Cross-Ownership of Mayerton Refractories Co., Ltd. and Dalian Mayerton Refractories Co. Ltd. (December 16, 2009) (Mayerton Companies Cross-Ownership Memorandum). In addition, the legal representative for LMR and DMR is the same individual. Other business proprietary information on the record of this proceeding indicates cross-ownership between LMR and DMR. *See* Mayerton Questionnaire Response at Exhibit 1 and Exhibit 9(a). *See also* Mayerton Companies Cross-Ownership Memorandum. Therefore, pursuant to 19 CFR 351.525(b)(6)(vi), we preliminarily determine that DMR and LMR are cross-owned.

The RHI Companies

As discussed above RHI Refractories Liaoning Co., Ltd. (*i.e.* RHIL) was selected as a mandatory respondent in the instant investigation. RHIL reported that it is affiliated with RHI Refractories (Dalian) Co., Ltd. (*i.e.* RHI Dalian) and Liaoning RHI Jinding Magnesia Co., Ltd. (*i.e.* RHI Jinding). Therefore, the RHI Questionnaire Response covers RHIL, RHI Dalian, and RHI Jinding. The RHI Questionnaire Response reported that each company is affiliated with numerous companies. However, of these affiliated companies, the RHI Companies reported that only RHIL and RHI Dalian are involved in the sale and production of subject merchandise. We have asked follow-up questions regarding the other affiliated companies in our supplemental questionnaire.

The RHI Companies' questionnaire response indicates that a company named RHI AG is the ultimate majority shareholder in RHIL, RHI Dalian, and RHI Jinding.[3] *See* Memorandum from Summer Avery, International Trade Compliance Analyst, Re: Cross-Ownership of RHI Refractories Liaoning Co., Ltd., RHI Refractories (Dalian) Co., Ltd., and Liaoning RHI Jinding Magnesia Co., Ltd. (December 16, 2009) (RHI Companies Cross-Ownership Memorandum). In addition, the RHI Companies stated in their questionnaire response that RHI AG has indirect majority voting ownership interest in all of the RHI affiliates. *See* RHI Questionnaire Response at III–2. *See also* RHI Companies Cross-Ownership Memorandum. Therefore, pursuant to 19 CFR 351.525(b)(6)(ii), we preliminarily determine that RHIL and RHI Dalian are cross-owned and, pursuant to 19 CFR 351.525(b)(6)(iv), RHIL, RHI Dalian, and RHI Jinding are cross-owned.

Denominator

When selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, the Department considered the basis for respondents' receipt of benefits under each program at issue. We have preliminarily found that the benefits received by the Mayerton Companies and the RHI Companies under the programs found

[2] The ownership percentages are proprietary. *See* Mayerton Companies' Cross-Ownership Memorandum.

[3] The ownership percentages are proprietary. *See* RHI Companies Cross-Ownership Memorandum.

countervailable were not tied to export performance or to the production of a particular product. As such, for subsidies received by the Mayerton Companies and the RHI Companies, we are using that company's sales (and those of its cross-owned affiliates where applicable) of all products as the denominator in our calculations. *See* 19 CFR 351.525(b)(3).

As discussed in the ''Cross-Ownership'' section above regarding the Mayerton Companies, LMR is cross-owned with DMR, a producer of subject merchandise that received benefits that were not tied to export performance or to the production of a particular product. As such, for benefits received by LMR or DMR, we are using total sales of all products by LMR and DMR (less any internal sales between LMR and DMR) as the denominator in our calculations. *See* 19 CFR 351.525(b)(6)(iv).

As discussed in the ''Cross-Ownership'' section above regarding the RHI Companies, RHIL, RHI Dalian, and RHI Jinding are cross-owned and each received benefits that were not tied to export performance or to the production of a particular product. As such, for benefits received by RHIL or RHI Dalian, which both produce the subject merchandise, we are using total sales of all products by RHIL and RHI Dalian (less any internal sales) as the denominator in our calculations. *See* 19 CFR 351.525(b)(6)(ii). For benefits received by RHI Jinding, we are using total sales of all products by RHIL, RHI Dalian, and RHI Jinding (less any internal sales) as the denominator in our calculations, because RHI Jinding is an input supplier, and the input is primarily dedicated to the production of the subject merchandise. *See* 19 CFR 351.525(b)(6)(iv).

Analysis of Programs

I. Programs Preliminarily Determined To Be Countervailable

A. VAT Rebates on Purchases of Domestically Produced Equipment

As outlined in GUOSHUIFA (1999) No. 171, Notice of the State Administration of Taxation Concerning the Trial Administrative Measures on Purchase of Domestically Produced Equipment by Foreign Invested Enterprises (FIEs), the GOC refunds FIEs with the value added tax (VAT) on purchases of certain domestic equipment produced if the purchases are within the enterprise's investment amount and if the equipment falls under a tax-free category. Article 3 specifies that this program is limited to FIEs with completed tax registrations and with foreign investment in excess of 25 percent of the total investment in the enterprise. Article 4 defines the type of equipment eligible for the VAT exemption, which includes equipment falling under the Encouraged and Restricted B categories listed in the Notice of the State Council Concerning the Adjustment of Taxation Policies for Imported Equipment (No. 37 (1997)) and equipment for projects listed in the Catalogue of Key Industries, Products and Technologies Encouraged for Development by the State. To receive the rebate, an FIE must meet the requirements above and, prior to the equipment purchase, bring its ''Registration Handbook for Purchase of Domestically Produced Equipment by FIEs'' as well as additional registration documents to the taxation administration for registration. After purchasing the equipment, FIEs must complete a Declaration Form for Tax Refund (or Exemption) of Exported Goods, and submit it with the registration documents to the tax administration. The Department has previously found this program to be countervailable. *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailiang Duty Determination with Final Antidumping Duty Determination,* 73 FR 54367, 54379 (September 19, 2008), results unchanged in the final determination.

The RHI Companies reported receiving VAT rebates on their purchases of domestically produced equipment under this program in several years. The Mayerton Companies reported that they did not use this program. We preliminarily determine that the rebate of the VAT paid on purchases of domestically produced equipment by FIEs confers a countervailable subsidy. The rebates are a financial contribution in the form of revenue foregone by the GOC and they provide a benefit to the recipients in the amount of the VAT rebate. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1). We further preliminarily determine that the VAT rebates are contingent upon the use of domestic over imported goods and, hence, specific under section 771(5A)(C) of the Act.

Normally, we treat exemptions from indirect taxes and import charges, such as VAT rebates, as recurring benefits, consistent with 19 CFR 351.524(c)(1), and allocate these benefits only in the year that they were received. However, when an indirect tax or import charge exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department may treat it as a non-recurring benefit and allocate the benefit to the firm over the AUL. *See* 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).

As discussed above, the RHI Companies reported receiving VAT rebates on its purchases of domestically produced capital equipment under this program in several years since the December 11, 2001 cut-off date for subsidies. Because these rebates are tied to capital equipment purchases, we find it appropriate to treat them as non-recurring benefits consistent with 19 CFR 351.524(c)(2)(iii).

After applying the 0.5 percent test pursuant to 19 CFR 351.524(b)(2), we found that the VAT rebates received over the years should be allocated over time. *See* Memorandum from Nicholas Czajkowski, International Trade Compliance Analyst, Re: Preliminary Determination Calculations for RHI Refractories Liaoning Co., Ltd., RHI Refractories (Dalian) Co., Ltd., and Liaoning RHI Jinding Magnesia Co., Ltd. (December 16, 2009) (RHI Companies Calculation Memorandum). To calculate the countervailable subsidy for the RHI Companies, we used our standard methodology for non-recurring benefits. *See* 19 CFR 351.524(b) and the ''Allocation Period'' section of this notice. Specifically, we used the discount rate described above in the ''Benchmarks and Discount Rates'' section to calculate the amount of the benefit attributable to the POI. We divided the benefits attributable to the POI by the appropriate denominator (*see* the ''Denominator'' section above) to calculate the countervailable subsidy of 0.51 percent *ad valorem* exists for the RHI Companies. *See* RHI Companies Calculation Memorandum.

B. Location-Based Income Tax Reduction Programs for FIEs

The GOC provides a complex system of tax benefits to FIEs operating in Special Economic Areas such as coastal economic zones, export processing zones, and economic and technological development zones. For example, although the standard corporate income tax rate during the POI was 30 percent, FIEs located in the designated economic zones pay income tax at a reduced rate of either 15 or 24 percent. FIEs are also eligible for further income tax reductions if they are located in ''Old Urban Districts'' or ''Coastal Economic Zones'' and are engaged in (1) technology or knowledge intensive projects; (2) long-term projects with foreign investment; or (3) energy resource development, transportation

and port construction projects. *See* the GOC Questionnaire Response at Exhibit D1 (FIE Tax Law at Article 7).

The GOC reports that RHIL is located in Yingkou Economic Development Zone, and the applicable tax rate for RHIL under this program was less than the standard PRC corporate income tax rate. *See* the GOC Questionnaire Response at page 5, and the RHI Questionnaire Response at Appendix 1. The Mayerton Companies did not use this program.

We preliminarily determine that the exemption or reduction in the income tax paid by FIEs in specially designated geographic areas under this program confers a countervailable subsidy. The exemption/reduction is a financial contribution in the form of revenue foregone by the GOC and it provides a benefit to the recipients in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also preliminarily determine that the exemption/reduction is limited to enterprises located in designated geographical regions and, hence, is specific under section 771(5A)(D)(iv) of the Act. The Department also found this program to be countervailable in the CFS investigation. *See Coated Free Sheet Paper From the People's Republic of China: Amended Preliminary Affirmative Countervailing Duty Determination,* 72 FR 17484, 17494 (April 9, 2007) (*CFS Amended Preliminary*), results unchanged in *CFS from the PRC.*

To calculate the benefit from this program to the RHI Companies, we treated the income tax exemption claimed by RHIL as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of tax savings, we multiplied RHIL's taxable income by the standard income tax rate for corporations (*i.e.,* 30 percent) and subtracted that actual amount of income tax paid by RHIL. In accordance with 19 CFR 351.525(b)(6)(i), we attributed the benefit received to the combined sales of RHIL and RHI Dalian. Additional information on this calculation is provided in the calculation analysis memorandum for the RHI Companies. *See* RHI Companies Calculation Memorandum. On this basis, we preliminarily determine a countervailable subsidy of 0.34 percent *ad valorem* for the RHI Companies for this program.

C. Local Income Tax Exemption and Reduction Programs for ''Productive'' FIEs

Pursuant to Article 9 of the FIE Tax Law and Article 71 of Decree 85 of the Council of 1991, local provinces can establish eligibility criteria and administer the application process for local income tax reductions or exemptions for FIEs, effectively extending the tax exemptions or reductions that are provided to FIEs by the national ''Two Free, Three Half'' program.[4] In its questionnaire response, the RHI Companies reported that RHIL participated in this program but none of the other cross-owned RHI Companies in the group did. The GOC confirmed that RHIL received benefits under this program during the POI. *See* the GOC Questionnaire Response at pages 41–42. The Mayerton Companies reported that they did not use this program. The GOC confirmed that the Mayerton Companies did not receive benefits under this program during the POI. *See* the GOC Questionnaire Response at pages 41–42.

We preliminarily determine that the exemption or reduction in the local income tax paid by ''productive'' FIEs under this program confers a countervailable subsidy. The exemption/reduction is a financial contribution in the form of revenue foregone by the government and it provides a benefit to the recipients in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also preliminarily determine that the exemption/reduction afforded by this program is limited as a matter of law to certain enterprises, ''productive'' FIEs, and, hence, is specific under section 771(5A)(D)(i) of the Act. The Department has also found this program to be countervailable in the CFS investigation. *See CFS Amended Preliminary,* 72 FR at 17494, results unchanged in *CFS from the PRC.*

To calculate the benefit from this program to the RHI Companies, we treated the income tax exemption claimed by RHIL as a recurring benefit, consistent with 19 CFR 351.524(c)(1). To compute the amount of tax savings, we compared the tax rate paid (1.5 percent) to the rate that would have been paid by RHIL otherwise (the standard local rate is 3 percent) and multiplied the difference by RHIL's taxable income. In accordance with 19 CFR 351.525(b)(6)(i), we attributed the benefit received to the combined sales of RHIL and RHI Dalian. Additional information on this calculation is provided in the calculation analysis memorandum for the RHI Companies. *See* RHI Companies Calculation Memorandum. On this basis, we preliminarily determine a countervailable subsidy of 0.03 percent *ad valorem* for the RHI Companies.

D. Income Tax Credits for FIEs Purchasing Domestically Produced Equipment

The Circular of the Ministry of Finance and the State Administration of Taxation of the People's Republic of China on Distribution of Interim Measures Concerning the Reduction and Exemption of Enterprise Income Tax for Investment in Domestic Equipment for Technological Renovation (CAISHUZI (1999) (209)) and Circular of the Ministry of Finance and the State Administration of Taxation on Enterprise Income Tax Credits for Purchases of Domestic Equipment by Foreign Invested Enterprises and Foreign Enterprises (CAISHUI (2000) No. 49) permit FIEs to obtain tax credits of up to 40 percent of the purchase value of domestically produced equipment. Specifically, the tax credit is available to FIEs and foreign-owned enterprises whose projects are classified in either the Encouraged or Restricted B categories of the Catalogue of Industrial Guidance for Foreign Investment. The credit can be taken for domestically produced equipment so long as the equipment is not listed in the Catalogue of Non-Duty-Exemptible Articles of Importation.

The Department has previously found this program to be countervailable. *See, e.g., Citric Acid,* 73 FR at 54371 (September 19, 2008), results unchanged in the final determination. For this preliminary determination, we find that income tax credits for the purchase of domestically produced equipment are countervailable subsidies. The tax credits are a financial contribution in the form of revenue foregone by the government and provide a benefit to the recipients in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We further determine that these tax credits are contingent upon use of domestic over imported goods and, hence, are specific under section 771(5A)(C) of the Act.

The RHI Companies reported receiving income tax credits on domestically purchased equipment under this program. To calculate the benefit for this program, we treated the income tax savings as a recurring benefit, consistent with 19 CFR 351.524(c)(1). Based on the information

[4] Under the ''Two Free, Three Half'' program, an FIE that is productive and scheduled to operate for not less than ten years may be exempted from income tax in the first two years of profitability and pay only half of their applicable income taxes for the next three years. The Department has previously found this program to be countervailable. *See, e.g.,* CFS Decision Memorandum, Line Pipe Decision Memorandum, Citric Acid Decision Memorandum, and LWTP Decision Memorandum.

in the RHI Questionnaire Response, it appears that the RHI Companies claimed through subsequent tax returns these income credits under this program prior to the POI and that none of the credits were carried forward into the tax returns filed in the POI. Accordingly, we determine that the RHI Companies did not receive benefits under this program during the POI.

E. Preferential Loans and Directed Credit to the Magnesia Carbon Brick Industry

The Department is examining whether Bricks producers receive preferential lending through state-owned commercial banks (SOCBs) or policy banks. Information on the record of this investigation demonstrates that the GOC has highlighted and supported the development of Bricks production and that GOC directives in this regard include financing support.

As in *Tires from the PRC*[5] and *OCTG from the PRC,*[6] the Department considered Decision of the State Council on Promulgating the ''Interim Provisions on Promoting Industrial Structure Adjustment'' for Implementation (No. 40 (2005) of the State Council) (Decision No. 40) and the Directory Catalogue on Readjustment of Industrial Structure (Version 2005) (Directory Catalogue). Consistent with *Tires from the PRC* and *OCTG from the PRC,* the Department finds that the GOC relied on Decision No. 40 and the Directory Catalogue in order to achieve the objectives of the Eleventh Five-Year Plan. On August 7, 2009, Petitioners placed excerpts from Decision No. 40 on the record of this investigation. For the preliminary determination, we are placing Decision No. 40 and the Directory Catalogue in their entirety on the record of this investigation. *See* Memorandum to File from Summer Avery, Office 6, Operations, Re: Policy Lending Documents of the Government of the People's Republic of China (December 16, 2009).

Decision No. 40 makes clear that the State, at all levels, has the ability and means to implement measures to encourage specific projects. We note that Decision No. 40 is explicit in its mandate for the State at all levels:

> The people's governments of all provinces, autonomous regions, and municipalities directly under the Central Government shall take the promotion of industrial structure adjustment as an important reform and development task at present and within a period in the future lay emphasis on implementation and shall, in accordance with the ''Interim Provisions'' formulate specific measures, rationally guide the investment directions, encourage and support the development of advanced production capacities, restrict and eliminate outdated production capacities. All relevant administrative departments shall speed up the formulation and amendment of policies on public finance, taxation, credit, land, import, export, etc., effectively intensify the coordination and cooperation with industrial policies, and further improve and promote the policy system on industrial structure adjustment.

Decision No. 40 at para. 2. Moreover, Decision No. 40 calls for strengthening financing (among other benefits) to encouraged projects listed in the Directory Catalogue. Specifically, Article 17 of Decision No. 40 states:

> The encouraged investment projects shall be examined, approved, ratified or archived in accordance with the relevant provisions of the state on investment administration. All financial institutions shall provide credit supports in compliance with credit principles. The equipment shall be imported within the total amount of investments for the importer's own use. Except for the commodities listed in the ''Catalogue of Non-tax Free Imported Commodities for Domestic Investment Projects (Amended in 2000)'' promulgated by the Ministry of Finance, the abovementioned equipment shall still be exempted from customs duties and import value-added tax, and shall, after the new provisions such as the catalogue of investment projects exempted from no tax have been promulgated, be governed by such new provisions. As for other preferential policies on encouraged industry projects, the relevant provisions of the state shall apply.

Decision No. 40 at Article 17. These provisions detail an active role for the State in implementing industrial policies, whether through industrial policy coordination or through the guidance of financial resources towards those projects or products that the State encourages, including Bricks which are explicitly designated to be an ''encourage industry'' in section VII (21) of the Directory Catalogue, ''Production of refractory materials featuring fine-composition and irregularity.'' *See* Petitioners December 14, 2009 Comments.

As described above, Decision No. 40 makes it clear that the State, at all levels, has the ability and means to implement measures, including directing financial resources such as credit, in order to develop specific projects or products in various industries. We note that several provincial and local five year plans covering areas where our respondents and their cross-owned companies are located refer to the goal of encouraging the production and development of magnesia products. In particular, the 11th Yingkou Economic and Social Development Five-Year Plan specifically ''calls for the development of magnesia bricks of high quality.'' *See* the GOC Questionnaire Response at Exhibit P–13.

Only the Mayerton Companies had outstanding loans from state-owned commercial banks (SOCBs) during the POI. Therefore, on the basis of the record information described above, we preliminarily determine that the GOC has a policy in place to encourage the development of production of Bricks through policy lending. Loans to Bricks producers from policy banks and SOCBs in the PRC constitute a direct financial contribution from the government, pursuant to section 771(5)(D)(i) of the Act, and they provide a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans (*see* section 771(5)(e)(2) of the Act). Finally, we determine that the loans are *de jure* specific because of the GOC's policy, as illustrated in the government directive and plans, to encourage and support the growth and development of the Bricks industry.

To calculate the benefit under the policy lending program, we compared the amount of interest that the Mayerton companies paid on their outstanding loans from SOCBs to the amount they would have paid on comparable commercial loans. *See* ''Subsidies Valuation—Benchmarks Rates'' section above. Most of the details about these loans are business proprietary; for a more complete discussion see Mayerton Companies Calculation Memorandum. We summed the benefit attributable to the POI and divided this amount by the Mayerton Companies' total sales. *See* the ''Subsidies Valuation –Denominator'' section above. On this basis, we calculated a total net subsidy rate of 0.07 percent *ad valorem* for the Mayerton Companies.

III. Programs Preliminarily Determined To Be Not Used

We preliminarily determine that the RHI Companies and the Mayerton Companies did not apply for or receive benefits during the POI under the programs listed below. Because of the

[5] *See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances,* 73 FR 40480 (July 15, 2008), and the accompanying Issues and Decision Memorandum at ''Government Policy Lending'' section.

[6] *See OCTG from the PRC* at 47217–47218, unchanged in final determination. *See Certain Oil Country Tubular Goods from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination,* 74 FR 64045 (December 7, 2009).

complicated cross-ownership issues in this investigation, we are continuing to gather information concerning the reported non-use of these programs by all companies that may be cross-owned within each company group.

A. *Provision of Land-Use Rights to State-Owned Enterprises (SOEs) for Less Than Adequate Remuneration*

B. *Two Free/Three Half Program for Foreign-Invested Enterprises (FIEs)*

C. *Income Tax Reductions for Export-Oriented FIEs*

D. *Preferential Income Tax Policy for Enterprises in the Northeast Region*

E. *Forgiveness of Tax Arrears for Enterprises in the Old Industrial Bases of Northeast China*

F. *Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment*

G. *Preferential Tax Programs for Enterprises Recognized as High or New Technology Enterprises*

H. *Northeast Revitalization Program and Related Provincial Policies*

I. *The State Key Technology Renovation Project Fund*

J. *Famous Brands Programs*

K. *Grants to Companies for ''Outward Expansion'' and Export Performance in Guangdong Province*

L. *Fund for Supporting Technological Innovation for Technological Small- and Medium-Sized Enterprises (SMEs)*

M. *Development Fund for SMEs*

N. *Fund for International Market Exploration by SMEs*

O. *Zhejiang Province Program to Rebate Antidumping Costs*

IV. Programs for Which We Need Additional Information

A. Provision of Electricity for Less Than Adequate Remuneration

The Department initiated on the GOC's provision of electricity at less than adequate remuneration (LTAR). Under this program, the GOC provides electricity to SOEs and special industrial sectors, and/or certain provincial, municipal and local governments provide electricity at preferential rates to entice investors to locate to certain zones. Petitioner alleged that the National Development and Reform Commission (NDRC) establishes rates that do not reflect true market prices, and that the GOC caps prices charged to end-users and provides direct energy subsidies to special industrial sectors.

The GOC, RHI Companies, and Mayerton Companies reported in their respective questionnaire responses that no benefits were provided under this program. According to the GOC, there are no price preferences for the Bricks industry and each respondent paid rates under the ''Large Scale Industry'' classification. *See* the GOC Questionnaire Response at page 9. The Department has requested that the GOC provide the additional information needed to complete our analysis of whether this program provides a countervailable subsidy to the RHI Companies or the Mayerton Companies.

B. Export Restraints of Raw Materials

Under this program, Petitioner alleged that the GOC has established export quotas and a minimum acceptable export sales price (*i.e.,* export restraints) [7] for a number of raw materials, including three types of magnesia used in the production of Bricks. Essentially, Petitioner has alleged that export restraints on raw materials such as magnesia artificially increase the domestic supply of the raw materials, thereby decreasing the price of raw materials available to PRC manufacturers. All PRC exporters of magnesia are subject to these export restraints, including the affiliated and unaffiliated magnesia suppliers of the RHI Companies and the Mayerton Companies. Under this system, the GOC appears to rank ''bids'' received from exporters by price and quantity and then awards exporting rights to the companies that can command the highest export prices.

In its response, the GOC has stated that there is no basis under WTO rules to treat export restraints as a countervailable program as such restraints cannot constitute a government-entrusted or government-directed provision of goods and therefore do not constitute financial contributions under Article 1.1.(a) of the Subsidy and Countervailable Measures Agreement. Moreover, the GOC reported that the purpose of setting export quotas for magnesia is to help regulate an exhaustible natural resource and protect the environment, as processing magnesia is an energy-intensive, high-polluting activity. Although the GOC maintains multiple factors affect magnesia production, the GOC also concedes that elimination of the export quota on magnesia ''could have a variety of short term effects related to production and consumption patterns in domestic and overseas markets.'' *See* the GOC Questionnaire Response at page 26.

The Department has issued a supplemental questionnaire requesting that the GOC fully describe and document the process whereby it determined that magnesia should be subject to an export quota as well as what factors it considers in setting that export quota and minimum acceptable export price. In addition, our supplemental questions to the responding companies request that each provide complete volume and value information regarding the domestic purchases of magnesia during the POI as well as other information relevant to our analysis.

Verification

In accordance with section 782(i)(1) of the Act, we will verify the information submitted by the respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have determined individual rates for The Mayerton Companies and The RHI Companies. Section 705(c)(5)(A)(i) provides that the all others rate will generally be an amount equal to the weighted average countervailable subsidy rates established for exporters or producers individually investigated, excluding any zero or *de minimis* countervailable subsidy rates and any rates determined entirely on the basis of the facts available. In this case, however, the countervailable subsidy rates for all of the individually investigated exporters or producers are *de minimis.* Section 705(c)(5)(A)(ii) provides that, when this is the case, the administering authority may use any reasonable method to establish the all others rate, including averaging the weighted average countervailable subsidy rates determined for the exporters and producers individually examined. Thus, to calculate the all-others rate, we weight-averaged the individual rates of the Mayerton Companies and the RHI Companies based on each company's respective sales during the POI. These rates are summarized in the table below:

[7] The U.S. Trade Representative requested a WTO panel against the GOC over export restraints on raw materials (including magnesia) on June 23, 2009. *See WTO Dispute Settlement Proceeding Regarding China –Measures Related to the Exportation of Various Raw Materials,* 74 FR 32218 (July 7, 2009).

Producer/exporter	Subsidy rate
The Mayerton Companies (Dalian Mayerton Refractories Co., Ltd. and Liaoning Mayerton Refractories Co., Ltd.).	*de minimis* percent *ad valorem.*
The RHI Companies (RHI Refractories Liaoning Co., Ltd., RHI Refractories (Dalian) Co., Ltd., and Liaoning RHI Jinding Magnesia Co., Ltd.).	*de minimis* percent *ad valorem.*
All Others	*de minimis* percent *ad valorem.*

Because all of the rates are *de minimis,* we preliminarily determine that no countervailable subsidies are being provided to the production or exportation of certain magnesia carbon bricks in the PRC. As such, we will not direct U.S. Customs and Border Protection to suspend liquidation of entries of certain magnesia carbon bricks from the PRC.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Disclosure and Public Comment

In accordance with 19 CFR 351.224(b), the Department will disclose to the parties the calculations for this preliminary determination within five days of its announcement. Case briefs for this investigation must be submitted no later than one week after the issuance of the last verification report. *See* 19 CFR 351.309(c) (for a further discussion of case briefs). Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the deadline for submission of case briefs. *See* 19 CFR 351.309(d). A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

In accordance with 19 CFR 351.310(c), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties will be notified of the schedule for the hearing and parties should confirm the time, date, and place of the hearing 48 hours before the scheduled time. Requests for a public hearing should contain: (1) Party's name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

This determination is issued and published pursuant to sections 703(f) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: December 16, 2009.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E9–30525 Filed 12–22–09; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Seventh Administrative Review of Honey from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind, In Part

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

SUMMARY: The Department of Commerce (''Department'') is conducting an administrative review of the antidumping duty order on honey from the People's Republic of China (''PRC''), covering the period of review (''POR'') of December 1, 2007, through November 30, 2008. As discussed below, we have preliminarily determined to rescind this administrative review because we have found the sales made by Dongtai Peak Honey Industry Co., Ltd. (''Dongtai Peak'') that entered during the POR were not *bona fide*. In addition, we have preliminarily determined to apply adverse facts available (''AFA'') with respect to the PRC–wide entity which includes Anhui Native Produce Import and Export Corp. (''Anhui Native''), as it failed to cooperate to the best of its ability and impeded the proceeding. We are also preliminarily finding that Qinhuangdao Municipal Dafeng Industrial Co., Ltd. (''QMD''), Inner Mongolia Youth Trade Development Co., Ltd. (''Inner Mongolia''), and Wuhu Qinshgi Tangye (''Wuhu Qinshgi'') did not demonstrate their eligibility for a separate rate and thus are considered to be part of the PRC–wide entity. If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on appropriate entries of subject merchandise during the POR for which importer–specific assessment rates are above *de minimis*. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: December 23, 2009.

FOR FURTHER INFORMATION CONTACT: Blaine Wiltse, 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) 482–6345.

SUPPLEMENTARY INFORMATION:

Background

On December 19, 2008, we received a request from Dongtai Peak, and on December 31, 2008, we received a request from Petitioners[1] to conduct administrative reviews for a total of 38 companies.[2] On February 2, 2009, the

[1] The petitioners are the members of the American Honey Producers Association and the Sioux Honey Association (hereinafter referred to as ''Petitioners'').

[2] Alfred L. Wolff (Beijing) Co., Ltd., Anhui Honghui Foodstuff (Group) Co., Ltd., Anhui Native Produce Imp & Exp Corp., Cheng Du Wai Yuan Bee Products Co., Ltd., Chengdu Stone Dynasty Art Stone, Dongtai Peak Honey Industry Co., Ltd., Eurasia Bee's Products Co., Ltd., Fresh Honey Co., Ltd. (formerly Mgl. Yun Shen), Golden Tadco Int'l., Hangzhou Golden Harvest Health Industry Co., Ltd., Haoliluck Co., Ltd., Hubei Yusun Co., Ltd., Inner Mongolia Altin Bee-Keeping, Inner Mongolia Youth Trade Development Co., Ltd., Jiangsu Kanghong Natural Healthfoods Co., Ltd., Jiangsu Light Industry Products Imp & Exp (Group) Corp., Jilin

Continued

Department initiated an administrative review of these 38 producers/exporters of subject merchandise from the PRC. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 5821 (February 2, 2009) (''*Initiation Notice*'').

On March 6, 2009, in accordance with section 777A(c)(2) of the Tariff Act of 1930, as amended (''Act''), the Department selected Anhui Native and QMD as mandatory respondents in this review, because they were the two largest exporters by volume during the POR, based on CBP data of U.S. imports under Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings 0409.00.00, 1702.90.90 and 2106.90.99.[3] On March 9, 2009, the Department issued antidumping duty questionnaires to Anhui Native and QMD.[4] Due to the fact that the questionnaire was undeliverable to QMD, the Department requested parties to submit new address information for QMD. On March 18, 2009, Petitioners provided the Department with five additional addresses. On March 20, 2009, the Department sent its questionnaire to the five addresses Petitioners provided for QMD.[5] However, we were again unable to confirm delivery of these questionnaires.[6]

On March 30, 2009, and April 10, 2009, Dongtai Peak submitted voluntary responses to the Department's questionnaire and requested to be selected as a voluntary respondent, pursuant to section 782(a) of the Act. The Department determined that, because its questionnaire was not deliverable to QMD in this administrative review, it would not be unduly burdensome to select Dongtai Peak as a voluntary respondent pursuant to section 782(a) of the Act. Therefore, Dongtai Peak was selected as a voluntary respondent in the current review on April 13, 2009.[7] On April 15, 2009, Anhui Native submitted a letter informing the Department that it would not participate in the current review.

Between May 2009 and December 2009, the Department received timely filed supplemental questionnaire responses from Dongtai Peak and comments from Petitioners. On August 7, 2009, the Department requested the entry document packages from CBP for Dongtai Peak's sales that entered the United States during the POR, which the Department received on September 14, 2009, and September 15, 2009, and placed on the record of the current review on December 16, 2009.

Rescission of Reviews

On February 23, 2009, Petitioners withdrew their request for review of 33 companies[8] for which they were the only party to request a review. On March 16, 2009, in accordance with section 351.213(d)(1) of the Department's regulations, we rescinded the administrative review with respect to these 33 companies.[9] Therefore, five producers/exporters[10] of the subject merchandise and the PRC–wide entity, remain under review.

Separate Rates

In the *Initiation Notice*, the Department instructed parties that the Separate Rate Certification and the Separate Rate Application were available on its website at: http://ia.ita.doc.gov/nme/nme–sep-rate.html. No company submitted a separate rate application or certification. For further discussion, *see* the ''PRC–wide Entity'' section of this notice.

Preliminary Extension

On August 18, 2009, in accordance with section 751(a)(3)(A) of the Act, we extended the time period for issuing the preliminary results by 60 days, until November 2, 2009.[11] On October 7, 2009, the Department further extended the deadline for the preliminary results to December 16, 2009.[12]

Scope of the Order

The products covered by this order are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise subject to this order is currently classifiable under subheadings 0409.00.00, 1702.90.90 and 2106.90.99 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under order is dispositive.

Bona Fide Analysis

In evaluating whether or not a sale subject to review is commercially reasonable, and therefore *bona fide*, the

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Province Juhui Import, Maersk Logistics (China) Company Ltd., Nefelon Limited Company, Ningbo Shengye Electric Appliance, Ningbo Shunkang Health Food Co., Ltd., Qingdao Aolan Trade Co., Ltd., QHD Sanhai Honey Co., Ltd., Qinhuangdao Municipal Dafeng Industrial Co., Ltd., Renaissance India Mannite, Shaanxi Youthsun Co., Ltd., Shanghai Bloom International Trading Co., Ltd., Shanghai Foreign Trade Co., Ltd., Shanghai Hui Ai Mal Tose Co., Ltd., Shanghai Taiside Trading Co., Ltd., Sichuan-Dujiangyan Dubao Bee Industrial Co., Ltd., Silverstream International Co., Ltd., Tianjin Eulia Honey Co., Ltd., Wuhan Bee Healthy Co., Ltd., Wuhan Shino-Food Trade Co., Ltd., Wuhu Qinshi Tangye, Wuhu Qinshgi Tangye, and Xinjiang Jinhui Food Co., Ltd.

[3] *See* Memorandum to James C. Doyle, Director, AD/CVD Operations, Office 9, from Blaine Wiltse, International Trade Analyst, AD/CVD Operations, Office 9, re; Seventh Administrative Review of Honey from the People's Republic of China: Respondent Selection Memorandum, dated March 6, 2009.

[4] *See* Memorandum to the File, from Blaine Wiltse, International Trade Compliance Analyst, Office 9, re; Seventh Administrative Review of Honey from the People's Republic of China (''PRC''): Delivery of Questionnaires, dated March 16, 2009.

[5] *See* Memorandum to the File, from Blaine Wiltse, International Trade Compliance Analyst, Office 9, re; Seventh Administrative Review of Honey from the People's Republic of China (''PRC''): Additional Addresses for QMD, dated March 20, 2009.

[6] See Memorandum to the File, from Blaine Wiltse, International Trade Compliance Analyst, Office 9, re; Seventh Administrative Review of Honey from the People's Republic of China (''PRC''): Incorrect Addresses for QMD, dated March 27, 2009.

[7] *See* Memorandum to James Doyle, Director, AD/CVD Operations, Office 9, from Catherine Bertrand, Program Manager, AD/CVD Operations, Office 9, re; Antidumping Duty Administrative Review of Honey from the People's Republic of China: Selection of Voluntary Respondent, dated April 13, 2009.

[8] Alfred L. Wolff (Beijing) Co., Ltd., Anhui Honghui Foodstuff (Group) Co., Ltd., Cheng Du Wai Yuan Bee Products Co., Ltd., Chengdu Stone Dynasty Art Stone, Eurasia Bee's Products Co., Ltd., Fresh Honey Co., Ltd. (formerly Mgl. Yun Shen), Golden Tadco Int'l, Hangzhou Golden Harvest Health Industry Co., Ltd., Haoliluck Co., Ltd., Hubei Yusun Co., Ltd., Inner Mongolia Altin Bee-Keeping, Jiangsu Kanghong Natural Healthfoods Co., Ltd., Jiangsu Light Industry Products Imp & Exp (Group) Corp., Jilin Province Juhui Import, Maersk Logistics (China) Company Ltd., Nefelon Limited Company, Ningbo Shengye Electric Appliance, Ningbo Shunkang Health Food Co., Ltd., Qingdao Aolan Trade Co., Ltd., QHD Sanhai Honey Co., Ltd., Renaissance India Mannite, Shaanxi Youthsun Co. Ltd., Shanghai Bloom International Trading Co., Ltd., Shanghai Foreign Trade Co., Ltd., Shanghai Hui Ai Mal Tose Co., Ltd., Shanghai Taiside Trading Co., Ltd., Sichuan-Dujiangyan Dubao Bee Industrial Co., Ltd., Silverstream International Co., Ltd., Tianjin Eulia Honey Co., Ltd., Wuhan Bee Healthy Co., Ltd., Wuhan Shino-Food Trade Co., Ltd., Wuhu Qinshi Tangye, and Xinjiang Jinhui Food Co., Ltd.

[9] *See Honey from the People's Republic of China: Partial Rescission of the Seventh Antidumping Administrative Review*, 74 FR 11087 (March 16, 2009).

[10] Anhui Native, Dongtai Peak, Inner Mongolia Youth Trade Development Co., Ltd., QMD, and Wuhu Qinshgi Tangye. Of these 5 producer/exporters, Anhui Native and QMD were selected as mandatory respondents, and Dongtai Peak was selected as a voluntary respondent, as discussed above.

[11] *See Seventh Administrative Review of Honey From the People's Republic of China: Extension of Time Limit for the Preliminary Results*, 74 FR 41679 (August 18, 2009).

[12] *See Seventh Administrative Review of Honey From the People's Republic of China: Second Extension of Time Limit for the Preliminary Results*, 74 FR 51566 (October 7, 2009).

Department considers, *inter alia*, such factors as (1) the timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was made on an arms–length basis.[13] Therefore, the Department considers a number of factors in its *bona fides* analysis, ''all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise.''[14]

Although some *bona fides* issues may share commonalities across various Department cases, the Department examines the *bona fide* nature of a sale on a case–by-case basis, and the analysis may vary with the facts surrounding each sale.[15] In TTPC, Slip Op. 05–29, at 9, the court affirmed the Department's practice of considering that ''any factor which indicates that the sale under consideration is not likely to be typical of those which the producer will make in the future is relevant,'' (*see TTPC*, citing *Windmill Int'l Pte., Ltd. v. United States*, F. Supp. 2d 1303, 1307 (CIT 2002)), and that ''the weight given to each factor investigated will depend on the circumstances surrounding the sale.'' *See TTPC*, Slip Op. 05–29, at 39. The Court stated that the Department's practice makes clear that the Department is highly likely to examine objective, verifiable factors to ensure that a sale is not being made to circumvent an antidumping duty order. *See New Donghua*, Slip Op. 05–70, at 11.

As the Department's antidumping duty questionnaire instructs respondents to ''report each U.S. sale of merchandise entered for consumption during the POR'' when performing its *bona fide* analysis, the Department reviews the circumstances surrounding a respondent's sales of subject merchandise that entered the United States during the POR.[16] Concurrent with this notice, we are issuing a memorandum[17] detailing our analysis of the *bona fides* of Dongtai Peak's U.S. entries and our preliminary decision to rescind the administrative review of Dongtai Peak based on the totality of the circumstances of its sales. Although much of the information relied upon by the Department to analyze the issues is business proprietary, the Department based its determination that the sales made by Dongtai Peak were not *bona fide* on the following: 1) the difference in the sales prices and subsequent entered values of Dongtai Peak's entries to the United States during the POR as compared to the entered values of other U.S. entries of honey during the POR; 2) the quantities of Dongtai Peak's POR sales as compared to the quantities of other U.S. entries of honey during the POR; 3) information regarding Dongtai Peak's U.S. customer during the POR; and 4) other indicia of a non–*bona fide* commercial transaction.

Based on our review of the *bona fides* nature of these sales, our analysis of the totality of the circumstances, and taking into consideration the information provided by parties, information obtained from CBP and other publicly available information resources, we preliminarily find that Dongtai Peak's sales that entered the United States during the POR are not *bona fide* commercial transactions. Therefore, Dongtai Peak's sales entering the United States during the POR do not provide a reasonable or reliable basis for calculating a dumping margin.

Preliminary Intent To Rescind

During the course of this review, we found evidence[18] that Dongtai Peak's U.S. sales were not *bona fide* commercial transactions; accordingly, Dongtai Peak has not met the requirements to qualify for an administrative review during the POR. Therefore, the Department is preliminarily rescinding this review with respect to Dongtai Peak because Dongtai Peak has no reviewable entries during the POR.[19]

PRC–Wide Entity

The *Initiation Notice* specifically initiated by name the reviews of Anhui Native, Inner Mongolia, QMD and Wuhu Qinshgi, and notified all parties that they must file either the application or certification for separate rate status, as appropriate. As none of these companies submitted a separate rate application or certification,[20] the Department finds that these companies failed to demonstrate their eligibility for separate–rate status. Accordingly, we consider these companies part of the PRC–wide entity.[21]

Facts Available

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

Furthermore, section 776(b) of the Act states that if the Department ''finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission . . . , in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.'' *See also* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316 at 870 (1994). Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *Id.* An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. *See* section 776(b) of the Act.

[13] *See Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, Slip Op. 05-29, at 9 (''*TTPC*'') (CIT March 9, 2005), citing *Am. Silicon Techs. v. United States*, F. Supp. 2d 992, 995 (CIT 2000).

[14] *See Hebei New Donghua Amino Acid Co., Ltd. v. United States*, Slip Op. 05-70, at 16, (''New Donghua'') citing *Fresh Garlic from the PRC: Final Results of Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002), and accompanying Issues and Decision Memorandum.

[15] *See New Donghua*, Slip Op. 05-70 at 12, citing *Certain Preserved Mushrooms From the People's Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 68 FR 41304 (July 11, 2003), and accompanying Issues and Decision Memorandum.

[16] *See* Dongtai Peak's Sections C and D Questionnaire, submitted April 14, 2009, at C-1.

[17] *See* Memorandum from Blaine Wiltse, International Trade Compliance Analyst, through Catherine Bertrand, Program Manager, Office 9, to James C. Doyle, Office Director, Office 9, re; Antidumping Duty Administrative Review of Honey from the People's Republic of China: *Bona Fide* Nature of the Sale Under Review for Dongtai Peak Honey Industry Co., Ltd., dated December 16, 2009 (''Dongtai *Bona Fides* Memo'').

[18] *See* Dongtai Bona Fides Memo.

[19] *See Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1249 (CIT 2005) (''{P}ursuant to the rulings of the Court, Commerce may exclude sales from the export price calculation where it finds that they are not bona fide'').

[20] As noted above, Anhui Native was selected as a mandatory respondent and did not submit full questionnaire responses as it was required to do, QMD was also selected as a mandatory respondent and did not submit any information with regard to separate rates.

[21] *See* Import Administration Policy Bulletin 05.1, available on the Department's website at: http://ia.ita.doc.gov/policy/index.html.

For these preliminary results, in accordance with section 776(a)(2)(B) of the Act and 782(c)(1) of the Act, we have determined that the use of facts available is appropriate for the PRC–wide entity which includes Anhui Native. As discussed in the ''Supplementary Information'' section above, Anhui Native was selected as a mandatory respondent in the current review but did not submit a response to the initial antidumping duty questionnaires issued by the Department on March 9, 2009. On March 30, 2009, Anhui Native filed a request for an extension of time to submit its responses to the Department's initial antidumping duty questionnaires, which the Department granted, in part. However, on April 15, 2009, Anhui Native submitted a letter informing the Department that it would not participate in the current review. As Anhui Native was selected as a mandatory respondent but did not submit its response to the questionnaire, Anhui Native is considered part of the PRC–wide entity for purposes of this review. Because Anhui Native, as part of the PRC–wide entity, failed to respond to the Department's requests for information, the Department finds that the PRC–wide entity did not cooperate to the best of its ability, and its non–responsiveness necessitates the use of facts available, pursuant to sections 776(a)(2)(A), (B) and (C) of the Act.

In summary, based upon Anhui Native's failure to submit responses to the Department's questionnaires, the Department finds that the PRC–wide entity, which includes Anhui Native, withheld requested information, failed to provide the information in a timely manner and in the form requested, and significantly impeded this proceeding, pursuant to sections 776(a)(2)(A), (B) and (C) of the Act. Therefore, the Department must rely on the facts otherwise available in order to determine a margin for the PRC–wide entity, pursuant to section 776(a)(2)(A), (B) and (C) of the Act.[22]

Because Anhui Native, as part of the PRC–wide entity, failed to cooperate to the best of its ability in providing the requested information, as discussed above, we find it appropriate, in accordance with sections 776(a)(2)(A), (B) and (C), as well as section 776(b), of the Act, to assign total AFA to the PRC–wide entity.[23] By doing so, we ensure that the companies that are part of the PRC–wide entity will not obtain a more favorable result by failing to cooperate than had they cooperated fully in this review.

Selection and Corroboration of Information Used as Facts Available

Section 776(b) of the Act authorized the Department to use, as AFA, information derived from the petition, the final determination in the less–than-fair–value (''LTFV'') investigation, any previous review, or any other information placed on the record. In selecting an AFA rate, the Department's practice has been to assign non–cooperative respondents the highest margin determined for any party in the LTFV investigation or in any administrative review.[24] When selecting an AFA rate from among the possible sources of information, the Department's practice has been to ensure that the margin is sufficiently adverse to induce respondents to provide the Department with complete and accurate information in a timely manner.[25]

As total AFA, we have assigned to exports of subject merchandise produced and/or exported by the PRC–wide entity, which includes Anhui Native, the rate of $2.63 per kilogram, which is the highest transaction–specific rate we calculated in the most recently completed administrative review, *Sixth AR Final Results*.[26] We further note, that his rate was calculated with respect to Anhui Native. We find that this rate is sufficiently adverse to serve the purposes of facts available and is appropriate. In choosing the appropriate balance between providing a respondent with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior transaction–specific margin reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.''[27]

Section 776(c) of the Act provides that, to the extent practicable, the Department shall corroborate secondary information used for facts available by reviewing independent sources reasonably at its disposal. Information from a prior segment of the proceeding constitutes secondary information.[28] The word ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value.[29] To corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used.

In selecting the AFA rate for PRC–wide entity, we assigned the rate of $2.63 per kilogram, which is based on information Anhui Native, who we have found to be part of the PRC–wide entity in this administrative review, submitted in the most recent administrative review of the Order on Honey from the PRC. Thus, we find that the AFA rate of $2.63 per kilogram is reliable and relevant because the AFA rate of $2.63 per kilogram is based on Anhui Native's own questionnaire responses and accompanying data from the immediately preceding administrative

[22] *See Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 69546 (December 1, 2006) and accompanying Issues and Decision Memorandum at Comment 1.

[23] *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of the First Administrative Review and New Shipper Review*, 72 FR 10689, 10692 (March 9, 2007) (decision to apply total AFA to the NME-wide entity unchanged in *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Antidumping Duty Administrative Review and First New Shipper Review*, 72 FR 52052 (September 12, 2007)).

[24] *See Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008); *see also Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 48612 (July 25, 2002), and accompanying Issue and Decision Memorandum at Comment 9, *citing Sigma Corp. v. U.S.*, 117 F. 3d 1401, 1411 (July 7, 1997) (noting Commerce has a ''long-standing practice of assigning to respondents who fail to cooperate with Commerce's investigation the highest margin calculated for any party in the less-than-fair-value investigation or in any administrative review''); *see also Sparklers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 65 FR 43293, 43294 (July 13, 2000) (where the Department assigned the PRC-wide entity ''the highest rate from this or any previous segment of the proceeding.'').

[25] *See, e.g., Certain Steel Concrete Reinforcing Bars From Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082, 65084 (November 7, 2006).

[26] *See Honey From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 796, 797 (January 8, 2009) (''Sixth AR Final Results'').

[27] *See Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990).

[28] *See Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Doc. No. 103-316, vol. 1 (1994)at 870; *see also Antifriction Bearings and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews, Rescission of Administrative Reviews in Part, and Determination To Revoke Order in Part*, 69 FR 55574, 55577 (September 15, 2004).

[29] *Id.; see also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996).

review. Therefore, we find that the rate is relevant for use in this administrative review and, therefore, it has probative value for use as AFA. As such, the Department finds this rate to be corroborated to the extent practicable consistent with section 776(c) of Act.

Therefore, as AFA, we have selected the rate of $2.63 per kilogram for PRC–wide entity, the highest margin we calculated for a respondent in the immediately preceding administrative review. We consider the $2.63 per kilogram rate to be sufficiently high so as to encourage participation in future segments of this proceeding.

Preliminary Results of the Review

The Department has determined that the following preliminary dumping margins exist for the period December 1, 2007 through November 30, 2008:

HONEY FROM THE PRC

Manufacturer/Exporter	Margin (per kilogram)
PRC–wide Entity[30]	$2.63

[30] The PRC-wide entity includes: Anhui Native Produce Import and Export Corp., Inner Mongolia Youth Trade Development Co., Ltd., Qinhuangdao Municipal Dafeng Industrial Co., Ltd., and Wuhu Qinshgi Tangye.

Schedule for Final Results of Review

Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(d). The Department urges interested parties to provide an executive summary of each argument contained within the case briefs and rebuttal briefs.

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

The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Consistent with the *Sixth AR Final Results*, we will direct CBP to assess importer–specific assessment rates based on the resulting per–unit (*i.e.*, per kilogram) amount on each entry of the subject merchandise during the POR.[31] The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. If these preliminary results are adopted in our final results of review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. For assessment purposes, we calculated importer–specific assessment rates for honey from the PRC. Specifically, we divided the total duties for each importer by the total quantity of subject merchandise sold to that importer during the POR to calculate a per–unit assessment amount. We will direct CBP to assess importer–specific assessment rates based on the resulting per–unit (*i.e.,* per kilogram) amount on each entry of the subject merchandise during the POR if any importer–specific assessment rate calculated in the final results of this review is above *de minimis*.

Due to the fact that this review of Dongtai Peak is preliminarily rescinded, if this preliminary rescission is adopted in our final results of review, Dongtai Peak's 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)(2).

Cash Deposit Requirements

The following cash–deposit requirements will be effective upon publication of the final results for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(2)(C) of the Act: (1) for subject merchandise exported by Dongtai Peak the cash deposit rate will be $0.98 per kilogram; (2) for Anhui Native, QMD, Inner Mongolia, Wuhu Qinshgi and all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate and, thus, are a part of the PRC–wide entity, the cash–deposit rate will be the PRC–wide rate of $2.63 per–kilogram; (3) for previously investigated or reviewed PRC and non–PRC exporters not listed above that have a separate rate, the cash deposit rate will continue to be the exporter–specific rate published for the most recent period; and, (4) for all non–PRC exporters of subject merchandise which have not received their own rate, the cash–deposit rate will be the rate applicable to the PRC exporter that supplied that non–PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

[31] *See* Sixth AR Final Results.

Notification of Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) 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.

This administrative review, and this notice are in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213 and 351.221(b)(4).

Dated: December 16, 2009.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E9–30530 Filed 12–22–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–886]

Polyethylene Retail Carrier Bags From the People's Republic of China: Rescission of Antidumping Duty Administrative Review

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

SUMMARY: In response to requests from interested parties, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on polyethylene retail carrier bags from the People's Republic of China. The period of review is August 1, 2008, through

July 31, 2009. The Department is rescinding this review.

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

FOR FURTHER INFORMATION CONTACT: Bryan Hansen or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3683 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 2004, we published in the **Federal Register** an antidumping duty order on polyethylene retail carrier bags (PRCBs) from the People's Republic of China (PRC). See *Antidumping Duty Order: Polyethylene Retail Carrier Bags From the People's Republic of China,* 69 FR 48201 (August 9, 2004). On August 3, 2009, we published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on PRCBs from the PRC. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 74 FR 38397 (August 3, 2009). On August 31, 2009, pursuant to section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b), the Polyethylene Retail Carrier Bag Committee and its individual members, Hilex Poly Co., LLC, and Superbag Corporation (collectively, the petitioners), requested an administrative review of the order with respect to Dongguan Nozawa Plastics Products Co., Ltd., and United Power Packaging, Ltd. (collectively, Nozawa), exporters of PRCBs from the PRC. Also on August 31, 2009, pursuant to section 751(a) of the Act and 19 CFR 351.213(b), Chung Va Century Macao Commercial Offshore Ltd. (Chung Va Macao) and Chinese Factory Zhuhai Chintec Packaging Technology Enterprise Co., Ltd. (Chintec Packaging), requested an administrative review of the order with respect to their exports of PRCBs from the PRC. On September 22, 2009, in accordance with section 751(a) of the Act and 19 CFR 351.221(c)(1)(i), we published a notice of initiation of an administrative review of the order. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 74 FR 48224 (September 22, 2009).

Rescission of Review in Part

In accordance with 19 CFR 351.213(d)(1), the Department will rescind an administrative review, ''in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.'' We received a notice of withdrawal from the petitioners with respect to Nozawa within the 90-day time limit. See letter from the petitioners dated November 17, 2009. Because the Department received no other requests for review of Nozawa, the Department is rescinding the review of the order with respect to Nozawa. We also received a notice of withdrawal from Chung Va Macao and Chintec Packaging within the 90-day limit. See letter dated November 20, 2009. Because the Department received no other requests for review of Chung Va Macao and Chintec Packaging, the Department is rescinding the review of the order with respect to Chung Va Macao and Chintec Packaging. This rescission is in accordance with 19 CFR 351.213(d)(1). The Department intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice.

Notification to Importer

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) 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 Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice is published in accordance with section 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: December 17, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–30516 Filed 12–22–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 09–59]

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 a section 36(b)(1) arms sales notification 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 is a copy of a letter to the Speaker of the House of Representatives, Transmittal 09–59 with attached transmittal, policy justification, and Sensitivity of Technology.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

DEC 14 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. 09-59, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to the Government of Egypt for defense articles and services estimated to cost $51 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
4. Regional Balance (Classified Document Provided Under Separate Cover)

Transmittal No. 09-59

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act (U)

(i) Prospective Purchaser: Egypt

(ii) Total Estimated Value:

Major Defense Equipment*	$ 50 million
Other	$ 1 million
TOTAL	$ 51 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 450 AGM-114K3A HELLFIRE II Air to Surface Anti-Armor missiles, spare and repair parts, test and tool sets, personnel training and equipment, publications, a U.S. Government and contractor engineering and logistics personnel services, and other related elements of logistics support.

(iv) Military Department: Army (VCI)

(v) Prior Related Cases, if any:
FMS Case URB - $43 million – 9Jun96
FMS case UTA - $23 Million – 1Mar00

(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: DEC 14 '09

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Egypt – HELLFIRE II Air-to-Surface Anti-Armor Missiles

The Government of Egypt has requested a possible sale of 450 AGM-114K3A HELLFIRE II missiles, spare and repair parts, test and tool sets, personnel training and equipment, publications, a U.S. Government and contractor engineering and logistics personnel services, and other related elements of logistics support. The estimated cost is $51 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.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Egypt and furthering weapon system standardization and interoperability with U.S. forces.

Egypt needs these missiles in order to defend its own borders and to remain militarily viable in the region. The proposed sale of HELLFIRE missiles will greatly improve Egypt's defense posture. The missiles will be provided in accordance with, and subject to the limitation on use and transfer provided under the Arms Export Control Act, as amended, as embodied in the Letter of Offer and Acceptance.

Egypt, which already has AGM-114K HELLFIRE missiles in its inventory, will have no difficulty absorbing the additional missiles.

This proposed sale will not adversely affect the military balance in the region.

The prime contractor is HELLFIRE Limited LLC.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Egypt.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 09-59

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 AGM-114K3 HELLFIRE II Air-to-Surface Anti-Armor missile hardware and documentation are unclassified. Missile performance parameters and characteristics, including susceptibility to countermeasures, are classified up to Secret and considered very sensitive. Missile hardware is considered sensitive and knowledge of the warhead timing mechanism would be useful in development of countermeasures. Technology contained within the missile is sensitive and Unclassified. The sensitivity of the system is primarily in the software programs which enable the missile to operate in a countermeasures environment. Training, maintenance, operations and related documentation are unclassified and not considered sensitive.

2. Missile design features minimize the possibility of reverse engineering U.S. capabilities.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware in this proposed sale, the information could be used to develop countermeasures, which might reduce the effectiveness of the reconnaissance system, or be used in the development of a system with similar capabilities.

4. A determination has been made that Egypt can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

Dated: December 18, 2009.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–30506 Filed 12–22–09; 8:45 am]

BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee Meeting; Military Leadership Diversity Commission (MLDC); Correction

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Meeting notice; correction.

SUMMARY: The Office of the Secretary of Defense published a document in the **Federal Register** on December 17, 2009 (74 FR 66959), announcing a Military Leadership Diversity Commission (MLDC) meeting on January 14 and 15, 2010. That document contained the correct agenda but the specific agenda topic (Promotion) is incorrect and is corrected in this notice. The dates, times, and meeting location are correct.

FOR FURTHER INFORMATION CONTACT: Master Chief Steven A. Hady, Designated Federal Officer, MLDC, at (703) 602–0838, 1851 South Bell Street, Suite 532, Arlington, VA. E-mail *Steven.Hady@wso.whs.mil.*

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of December 17, 2009, in FR Doc. E9–29999, on page 66959, in the second column under the heading January 14, 2010, correct the agenda topic ''Briefings from Service representatives from organizations responsible for promotion'' on lines 10 to 12 and 17 to 19 to read:

Briefings from Service representatives from organizations responsible for retention

Dated: December 18, 2009.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–30504 Filed 12–22–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

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

DATES: Interested persons are invited to submit comments on or before January 22, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, or should be faxed to (202) 395–5806 or send e-mail to *oira_submission@omb.eop.gov.*

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

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

Dated: December 18, 2009.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: New.

Title: Part 601 Preferred Lender Arrangements.

Frequency: On occasion.

Affected Public: Individuals or households; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 13,674,883.

Burden Hours: 3,197,761.

Abstract: Part 601—Institution and Lender Requirements Relating to Education Loans is a new section of the proposed regulations governing private education loans offered at covered institutions by lenders also participating in the FFEL program. These proposed regulations assure the Secretary that the integrity of the program is protected from fraud and misuse of program funds and places requirements on institutions and lenders to insure that borrowers receive additional disclosures about Title IV, HEA program assistance prior to obtaining a private education loan. These proposed regulations require covered institutions to provide a variety of new loan disclosures, disclosures on private loans, for institutions to prepare and submit an annual report on the use of private loans, and to establish and adopt a code of conduct for institutions' participation in a preferred lender arrangement. The Department, in conjunction with outside entities are submitting the Private Education Loan Applicant Self-Certification form for OMB's approval. While information about the applicant's cost of attendance and estimated financial assistance must be provided to the student, if available, the student will provide the data to the private loan lender who must collect and maintain the self-certification form prior to disbursement of a Private Education Loan. The Department will not receive the Private Education Loan Applicant Self-Certification form and therefore will not be collecting and maintaining the form or its data.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4046. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

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

[FR Doc. E9–30514 Filed 12–22–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Savings Performance Contract (ESPC) Process Improvement Working Group Meeting

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the Federal Energy Management Program (FEMP) within the Office of Energy Efficiency and Renewable Energy on Measurement and Verification for energy savings performance contracts.

DATES: The public meeting will be held Wednesday, January 13, 2010, 8:30 a.m. until 3:30 p.m.

ADDRESSES: U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. *Call-in number:* 301–903–0626.

FOR FURTHER INFORMATION CONTACT: *http://www1.eere.energy.gov/femp/financing/espcs_publicforums.html*, or contact Katy Christiansen at *katherine.christiansen@hq.doe.gov*, (202)–586–7930.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of the meeting is to provide an opportunity for the public to present comment on measurement and verification for energy savings performance contracts. Information on the current ESPC program at DOE can be found at *http://www1.eere.energy.gov/femp/financing/espcs.html*. DOE is considering changes for the purpose of improving quality assurance throughout the life of ESPC contracts.

Tentative Agenda: Agenda will include the following:

- M&V Dashboards.
- Development of M&V Plans.
- M&V Templates.
- Performance Period M&V.
- FEMP ESPC Life of Contract Services.
- Emerging Technologies for ESPCs.
- Comment periods after each presentation.

The meeting is open to the public. DOE invites participation by all interested parties.

For information on:

- The agenda,
- Facilities or services for individuals with disabilities,
- Requests for special assistance,
- Requests to present or speak.

Contact: http://www1.eere.energy.gov/femp/financing/espcs_publicforums.html or Katy Christiansen at *Katherine.christiansen@hq.doe.gov*, (202) 586–7930.

Minutes: DOE will designate a DOE official to preside at the public meeting. The meeting will not be a judicial or evidentiary-type public hearing. A stenographer will be present to record and transcribe the proceedings. The minutes of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room; Room 1E–190; Forrestal Building; 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Public Participation: DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting, interested parties may submit further comments about the proceedings. The public meeting will be conducted in an informal, conference style. Each participant will be allowed to make a prepared general statement (within time limits determined by DOE) before discussion of a particular topic. DOE will permit other participants to comment briefly on any general

statements. At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. DOE representatives may also ask questions of participants concerning other matters relevant to ESPCs and may accept additional comments or questions from those attending, as time permits.

Issued in Washington, DC on December 15, 2009.

Richard Kidd,

FEMP Program Manager.

[FR Doc. E9–30476 Filed 12–22–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–27–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Application

December 15, 2009.

Take notice that on December 10, 2009, Southern Star Central Gas Pipeline, Inc. (Southern Star), 4700 Highway 56, Owensboro, Kentucky 42301, filed an application in Docket No. CP10–27–000, pursuant to section 7(b) of the Natural Gas Act (NGA) as amended and Part 157 of the Commission's regulations requesting certificate authority to abandon by removal two Cooper-Bessemer GMVH–10 2000 horsepower units (No. 3 and No. 4) and appurtenant facilities including auxiliary equipment and buildings. The facilities proposed for abandonment are known as Southern Star's United Compressor Station which is located in the North ¼ Section 3, Township 29 South, Range 35 West on the site of Southern Star's existing Hugoton Compressor Station in Grant County, Kansas all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Any questions concerning this application should be directed to David N. Roberts, Manager, Regulatory Affairs, Southern Star Central Gas Pipeline, Inc., 4700 KY Highway 56 Owensboro, Kentucky 42301, (270) 852–4654 (phone), (270) 852–5010 (fax) or via e-mail at *david.n.roberts@sscgp.com.*

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.

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 ''e-Library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676, or for TTY, (202) 502–8659.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

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 commenters 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 commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters 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.

Protests and interventions may be filed electronically via the Internet in lieu of paper; *see,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: January 5, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–30455 Filed 12–22–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–28–000]

Bear Creek Storage Company; Notice of Application

December 16, 2009.

Take notice that on December 11, 2009, Bear Creek Storage Company (Bear Creek), PO Box 2563, Birmingham, Alabama 35202–2563, filed with the Commission an application under section 7(c) of the Natural Gas Act (NGA) and Subpart F of Part 157 of the Commission's regulations under the NGA for a blanket certificate of public convenience and necessity authorizing Bear Creek to engage in any of the activities specified in Subpart F of Part 157 of the Commission's regulations, as may be amended from time to time, all as more fully set forth in the application which is on file with the Commission

and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (868) 208–3676 or TYY, (202) 502–8659.

Any questions regarding the petition should be directed to Glenn A. Sheffield, Vice President, Bear Creek Storage Company, PO Box 2563, Birmingham, Alabama 35202–2563 at (205) 352–3813.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 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: December 30, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–30465 Filed 12–22–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–1682–004]

New York Independent System Operator, Inc.; Notice of Filings

December 16, 2009.

Take notice that on December 3, 2009, various Generation Owners and the New York Independent System Operator, Inc. (NYISO), filed in compliance with the Commission's November 3, 2009 Order in this proceeding,[1] revised, redacted public versions of their original filings and pleadings in this proceeding.[2] Also, on December 3, 2009, New York Independent System Operator filed additional information in compliance with the Commission's November 3, 2009 Order in a non-public filing.[3]

Any person desiring to intervene or to protest these filings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 28, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–30458 Filed 12–22–09; 8:45 am]

BILLING CODE 6717–01–P

[1] *New York Independent System Operator, Inc.,* 129 FERC ¶ 61,103 (2009).

[2] Foley & Lardner LLP, accession number 20091203–5092; New York ISO, accession numbers 20091208–0018; Steptoe & Johnson LLP accession number 20091203–5093.

[3] New York ISO, accession number 20091208–0019.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES10–9–000]

Southern Power Company; Notice of Filing

December 16, 2009.

Take notice that on December 11, 2009, Southern Power Company filed supplements to their application filed under section 204 of the Federal Power Act for Authorization to Issue Securities on November 18, 2009.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the

comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 21, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–30464 Filed 12–22–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER10–228–000; ER10–228–001]

Star Point Wind Project LLC; Notice of Filing

December 16, 2009.

Take notice that, on December 9, 2009, Star Point Wind Project LLC filed to supplement its filing in the above captioned docket with information required under the Commission's regulations. Such filing served to reset the filing date in this proceeding.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 30, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–30459 Filed 12–22–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–310–001]

Algonquin Energy Services Inc.; Notice of Filing

December 15, 2009.

Take notice that on December 11, 2009, Algonquin Energy Services Inc., filed supplements to its November 25, 2009, application for market-based rate authority, for certain waivers and blanket approvals.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 21, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–30454 Filed 12–22–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES10–6–000]

Carolina Power & Light Company; Notice of Filing

December 15, 2009.

Take notice that on December 11, 2009, Progress Energy Service Company, LLC filed an application on behalf of Carolina Power & Light Company (Progress), pursuant to section 204 of the Federal Power Act. Progress is seeking Commission authorization to issue and sell short-term debt securities having a maturity of not more than one year in the form of promissory notes, commercial paper, or other forms of short-term debt securities associated with commercial paper transactions.

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 21, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–30450 Filed 12–22–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–1717–000]

Duke Energy Carolinas, LLC; Notice of Filing

December 15, 2009.

Take notice that on December 2, 2009, Duke Energy Carolinas, LLC tendered for filing additional requested information in order to assist the Commission in rendering a decision.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 23, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–30451 Filed 12–22–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–1728–002]

Midwest Independent Transmission, System Operator, Inc. and ALLETE, Inc.; Notice of Filing

December 15, 2009.

Take notice that on December 10, 2009, the Midwest Independent Transmission System Operator, Inc. and ALLETE, Inc., filed in compliance with the Commission November 24, 2009 Order, revisions to their September 21, 2009, joint filing.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 18, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–30452 Filed 12–22–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER10–228–000; ER10–228–001]

Star Point Wind Project LLC; Notice of Filing

December 15, 2009.

Take notice that on December 9, 2009, Star Point Wind Project LLC submitted an application requesting acceptance of FERC Electric Tariff, Original Volume No. 1 and grant a blanket authorization to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or

protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 30, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–30453 Filed 12–22–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–401–000]

Asset Energy Cost Savings Cooperative, L.L.C.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

December 16, 2009.

This is a supplemental notice in the above-referenced proceeding of Asset Energy Cost Savings Cooperative, L.L.C.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is January 5, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list.

They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–30460 Filed 12–22–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–410–000]

Covanta Power LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

December 16, 2009.

This is a supplemental notice in the above-referenced proceeding of Covanta Power LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is January 5, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–30463 Filed 12–22–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–409–000]

Covanta Energy Marketing LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

December 16, 2009.

This is a supplemental notice in the above-referenced proceeding of Covanta Energy Marketing LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is January 5, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–30462 Filed 12–22–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–402–000]

FPL Energy Illinois Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

December 16, 2009.

This is a supplemental notice in the above-referenced proceeding of FPL Energy Illinois Wind, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is January 5, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–30461 Filed 12–22–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–29–000]

Gulf South Pipeline Company, LP; Notice of Request under Blanket Authorization

December 16, 2009.

Take notice that on December 14, 2009, Gulf South Pipeline Company, LP (Gulf South), 9 Greenway Plaza, Suite 2800, Houston, Texas 77046, filed in Docket No. CP10–29–000, a prior notice request pursuant to sections 157.205 and 157.216 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act for authorization to abandon, by removal, certain facilities located at its Lafayette Compressor Station, located in Lafayette Parish, Louisiana, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Specifically, Gulf South proposes to remove all aboveground facilities down to and including removal of their concrete foundations at the Lafayette Compressor Station. Gulf South Proposes to abandon by removal four inactive Clark HBA–5–1,100 horsepower reciprocating compressors,

the main compressor building including foundations, the suction and discharge piping, and associated valves and appurtenances. Gulf South states that this proposal will reduce maintenance obligations currently required for the out-of-service facilities. Gulf South asserts that the Lafayette Compressor Station has not been utilized since 2001 and has been abandoned in place since 2005. Gulf South avers that the proposed abandonment by physical removal will have no effect on capacities and services.

Any questions regarding the application should be directed to M. L. Gutierrez, Project Director, Gulf South Pipeline Company, LP, 9 Greenway Plaza, Suite 2800, Houston, Texas 77046, telephone (713) 479–8252, or by e-mail: *nell.gutierrez@bwpmlp.com.*

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. *See* 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–30457 Filed 12–22–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM01–5–000]

Electronic Tariff Filings; Notice of Technical Conferences

December 16, 2009.

In Order No. 714,[1] the Commission adopted regulations requiring tariff and tariff related filings to be made electronically starting April 1, 2010. One of the required electronic tariff filing's data elements is the *Type of Filing Code.*

Take notice that several technical conferences will be held to address certain specific issues related to the *Type of Filing Code.* Specifically, these meetings will address the tariff filing definitions used for electronic filing and the attachments that are required, in accordance with the Commission's regulations, for each tariff filing type. The conferences will be held at the Commission's offices, 888 First Street, NE., Washington, DC. All interested persons are invited to attend.

The documents that will be discussed are located at *http://www.ferc.gov/docs-filing/etariff.asp.* The dates, times, room numbers and the regulatory sections to be discussed are as follows:

Industry	Date	Time and room location	Regulatory section to discuss
Natural Gas Act Pipelines	Friday, January 22, 2010	10 a.m. EDT Room 3M–3	Part 154.
Natural Gas Policy Act and NGA Hinshaw Pipelines.	Friday, January 22, 2010	After NGA pipelines—5 p.m., Room 3M–3.	Sections 284.123 and .224.
Interstate Commerce Act Pipelines	Thursday, January 28, 2010	10 a.m.–1:30 p.m. EDT, Room 3M–3.	Part 341.
Federal Power Act Public Utilities	Tuesday, February 9, 2010	10 a.m.–1:30 p.m. EDT, Room 3M–3.	Part 35.

Teleconferencing will be available. The number for teleconferencing in these meetings will be posted on *http://www.ferc.gov/docs-filing/etariff.asp* and an RSS alert of the posting will be issued.

The meetings are open to the public. No preregistration is required.

FERC meetings are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

For more information about these conferences, please contact Keith Pierce, Office of Energy Market Regulation at (202) 502–8525 or send an e-mail to *ETariff@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. E9–30456 Filed 12–22–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9091–2]

National Lakes Assessment Draft Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and request for comments.

SUMMARY: Notice is hereby given for a 30-day public review and comment period on the draft report of the National Lakes Assessment (NLA). The National Lakes Assessment draft report describes the results of the nationwide probabilistic lake survey that was conducted in the summer of 2007. EPA and its state/tribal partners looked at the biological, trophic, recreational and habitat conditions in lakes of the conterminous United States. The NLA report includes information on how the survey was implemented, what the findings were on a national and ecoregional scale, implications for

[1] *Electronic Tariff Filings,* Order No. 714, 73 FR 57,515 (Oct. 3, 2008), 124 FERC ¶ 61,270, FERC Stats. & Regs [Regulations Preambles] ¶ 31,276 (2008) (Sept. 19, 2008).

resource managers, and future actions and challenges.

DATES: Comments must be received by 11:59 p.m. January 22, 2010.

ADDRESSES: E-mail your comments to *lakessurvey@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Carol Peterson, Assessment and Watershed Protection Division, Office of Water, Washington, DC; Phone: 202–566–1304; e-mail: *peterson.carol@epa.gov*.

SUPPLEMENTARY INFORMATION:

To better answer questions about the condition of waters across the country, EPA and its state and tribal partners have embarked on a series of surveys under the National Aquatic Resource Surveys (NARS) program. The program will provide actual data and information vital to understanding water quality conditions across the country and how these conditions vary with geographic setting as well as human and natural influences. NARS program goals are to:

- Generate scientifically valid and environmentally relevant information on the condition of lake resources
- Determine national and regional ecological and recreational well-being of lakes
- Establish baseline information for future trends assessment
- Identify key stressors to lake health and explore the relative importance of these stressors.

The NLA provides unbiased estimates of the condition of natural and man-made freshwater lakes, ponds, and reservoirs greater than 10 acres and at least one meter deep. Using a statistical survey design, lakes were selected at random to represent the condition of the larger population of lakes across the lower 48 states. A total of 1,028 lakes were sampled for the NLA during summer 2007, representing the condition of 50,000 lakes nationwide. The Great Lakes and Great Salt Lake were not included in the survey.

The NLA finds that 56% of the nation's lakes support healthy biological communities when compared to least disturbed sites in similar regions. Another 21% of lakes are in fair condition, and 22% are in poor biological condition. This rating is based on an index of phytoplankton and zooplankton taxa loss—the percentage of taxa observed compared to those that are expected, based on conditions at least disturbed lakes.

The draft report has undergone State and EPA review. EPA, through this public review, is seeking comment on the information contained in the draft report, the reasonableness of the conclusions, and the clarity with which the information is presented. You may view and download the draft report from EPA's Web site at *http://www.epa.gov/owow/lakes/lakessurvey*.

Dated: December 17, 2009.

Peter S. Silva,

Assistant Administrator for Water.

[FR Doc. E9–30494 Filed 12–22–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket #EPA–RO4–SFUND–2009–0903, FRL–9095–4]

East 23rd Battery Superfund Site, Tampa, Hillsborough County, FL; Notice of Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of settlement.

SUMMARY: Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement for reimbursement of past response costs concerning the East 23rd Battery Site located in Tampa, Hillsborough County, Florida for publication.

DATES: The Agency will consider public comments on the settlement until January 22, 2010. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlement are available from Ms. Paula V. Painter. Submit your comments, identified by Docket ID No. EPA–RO4–SFUND–2009–0903 or Site name East 23rd Battery Superfund Site by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *http://www.epa.gov/region4/waste/sf/enforce.htm.*
- *E-mail: Painter.Paula@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Paula V. Painter at 404/562–8887.

Dated: December 7, 2009.

Anita L. Davis,

Chief, Superfund Enforcement & Information Management Branch, Superfund Division.

[FR Doc. E9–30496 Filed 12–22–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0143; FRL–8801–3]

Computer Science Corporation, et al.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter will be transferred to Computer Science Corporation and its subcontractors, Yoh IT, Poloma, Disys, Barrett & Associates, Apptis, Excel Corp., Apex System, Inc., General Dynamics, Kforce, and Apex System in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). Computer Science Corporation and its subcontractors, Yoh IT, Poloma, Disys, Barrett & Associates, Apptis, Excel Corp., Apex System, Inc., General Dynamics, Kforce, and Apex System have been awarded a contract to perform work for OPP. Access to this information will enable Computer Science Corporation and its subcontractors, Yoh IT, Poloma, Disys, Barrett & Associates, Apptis, Excel Corp., Apex System, Inc., General Dynamics, Kforce, and Apex System to fulfill the obligations of the contract.

DATES: Computer Science Corporation and its subcontractors, Yoh IT, Poloma, Disys, Barrett & Associates, Apptis, Excel Corp, Apex System Inc., General Dynamics, Kforce, and Apex System will be given access to this information on or before December 28, 2009.

FOR FURTHER INFORMATION CONTACT: Felicia Croom, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–0786; e-mail address: *croom.felicia@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions

regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2009–0143. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

II. Contractor Requirements

Under Contract No. GS00T99ALD0203 Task Order EP10H000097, Computer Science Corporation and its subcontractors, Yoh IT, Poloma, Disys, Barrett & Associates, Apptis, Excel Corp., Apex System, Inc., General Dynamics, Kforce, and Apex System will provide operational and management support for the EPA Wide Area Network, web and application hosting, enterprise server, email and Lotus Notes applications, distributed systems, and workload reporting. Computer Science Corporation will also supply security and security incident response reporting for EPA.

The OPP has determined that access by Computer Science Corporation and its subcontractor, Yoh IT, Poloma, Disys, Barrett & Associates, Apptis, Excel Corp., Apex System, Inc., General Dynamics, Kforce, and Apex System to information on all pesticide chemicals may be necessary for the performance of this contract.

Some of this information may be entitled to confidential treatment. This information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with Computer Science Corporation and its subcontractors, Yoh IT, Poloma, Disys, Barrett & Associates, Apptis, Excel Corp., Apex System, Inc., General Dynamics, Kforce, and Apex System prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the *FIFRA Information Security Manual*. In addition, Computer Science Corporation and its subcontractors, Yoh IT, Poloma, Disys, Barrett & Associates, Apptis, Excel Corp., Apex System, Inc., General Dynamics, Kforce, and Apex System are required to submit for EPA's approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Computer Science Corporation and its subcontractors, Yoh IT, Poloma, Disys, Barrett & Associates, Apptis, Excel Corp, Apex System, Inc., General Dynamics, Kforce, and Apex System until the requirements in this document have been fully satisfied. Records of information provided to Computer Science Corporation and EPA's Project Officers will be maintained by its subcontractors, Yoh IT, Poloma, Disys, Barrett & Associates, Apptis, Excel Corp., Apex System, Inc., General Dynamics, Kforce, and Apex System for this contract. All information supplied to Computer Science Corporation and its subcontractors, Yoh IT, Poloma, Disys, Barrett & Associates, Apptis, Excel Corp., Apex System, Inc., General Dynamics, Kforce, and Apex System by EPA for use in connection with this contract will be returned to EPA when the Computer Science Corporation and its subcontractors, Yoh IT, Poloma, Disys, Barrett & Associates, Apptis, Excel Corp., Apex System, Inc., General Dynamics, Kforce, and Apex System have completed their work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: December 15, 2009.

Oscar Morales,

Acting, Director, Office of Pesticide Programs.

[FR Doc. E9–30260 Filed 12–22–09; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL DEPOSIT INSURANCE CORPORATION

Deposit Insurance Assessments—2010 Designated Reserve Ratio

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice.

At a meeting on December 15, 2009, pursuant to provisions in the Federal Deposit Insurance Act, the Board of Directors of the FDIC (Board) set the 2010 designated reserve ratio (DRR) for the Deposit Insurance Fund (DIF) at 1.25 percent of estimated insured deposits.[1] The 2010 DRR of 1.25 percent is unchanged from the 2009 DRR.[2] The Board is publishing this notice as required by section 7(b)(3)(A)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(3)(A)(i)).[3]

FOR FURTHER INFORMATION CONTACT: Munsell W. St. Clair, Chief, Banking and Regulatory Policy Section, Division of Insurance and Research, (202) 898–8967; or Christopher Bellotto, Counsel, Legal Division, (202) 898–3801.

By order of the Board of Directors.

Dated at Washington, DC, this 17th of December, 2009.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E9–30423 Filed 12–22–09; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. A copy of the agreement is available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

[1] Section 7(b)(3)(C) of the FDI Act provides that, in setting the DRR for any year, the Board must: ''(i) take into account the risk of losses to the Deposit Insurance Fund in such year and future years, including historic experience and potential and estimated losses from insured depository institutions; (ii) take into account economic conditions generally affecting insured depository institutions so as to allow the designated reserve ratio to increase during more favorable economic conditions and to decrease during less favorable economic conditions, notwithstanding the increased risks of loss that may exist during such less favorable conditions, as determined to be appropriate by the Board of Directors; (iii) seek to prevent sharp swings in the assessment rates for insured depository institutions; and (iv) take into account such other factors as the Board of Directors may determine to be appropriate, consistent with the requirements of this subparagraph.'' 12 U.S.C. 1817(b)(3)(C).

[2] The DRR is indicated in section 327.4(g) of the FDIC's regulations. 12 CFR 327.4(g). There is no need to amend this provision because, as noted, the DRR for 2010 is the same as the current DRR.

[3] The applicable provision of the FDI Act requires notice-and-comment rulemaking only when the Board changes the DRR. 12 U.S.C. 1817(b)(3)(A)(ii).

Agreement No.: 012087.

Title: NYK/Africa Car Carrier Mediterranean/West Africa Space Charter Agreement.

Parties: Africa Car Carrier Sal and Nippon Yusen Kaisha.

Filing Party: Patricia M. O'Neill, Esq., NYK Line (North America) Inc., 300 Lighting Way, 5th Floor, Secaucus, NJ 07094.

Synopsis: The agreement authorizes NYK to charter space to Africa Car Carrier Sal in the trade between U.S. Atlantic and Gulf Coasts ports and ports on the Mediterranean Sea and West African coast.

By order of the Federal Maritime Commission.

Dated: December 18, 2009.

Karen V. Gregory,

Secretary.

[FR Doc. E9–30521 Filed 12–22–09; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

JDI Shipping LLC, 43120 Christy Street, Fremont, CA 94538, Officers: Kevin Wen Chang, General Manager (Qualifying Individual), Thuy Tran, President.

Western Logistics Inc., 9121 Blackley Street, Temple City, CA 91780, Officers: Qi Rick Li, President (Qualifying Individual), Jie Jenny Chen, CFO.

AMP Shipping International, 3828 W. 226th, Ste. 37, Torrance, CA 90505, Amy Miwon Park, Sole Proprietor.

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

International First Service USA, Inc., 197 Route 18 South, Ste. 3000, East Brunswick, NJ 08816, Officer: Anita McNeil, President (Qualifying Individual).

PAS Global Logistics, Inc., 8555 Cashio Street, Ste. 305, Los Angeles, CA 90035, Officer: Seung Hoon Moon, President (Qualifying Individual).

ITL USA Inc., 1200 Route 22 East, Ste. 2000, Bridgewater, NJ 08807, Officers: Sunil Chopra, President (Qualifying Individual), Jan De Bock, Director.

Cargostream, LLC, 1223 Old Fort Road, Moncks Corner, SC 29461, Officer: Wallace M. Hester, Owner (Qualifying Individual).

CTS Global Logistics (Georgia) Inc., CTS Global Supply Chain Solutions, 5192 Southridge Parkway, Ste. 117, Atlanta, GA 30349, Officers: Christine T. Springer, Asst. Secretary (Qualifying Individual), Wanda Stone, President.

S & E Transportation LLC, 26224 Enterprise Court, Lake Forest, CA 92630, Officers: Sheila Carden, President (Qualifying Individual), Eric Carden, Vice President.

Base Ventures International dba Base, Ventures Shipping, 1405 Silver Lake Rd., NW., Ste. 201, New Brighton, MN 55112, Oluwaseyi E. Olawore, Sole Proprietor.

Prolog Services Inc. dba PSI Ocean Freight Systems, 5803 Sovereign Dr., Ste. 220, Houston, TX 77036, Officers: Stanley A. Egbo, President (Qualifying Individual), Jemima I. Egbo, Director.

Hankyu Hanshin Express (USA) Inc., 1561 Beachey Place, Carson, CA 90746, Officer: Nobyuki Harasaki, Vice President (Qualifying Individual).

Around The World Shipping, Inc., 6726 Reseda Blvd. Ste. A–10, Reseda, CA 91335, Officer: Artak Agamalian, Director (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

Oliveira Marine Shipping, Inc., 1200 Acushnet Ave., New Bedford, MA 02746, Officers: Arnaldo S. Oliveira, President (Qualifying Individual), Maria O. Oliveira, Treasurer/Dir.

Madi Auto Sales and Shipping, 2911 State Road 590, Ste. 26, Clearwater, FL 33759, Officers: Nancy Dent, Vice President (Qualifying Individual), Mohammad A. Madi, Owner.

Dated: December 18, 2009.

Karen V. Gregory,

Secretary.

[FR Doc. E9–30520 Filed 12–22–09; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/Address	Date reissued
019355F	ABAD Air, Inc., 10411 NW 28th Street, Suite C–101, Miami, FL 33172	November 26, 2009.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E9–30522 Filed 12–22–09; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

License Number: 019355N.

Name: ABAD Air, Inc.

Address: 10411 NW 28th Street, Ste. C–101, Miami, FL 33172.

Date Revoked: November 26, 2009.

Reason: Failed to maintain a valid bond.

License Number: 002853F.
Name: HPH International, Inc.
Address: 555 East Ocean Blvd., Ste. 217, Long Beach, CA 90802.
Date Revoked: December 8, 2009.
Reason: Surrendered license voluntarily.

License Number: 019598N.
Name: SCM Global, Inc.
Address: 1201 Corbin Street, Elizabeth, NJ 07201.
Date Revoked: November 30, 2009.
Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E9–30523 Filed 12–22–09; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) Title 44, United States Code (U.S.C.), as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans, call the HRSA Reports Clearance Officer at (301) 443–1129.

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

Proposed Project: Data Collection Tool for State Offices of Rural Health Grant Program: (OMB Number: 0915–0322)—Extension

The mission of the Office of Rural Health Policy (ORHP) is to sustain and improve access to quality care services for rural communities. In its authorizing language (Sec. 711 of the Social Security Act [42 U.S.C. 912]), Congress charged ORHP with administering grants, cooperative agreements, and contracts to provide technical assistance and other activities as necessary to support activities related to improving health care in rural areas.

In accordance with the Public Health Service Act, section 338J, 42 U.S.C. 254r, the Health Resources and Services Administration proposes to revise the State Offices of Rural Health Grant Program—Guidance and Forms for the Application. The guidance is used annually by 50 States in writing applications for Grants under the State Offices of Rural Health Grant Program (SORH) of the Public Health Service Act, and in preparing the required report.

ORHP seeks to expand the information gathered from grantees on their efforts to provide technical assistance to clients within their State. SORH grantees would be required to submit a Technical Assistance Report that includes: (1) The total number of technical assistance encounters provided directly by the grantee; and, (2) the total number of unduplicated clients that received direct technical assistance from the grantee. Submission of the Technical Assistance Report would be done via e-mail to ORHP no later than 30 days after the end of each 12-month budget period.

The estimated average annual burden is as follows:

Form	Number of respondents	Responses per respondent	Burden hours per response	Total burden hours
Technical Assistance Report	50	1	12.5	625
Total	50			625

E-mail comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: December 17, 2009.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E9–30538 Filed 12–22–09; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0399]

International Conference on Harmonisation; Guidance on Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the International Conference on Harmonisation Regions; Annex 5 on Disintegration Test General Chapter; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 5: Disintegration Test General Chapter.'' The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guidance provides the results of the ICH Q4B evaluation of the Disintegration Test General Chapter harmonized text from each of the three pharmacopoeias (United States, European, and Japanese) represented by the Pharmacopoeial Discussion Group (PDG). The guidance conveys recognition of the three pharmacopoeial methods by the three ICH regulatory regions and provides specific information regarding the recognition.

The guidance is intended to recognize the interchangeability between the local regional pharmacopoeias, thus avoiding redundant testing in favor of a common testing strategy in each regulatory region. In the **Federal Register** of February 21, 2008 (73 FR 9575), FDA made available a guidance on the Q4B process entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions.''

DATES: Submit written or electronic comments on agency guidance at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Send two self-addressed adhesive labels to assist the office in processing your requests. Requests and comments should be identified with the docket number found in brackets in the heading of this document. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Robert H. King, Sr., Center for Drug Evaluation and Research (HFD–003), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 4150, Silver Spring, MD 20993–0002, 301–796–1242; or Christopher Joneckis, Center for Biologics Evaluation and Research (HFM–25), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–0373.

Regarding the ICH: Michelle Limoli, Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4480.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In the **Federal Register** of August 5, 2008 (73 FR 45466), FDA published a notice announcing the availability of a draft tripartite guidance entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 5: Disintegration Test General Chapter.'' The notice gave interested persons an opportunity to submit comments by October 6, 2008.

After consideration of the comments received and revisions to the guidance, a final draft guidance entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 5: Disintegration Test General Chapter'' was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies in June 2009.

The guidance provides the specific evaluation outcome from the ICH Q4B process for the Disintegration Test General Chapter harmonization proposal originating from the three-party PDG. This guidance is in the form of an annex to the core ICH Q4B guidance. When implemented, the annex will provide guidance for industry and regulators on the use of the specific pharmacopoeial texts evaluated by the ICH Q4B process. Following receipt of comments on the draft, no substantive changes were made to the annex.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may, at any time, submit to the Division of Dockets Management (see **ADDRESSES**) written comments on the guidance. 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.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.regulations.gov*, *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*, or *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*.

Dated: December 17, 2009.

David Dorsey,

Acting Deputy Commissioner for Policy, Planning, and Budget.

[FR Doc. E9–30441 Filed 12–22–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Gastrointestinal Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Gastrointestinal Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 23, 2010, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC/ Silver Spring, The Ballrooms, 8727 Colesville Rd., Silver Spring, MD. The hotel phone number is 301–589–5200.

Contact Person: Kristine T. Khuc, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *Kristine.Khuc@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512538. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On February 23, 2010, the committee will discuss the efficacy and safety of new drug application (NDA) 22–554, for XIFAXAN (rifaximin) Tablets, 550 milligrams, by Salix Pharmaceuticals, for the indication (use) of maintenance of remission of hepatic encephalopathy, a condition in which severe liver disease contributes to an accumulation of toxic substances that impair brain function. This indication is for patients 18 years of age and older.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before February 8, 2010. Oral presentations from the public will be scheduled between 1 p.m. to 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before January 29, 2010. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by February 1, 2010.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kristine T. Khuc at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 17, 2009.

David Dorsey,

Acting Deputy Commissioner for Policy, Planning, and Budget.

[FR Doc. E9–30442 Filed 12–22–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the PubMed Central National Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: PubMed Central National Advisory Committee.

Date: June 4, 2010.

Time: 9 a.m. to 3 p.m.

Agenda: Review and Analysis of Systems.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: David J. Lipman, MD., Director Natl Ctr For Biotechnology Information, National Library of Medicine, Building 38, Room 8N805, Bethesda, MD 20894, 301–435–5985, *dlipman@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.pubmedcentral.nih.gov/about/nac.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: December 15, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–30311 Filed 12–22–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–129F; Extension of an Existing Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review; Form I–129F, Petition for Alien Fiance(e); OMB Control No. 1615–0001.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on September 29, 2009, at 74 FR 49885, allowing for a 60-day public comment period. USCIS did not receive any comments.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 22, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs @dhs.gov*, and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via e-mail at *oira_submission@ omb.eop.gov.*

When submitting comments by e-mail, please make sure to add OMB Control No. 1615–0001 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Petition for Alien Fiance(e).

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–129F; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–129F must be filed with U.S. Citizenship and Immigration Services (USCIS) by a citizen of the United States in order to petition for an alien spouse, finance(e), or child.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 200,000 responses at 1 hour and 30 minutes (1.50) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 300,000 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http:// www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210, Telephone number 202–272–8377.

Dated: December 18, 2009.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services.

[FR Doc. E9–30537 Filed 12–22–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5288–N–16]

Notice of Proposed Information Collection for Public Comment; Section 901 Implementation

AGENCY: Office of the Assistant Secretary for Public and Indian Housing (PIH), HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 22, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Lillian L. Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4178, Washington, DC 20410–5000; telephone 202.402.8048, (this is not a toll-free number) or e-mail Ms. Deitzer at *Lillian.L.Deitzer@hud.gov* for a copy of the proposed forms, or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll-free.)

FOR FURTHER INFORMATION CONTACT: Dacia Rogers, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410; telephone 202–708–0713, (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). Division B of the Department of Defense Emergency Supplemental Appropriations to address Hurricanes in the Gulf of Mexico and Pandemic Influenza Act, 2006 (Section 901 of Pub. L. 109–148, enacted on December 30, 2005), authorized PHAs in federally declared disaster areas as a result of Hurricanes Katrina and Rita to combine or use for other program purposes Housing Choice Voucher (HCV) and public housing operating and capital funds under sections 8(o) and 9(d) and (e) of the U.S. Housing Act of 1937 (''the Act'') in order to aid families that were receiving assistance under those programs before the hurricanes and were displaced from their housing after the hurricanes.

HUD implemented Section 901 through publication in the **Federal Register** on July 28, 2006, of FR–5067–N–01 (Volume 71, Page 42996) entitled *Implementation Guidance for Section 901 of the Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006* (''the Section 901 implementation guidance''). HUD subsequently published notice FR–5067–N–04 on December 17, 2008 (Volume 73, page 76673) extending to the PHAs most heavily affected by Hurricanes Katrina and Rita the flexibility to combine funds through CY 2008 and 2009. Additionally, HUD published FR–5067–N–02 on October 30, 2006, (Volume 71, Page 63340) to extend the deadline for submitting fungibility plans to November 21, 2006, and permit combined funds to be used for eligible purposes under the Housing Choice Voucher program.

Section 4803 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Pub. L. No. 110–28 enacted May 25, 2007) extended authority for this flexibility to CY 2006 and 2007.

Section 11003 of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. 110–329) extended authority for fungibility to CY 2008 and 2009. Division B of the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006 (Pub. L. 109–148; approved December 30, 2005), among other things, makes emergency supplemental appropriations to address the hurricane devastation in the Gulf of Mexico. Section 901 of this supplemental appropriations act permits eligible PHAs to combine their Capital Funds (section 9(d) of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act)), Operating Funds (section 9(e) of the 1937 Act), and Housing Choice Voucher Funds (section 8(o) of the 1937 Act) to assist families who were displaced by Hurricane Katrina or Rita. HUD has issued a Notice in the **Federal Register** providing guidance on how eligible PHAs may implement this flexibility and how PHAs must report the planned activities, accomplishments, and funds utilization from using this flexibility.

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Public and Indian Housing, Section 901 Notice of Intent and Fungibility Plan, Quarterly Reports, and Final Report;

OMB Control Number: 2577–0245.

Description of the need for the information and proposed use: The Notice of Intent is necessary for HUD to be informed about which eligible PHAs elect to invoke the funding flexibility authorized by section 901 of the Emergency Supplemental Appropriations (Pub. L. 109–148). The Fungibility Plan and Reports are necessary for HUD to know how eligible PHAs plan to reallocate and spend these funds, the rate such funds are obligated and expended, and the results in using this funding flexibility. Fungibility Plans proposing to use Section 901 flexibility and funding to develop new housing units will be required to include new development proposals following the format required by 24 CFR 941.606. Fungibility Plans proposing to use Section 901 flexibility to pay for public housing renovations will require submission of Capital Fund Program Annual Statements identifying work items and costs. These collections are approved under separate OMB numbers. Under Section 901, funds from one program used for another program's purposes must follow the rules of the program in which the funds will be used.

Agency form numbers, if applicable: None.

Members of affected public: Eligible Public Housing Agencies in the areas most heavily impacted by Hurricanes Katrina and Rita.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Notification of Intent and Fungibility Plan. This is a one-time submission estimated to take 40 hours for each of up to twelve eligible PHAs that submitted plans from 2006 through 2009. The original burden estimate for this information collection was 6,624 hours assuming all ninety-six PHAs eligible for Section 901 flexibility would opt to use it. A later burden estimate of 1,248 hours was submitted, when in 2006, only eight out of ninety-six eligible PHAs submitted plans to use Section 901 flexibility. In 2007, seven out of the eight 2006 PHAs and one new PHA submitted plans to use Section 901 flexibility. In 2008, seven out of the nine 2006 and 2007 PHAs and three new PHAs submitted plans to use Section 901 flexibility. Ten or fewer respondents have submitted plans to use Section 901 flexibility each year. One PHA submitted a plan in 2009. A total of ten PHAs have been approved to use and must report the results of Section 901 flexibility. A new estimate of burden for Section 901 Notifications of Intent and Fungibility Plans and subsequent periodic reporting is 1,680 hours based on requirements for 10 PHAs to prepare and submit these documents.

Quarterly Progress Reports of Obligations and Expenditures for Section 901 Designated Funds and Activities. In order to permit HUD to adequately monitor PHA progress in carrying out Section 901 approved activities and obligating and expending Section 901 approved funds in a timely manner, PHAs will report the amount of Section 901 funds obligated and expended for each approved activity for the quarterly reporting period, and the outstanding balance of unexpended Section 901 funds. Response time per quarterly report, including the time to research records containing documentation needed to prepare the quarterly reports is estimated to average sixteen hours for each of the PHAs with

approved Section 901 plans. Reports will be submitted by each PHA four times per year for five consecutive years for each calendar year of funding. Section 901 PHAs have five years to expend funds designated for Section 901 flexibility for a given calendar year (2006, 2007, 2008, and/or 2009). Total annual reporting burden for ten PHAs to submit quarterly reports of their progress in carrying out Section 901 approved activities and rates of obligations and expenditures for CY 2006, 2007, 2008, and 2009 funding is estimated at 640 hours.

Annual Report. Annual reports will address: (1) PHA progress and results in carrying out Section 901 activities, (2) the amount of program funds approved under Section 901 flexibility for other program uses, (3) the amount of funds obligated during the year and cumulatively for Section 901 approved activities, and (4) the amount of funds expended annually and cumulatively for Section 901 approved activities. These reports are expected to address progress-to-date during the five-year expenditure period for initiating and getting Section 901 activities under-way, and reporting on challenges or unforeseen obstacles.

Final Report. This is a one-time submission estimated to take forty hours for each of up to ten PHAs, including the Housing Authority of New Orleans, for a total reporting burden of 400 hours. The final report is expected to address all programmatic and financial matters pertinent to Section 901 implementation, including the PHA's performance in carrying out all approved Section 901 activities, including but not limited to public housing redevelopment and capital improvements, public housing mixed-finance development, affordable housing development coupled with use of project-based vouchers, homeownership development and incentives, property acquisitions, and re-occupancy programs; in addition to accounting for the final obligation and expenditure of Section 901 designated funds and remaining balances.

Status of the proposed information collection: Extension of a previously approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 17, 2009.

Merrie Nichols-Dixon,

Deputy Director for Policy, Programs, and Legislative Initiatives.

[FR Doc. E9–30513 Filed 12–22–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Collections for 1029–0115

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for 30 CFR part 773—Requirements for permits and permit processing, has been submitted to the Office of Management and Budget (OMB) for review and approval. The information collection package was previously approved and assigned control number 1029–0115. This notice describes the nature of the information collection activity and the expected burdens.

DATES: OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB by January 22, 2010, in order to be assured of consideration.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Department of the Interior Desk Officer, via e-mail at *OIRA_Docket@omb.eop.gov,* or by facsimile to (202) 395–5806. Also, please send a copy of your comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 202—SIB, Washington, DC 20240, or electronically to *jtrelease@osmre.gov.* Please reference 1029–0115 in your correspondence.

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John Trelease at (202) 208–2783, or electronically at *jtrelease@osmre.gov.* You may also review the information collection request online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [*see* 5 CFR 1320.8(d)]. OSM has submitted a request to OMB to renew its approval for the collection of information for 30 CFR part 773 Requirements for permits and permit processing. OSM is requesting a 3-year term of approval for this information collection activity.

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 number for this collection, 1029–0115, is listed in 30 CFR 773.3. Individuals are required to respond to obtain a benefit.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on September 16, 2009 (74 FR 47614). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: 30 CFR part 773—Requirements for Permits and Permit Processing.

OMB Control Number: 1029–0115.

SUMMARY: The collection activities for this part ensure that the public has the opportunity to review permit applications prior to their approval, and that applicants for permanent program permits or their associates who are in violation of the Surface Mining Control and Reclamation Act do not receive surface coal mining permits pending resolution of their violations.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Applicants for surface coal mining and reclamation permits and State governments and Indian Tribes.

Total Annual Responses: 515 permit applicants and 4,780 State and Indian regulatory authorities.

Total Annual Burden Hours: 41,430.

Total Non-wage Costs: $22,920.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the places listed in **ADDRESSES**. Please refer to control number 1029–0115 in all correspondence.

Before including your address, phone number, e-mail address, or other personal identifying information in your

comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: December 15, 2009.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. E9–30399 Filed 12–22–09; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–WSR–2009-N281] [91405-5110000-241A-7H and 91405-9410000-241A-7H]

Information Collection Sent to the Office of Management and Budget (OMB) for Approval; OMB Control Number 1018-0007; Annual Certification of Hunting and Sport Fishing Licenses Issued

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. This ICR is scheduled to expire on January 31, 2010. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must send comments on or before January 22, 2010.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB-OIRA at (202) 395-5806 (fax) or OIRA_DOCKET@OMB.eop.gov (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222-ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail) or hope_grey@fws.gov (e-mail).

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey by mail or e-mail (see ADDRESSES) or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1018-0007.

Title: Annual Certification of Hunting and Sport Fishing Licenses Issued, 50 CFR 80.10.

Service Form Number(s): 3-154a, 3-154b.

Type of Request: Extension of a currently approved collection.

Affected Public: States, territories (Commonwealth of Puerto Rico, Commonwealth of the Northern Mariana Islands, Guam, U.S. Virgin Islands, and American Samoa), and District of Columbia.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Annually.

Estimated Annual Number of Respondents: 56.

Estimated Total Annual Responses: 112.

Estimated Time Per Response: Average of 12 hours for FWS Form 3-154a and 20 hours for FWS Form 3-154b.

Estimated Total Annual Burden Hours: 1,792.

Abstract: The Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669 et seq.) and the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777 et seq. except 777e-1) provide authority for Federal assistance to the States for management and restoration of fish and wildlife. These Acts and our regulations at 50 CFR 80.10 require that States, territories, and the District of Columbia annually certify their hunting and fishing license sales. States, territories, and the District of Columbia that receive grants under these Acts use FWS Forms 3-154a (Part I - Certification) and 3-154b (Part II - Summary of Hunting and Sport Fishing Licenses Issued) to certify the number and amount of hunting and fishing license sales. We use the information collected to apportion and distribute funds according to the formula specified in each Act.

Comments: On August 20, 2009, we published in the **Federal Register** (74 FR 42091) a notice of our intent to request that OMB renew this ICR. In that notice, we solicited comments for 60 days, ending on October 19, 2009. We did not receive any comments.

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- 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.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: December 17, 2009

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

FR Doc. E9–30554 Filed 12–22–09; 8:45 am

Billing Code 4310–55–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–LE–2009-N280; 99011-1224-0000-9B]

Information Collection Sent to the Office of Management and Budget (OMB) for Approval; OMB Control Number 1018-0012; Declaration for Importation or Exportation of Fish or Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. This ICR is scheduled to expire on January 31, 2010. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must send comments on or before January 22, 2010.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB-OIRA at (202) 395-5806 (fax) or OIRA_DOCKET@OMB.eop.gov (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife

Service, MS 222-ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail) or hope_grey@fws.gov (e-mail).

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey by mail or e-mail (see ADDRESSES) or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1018-0012.

Title: Declaration for Importation or Exportation of Fish or Wildlife, 50 CFR 14.61 - 14.64.

Service Form Number(s): 3-177 and 3-177a.

Type of Request: Extension of a currently approved collection.

Affected Public: Businesses or individuals that import or export fish, wildlife, or wildlife products; scientific institutions that import or export fish or wildlife scientific specimens; and government agencies that import or export fish or wildlife specimens for various purposes.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Activity	Number of annual respondents	Number of annual responses	Completion time per response	Annual burden hours
3-177 - Hard Copy Submission	4,200	37,000	15 minutes	9,251
3-177 -Electronic Submission	16,500	145,000	10 minutes	24,166
Totals	20,700	182,000		33,417

Abstract: The Endangered Species Act (16 U.S.C. 1531 et seq.) makes it unlawful to import or export fish, wildlife, or plants without filing a declaration or report deemed necessary for enforcing the Act or upholding the Convention on International Trade in Endangered Species (CITES) (see 16 U.S.C. 1538(e)). With a few exceptions, businesses, individuals, or government agencies importing into or exporting from the United States any fish, wildlife, or wildlife product must complete and submit to the Service an FWS Form 3-177 (Declaration for Importation or Exportation of Fish or Wildlife). This form as well as FWS Form 3-177a (Continuation Sheet) and instructions for completion are available for electronic submission at https://edecs.fws.gov. These forms are also available in hard copy at http://www.fws.gov/forms/ .

The information that we collect is unique to each wildlife shipment and enables us to:

- Accurately inspect the contents of the shipment;
- Enforce any regulations that pertain to the fish, wildlife, or wildlife products contained in the shipment; and
- Maintain records of the importation and exportation of these commodities.

Businesses or individuals must file FWS Forms 3-177 and 3-177a with us at the time and port where they request clearance of the import or export of wildlife or wildlife products. Our regulations allow for certain species of wildlife to be imported or exported between the United States and Canada or Mexico at U.S. Customs and Border Protection ports, even though our wildlife inspectors may not be present. In these instances, importers and exporters may file the forms with U.S. Customs and Border Protection. We collect the following information:

(1) Name of the importer or exporter and broker.

(2) Scientific and common name of the fish or wildlife.

(3) Permit numbers (if permits are required).

(4) Description, quantity, and value of the fish or wildlife.

(5) Natural country of origin of the fish or wildlife.

In addition, certain information, such as the airway bill or bill of lading number, the location of the fish or wildlife for inspection, and the number of cartons containing fish or wildlife, assists our wildlife inspectors if a physical examination of the shipment is necessary.

Comments: On August 13, 2009, we published in the **Federal Register** (74 FR 40836) a notice of our intent to request that OMB renew this ICR. In that notice, we solicited comments for 60 days, ending on October 13, 2009. We received one comment. The commenter strongly supported the collection of this information and suggested the following ways to improve the quality of data collected:

Issue: FWS Form 3-177 should have language stating that filing a false or incomplete declaration may result in a penalty.

Response: The form already includes this language. FWS Form 3-177 contains the following statement: ''Knowingly making a false statement in a Declaration for Importation or Exportation of Fish and Wildlife may subject the declarant to the penalty provided by 18 U.S.C. 1001 and 16 U.S.C. 3372(d).'' In addition, item 22 of the form includes the following certification statement prior to signature ''I certify under penalty of perjury that the information furnished is true and correct.'' We have added this language to the instructions as well.

Issue: The instructions for FWS Form 3-177 should include more direction on how the species and subspecies should be identified. Also, instructions are needed regarding entering the identifier number and ID type for questions 13, 14, and 15.

Response: The instructions for FWS Form 3-177 include guidance for accurately identifying species, including the requirement to provide the scientific name (Latin name including genus and species and subspecies, if applicable) and the common name in English. The instructions also include guidance for entering the identifier number and ID type.

Issue: The Service should standardize the units of measure used on FWS Form 3-177 incorporating quantity, length, weight, and volume.

Response: We do not believe that this is practical and have not made any changes to the form or instructions.

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- 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.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: December 17, 2009.

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. E9–30552 Filed 12–22–09; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Deadline for Submitting Completed Applications To Begin Participation in the Tribal Self-Governance Program in Fiscal Year 2011 or Calendar Year 2011

AGENCY: Office of Self-Governance, Bureau of Indian Affairs, Interior.

ACTION: Notice of Application Deadline.

SUMMARY: In this notice, the Office of Self-Governance (OSG) establishes a March 1, 2010, deadline for Indian tribes/consortia to submit completed applications to begin participation in the tribal self-governance program in fiscal year 2011 or calendar year 2011.

DATES: Completed application packages must be received by the Director, Office of Self-Governance, by March 1, 2010.

ADDRESSES: Application packages for inclusion in the applicant pool should be sent to Sharee M. Freeman, Director, Office of Self-Governance, Department of the Interior, Mail Stop 355–G–SIB, 1951 Constitution Avenue, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Kenneth D. Reinfeld, Office of Self-Governance, Telephone 202–208–5734.

SUPPLEMENTARY INFORMATION: Under the Tribal Self-Governance Act of 1994 (Pub. L. 103–413), as amended by the Fiscal Year 1997 Omnibus Appropriations Bill (Pub. L. 104–208), the Director, Office of Self-Governance may select up to 50 additional participating tribes/consortia per year for the tribal self-governance program, and negotiate and enter into a written funding agreement with each participating tribe. The Act mandates that the Secretary submit copies of the funding agreements at least 90 days before the proposed effective date to the appropriate committees of the Congress and to each tribe that is served by the Bureau of Indian Affairs (BIA) agency that is serving the tribe that is a party to the funding agreement. Initial negotiations with a tribe/consortium located in a region and/or agency which has not previously been involved with self-governance negotiations, will take approximately 2 months from start to finish. Agreements for an October 1 to September 30 funding year need to be signed and submitted by July 1. Agreements for a January 1 to December 31 funding year need to be signed and submitted by October 1.

Purpose of Notice

25 CFR sections 1000.10 to 1000.31 will be used to govern the application and selection process for tribes/consortia to begin their participation in the tribal self-governance program in fiscal year 2011 and calendar year 2011. Applicants should be guided by the requirements in these subparts in preparing their applications. Copies of these subparts may be obtained from the information contact person identified in this notice.

Tribes/consortia wishing to be considered for participation in the tribal self-governance program in fiscal year 2011 or calendar year 2011 must respond to this notice, except for those tribes/consortia which are: (1) Currently involved in negotiations with the Department; (2) one of the 99 tribal entities with signed agreements; or (3) one of the tribal entities already included in the applicant pool as of the date of this notice.

Information Collection

This information collection is authorized by OMB Control Number 1076–0143, Tribal Self-Governance Program, which expires November 30, 2009. A request for renewal was submitted to OMB on August 26, 2009.

Dated: December 14, 2009.

Larry Echo Hawk,

Assistant Secretary—Indian Affairs.

[FR Doc. E9–30472 Filed 12–22–09; 8:45 am]

BILLING CODE 4310–W8–P

DEPARTMENT OF THE INTERIOR

National Park Service

Draft General Management Plan and Environmental Impact Statement, Roosevelt-Vanderbilt National Historic Sites, Hyde Park, NY

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of the Draft General Management Plan and Environmental Impact Statement for Roosevelt-Vanderbilt National Historic Sites, Hyde Park, New York.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the National Park Service announces the availability of the Draft General Management Plan and Environmental Impact Statement (Draft GMP/EIS) for Roosevelt-Vanderbilt National Historic Sites, New York.

Consistent with National Park Service laws, regulations, and policies, and the purposes of the National Historic Sites, the Draft GMP/EIS describes and analyzes three alternatives (No-Action, Action Alternative One, and Action Alternative Two) to guide the management of the National Historic Sites over the next 20 years. The Draft GMP/EIS covers the three units of the national park system that compose Roosevelt-Vanderbilt National Historic Sites: Home of Franklin D. Roosevelt National Historic Site; Eleanor Roosevelt National Historic Site; and Vanderbilt Mansion National Historic Site. The three national historic sites are combined into a single administrative unit, but each was established by separate legislation and each has its own purpose and significance. At present, management of the National Historic Sites is guided by three separate planning documents. Although a GMP was needed for each of the sites, a single unifying plan was deemed to be the most expeditious and critical for continued coordinated management.

Primary planning issues include preservation and treatment of cultural resources, provision of visitor services, and partnership opportunities. The alternatives incorporate various management prescriptions to ensure protection, access, and enjoyment of the parks' resources. The No Action Alternative would continue the current management direction. Action Alternative One would emphasize restoring historic appearance and encouraging visitors to explore more of the estate buildings and landscape. Action Alternative Two would seek to make the parks relevant to more audiences by encouraging greater civic participation in park activities, while significantly enhancing the historic character of park resources. Action Alternative Two is the National Park Service's preferred alternative. The Draft GMP/EIS evaluates the potential environmental consequences of implementing the alternatives. Impact topics include the cultural, natural, and socioeconomic environments.

DATES: The National Park Service will accept comments on the Draft GMP/EIS from the public for a period of 60 days following publication of the Environmental Protection Agency's Notice of Availability in the **Federal Register**. The National Park Service will also hold a public forum to solicit comments on the Draft GMP/EIS during the public review period. The date, time and location will be announced in local

newspapers, on the parks' Web sites (*http://www.nps.gov/hofr, http://www.nps.gov/elro, http://www.nps.gov/vama, http://www.parkplanning.nps.gov/rova*), and can also be obtained by calling 845.229.9116 extension x 10.

ADDRESSES: There are several ways to view the document, which will be publicly available on or about December 1, 2009:

- An electronic version of the document will be available for public review and comment on the National Park Service Planning, Environment and Public Comment (PEPC) Web site at *http://parkplanning.nps.gov/rova*.
- Copies of the document can be viewed at Bellefield, the Roosevelt-Vanderbilt headquarters, 4097 Albany Post Road, Hyde Park, NY, and at the Hyde Park Free Library, 2 Main Street, Hyde Park, NY.
- Copies of the document can be requested by contacting the park at 845.229.9116 extension 10.

If you wish to comment, you may submit your comments by any one of several methods. The preferred method of comment is via the Internet at *http://parkplanning.nps.gov/rova*. You may also mail written comments to Superintendent Sarah Olson, Roosevelt-Vanderbilt National Historic Sites, 4097 Albany Post Road, Hyde Park, NY 12538. You may also fax your comments to 845.229.7115. 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.

FOR FURTHER INFORMATION CONTACT: Superintendent, Roosevelt-Vanderbilt National Historic Sites, 4097 Albany Post Road, Hyde Park, NY 12538, Phone: 845.229.9116 ext. 33, *Sarah_Olson@nps.gov.*

SUPPLEMENTARY INFORMATION: Together the sites include over 1,100 acres of federally owned land, along with 40 historic buildings (including four furnished historic homes), 14 miles of roads and trails, 35 acres of forest plantations set out by FDR, five historic gardens, nearly 100 acres of open fields, and over 25,000 objects and artifacts. The parks are supported by an annual budget of over $5 million and the work of hundreds of volunteers and they attract more than half a million visitors every year.

Home of Franklin D. Roosevelt National Historic Site preserves and interprets the birthplace, lifelong home, and memorial gravesite of FDR, so that current and future generations can appreciate the life and legacy of the U.S. president who led the nation through the Great Depression and World War II.

Eleanor Roosevelt National Historic Site commemorates and perpetuates the life work of Eleanor Roosevelt, and preserves and interprets the place most central to her emergence as a public figure, so that current and future generations can appreciate her life and legacy as a champion of democracy and human rights.

Vanderbilt Mansion National Historic Site preserves and interprets the country estate of Frederick W. and Louise Vanderbilt as a premier example of an ''American country place,'' which illustrates important economic, social, and cultural developments resulting from America's industrialization following the Civil War.

The Draft GMP/EIS sets forth alternative visions (management alternatives) for the preservation and operation of Roosevelt-Vanderbilt National Historic Sites. This plan is the product of a process that integrates the aspirations of the public with the unique capabilities of the NPS to provide for the preservation and public enjoyment of the National Historic Sites over the next 20 years.

Michael T. Reynolds,

Acting Regional Director, Northeast Region, National Park Service.

[FR Doc. E9–30355 Filed 12–22–09; 8:45 am]

BILLING CODE P

NATIONAL INDIAN GAMING COMMISSION

Fee Rate

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given, pursuant to 25 CFR 514.1(a)(3), that the National Indian Gaming Commission has adopted final annual fee rates of 0.00% for tier 1 and 0.058% (.00058) for tier 2 for calendar year 2009. These rates shall apply to all assessable gross revenues from each gaming operation under the jurisdiction of the Commission. If a tribe has a certificate of self-regulation under 25 CFR part 518, the final fee rate on class II revenues for calendar year 2009 shall be one-half of the annual fee rate, which is 0.029% (.00029).

FOR FURTHER INFORMATION CONTACT: Chris White, National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005; telephone (202) 632–7003; fax (202) 632–7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA) established the National Indian Gaming Commission which is charged with, among other things, regulating gaming on Indian lands.

The regulations of the Commission (25 CFR part 514), as amended, provide for a system of fee assessment and payment that is self-administered by gaming operations. Pursuant to those regulations, the Commission is required to adopt and communicate assessment rates; the gaming operations are required to apply those rates to their revenues, compute the fees to be paid, report the revenues, and remit the fees to the Commission on a quarterly basis.

The regulations of the Commission and the final rate being adopted today are effective for calendar year 2009. Therefore, all gaming operations within the jurisdiction of the Commission are required to self administer the provisions of these regulations, and report and pay any fees that are due to the Commission by December 31, 2009.

December 17, 2009.

George Skibine,

Acting Chairman, National Indian Gaming Commission.

[FR Doc. E9–30466 Filed 12–22–09; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORS04000.L63320000.FV0000.241A.00 HAG 9–0043]

Notice of Intent To Collect Fees on Public Land in Marion County, OR Under the Federal Lands Recreation Enhancement Act

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: Pursuant to applicable provisions of the Federal Lands Recreation Enhancement Act (REA), 16 U.S.C. 6801 *et seq.,* the Bureau of Land Management's (BLM) Salem District Office is proposing to collect day-use fees beginning in the summer of 2010 at the Canyon Creek Recreation Site on the Little North Santiam River, in Marion County, Oregon (Township 9 S, Range 3 E, section 7).

DATES: The public is encouraged to participate during the public comment period that will expire 30 days after publication of this notice. Following 6 months after publication of this notice, the BLM Salem District Office will initiate fee collection for day-use at Canyon Creek Recreation Site, unless the BLM publishes a **Federal Register** notice to the contrary.

ADDRESSES: Mail: District Manager, Salem District Office, 1717 Fabry Road SE., Salem, Oregon 97306.

FOR FURTHER INFORMATION CONTACT: Aaron G. Horton, District Manager Salem District Office, 1717 Fabry Road, SE., Salem, Oregon 97306. (503) 375–5643.

SUPPLEMENTARY INFORMATION: Under section 3(g) of the REA, the Canyon Creek Recreation Site qualifies as a site wherein visitors can be charged a ''Standard Amenity Recreation Fee.'' Visitors wishing to use the day-use area the BLM has developed at Canyon Creek Recreation Site are required to purchase a recreation use permit as described at 43 CFR part 2930. Pursuant to the REA and implementing regulations at 43 CFR subpart 2933, fees may be charged for day-use facilities, overnight camping, and group-use reservations. Specific visitor fees are identified in the Canyon Creek Recreation Site Business Plan which is available on the BLM's Salem District Web site and at the Salem District Office. Fees must be paid at the self-service pay station located at the site. People holding any one of the America The Beautiful-The National Parks and Federal Recreational Lands-Passes (i.e., Interagency Passes) or Golden Passports may use these passes in lieu of the requirement to purchase a recreation use permit, providing those passes are visible from the windshield or the information contained on the alternate pass is written on a recreation use permit envelope stub and the pass is available upon request for verification of payment.

The Canyon Creek Recreation Site is a developed 21-unit day-use site located along the Little North Santiam River on the North Fork Road. The site is about 34 miles southeast of Salem, Oregon, and is accessible via Interstate I–5, Highway 22, and the North Fork Road. The BLM is committed to providing and receiving fair value for the use of developed recreation facilities and services in a manner that meets public use demands, provides quality experiences, and protects important resources. The BLM's policy is to collect fees at all specialized recreation sites and at all locations where the BLM provides facilities, equipment, or services, at Federal expense, in connection with outdoor use. In an effort to meet increasing demand for services and maintenance of developed facilities, the BLM will implement a day-use fee for the Canyon Creek Recreation Site. Day-use fees collected at the Canyon Creek Recreation Site will help ensure funding for the maintenance of existing facilities, and providing recreational opportunities, an on-site staffing presence, and resource protection. Future adjustments in the fee amount will be made in accordance with the Canyon Creek Recreation Site Business Plan, consultation with the RRAC, and through public notice and comment.

In December 2004, the REA was signed into law. The REA provides authority for the Secretaries of the Interior and Agriculture to establish, modify, charge, and collect recreation fees for use of some Federal recreation lands and waters. The REA contains specific provisions addressing public involvement in the establishment of recreation fees, including a requirement that RRACs have the opportunity to make recommendations regarding establishment of such fees. The REA also directs the Secretaries of the Interior and Agriculture to publish advance notice in the **Federal Register** whenever new recreation fee areas are established under their respective jurisdictions. The BLM has notified and involved the public at each stage of the planning process, including this Notice of Intent to Collect Fees and public notices during the summer of 2009. The RRAC reviewed the proposal to charge a fee at the Canyon Creek Recreation Site and recommended day-use fees be charged at Canyon Creek Recreation Site. Copies of the Business Plan are available at the Salem District Office, 1717 Fabry Road SE., Salem, Oregon 97306 and the BLM Oregon/Washington State Office, 333 SW 1st Avenue Portland, Oregon 97204.

The BLM welcomes public comments on this proposal to collect fees at Canyon Creek Recreation Site. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised 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 indentifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 16 U.S.C. 6803(b).

Aaron G. Horton,

District Manager, Salem District Office.

[FR Doc. E9–30517 Filed 12–22–09; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT924000–L54200000.FR0000.E0480000; MTM 99415]

Notice of Realty Action; Application for Recordable Disclaimer of Interest; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Gerald T. Archambeault, Attorney-at-Law, has filed an application with the Bureau of Land Management (BLM) for a Recordable Disclaimer of Interest on behalf of George and Roberta Budak pursuant to provisions in the Federal Land Policy and Management Act of 1976. A disclaimer, if issued, will confirm that the United States has no valid interest in the subject land.

DATES: Comments or objections should be received by January 22, 2010.

ADDRESSES: Comments or objections should be sent to Cindy Staszak, Chief, Branch of Land Resources, BLM Montana State Office, 5001 Southgate Drive, Billings, Montana 59101–4669.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, 5001 Southgate Drive, Billings, Montana 59101–4669, 406–896–5052.

SUPPLEMENTARY INFORMATION: On August 6, 2009, Gerald T. Archambeault, Attorney-at-Law, on behalf of George and Roberta Budak, filed an application for a Recordable Disclaimer of Interest pursuant to 43 U.S.C. 1745 for the land surveyed under Certificate of Filing 367416 Survey, File 5811, Plat 288A, records of Roosevelt County, Montana, described as follows:

Principal Meridian, Montana

T. 27 N., R. 49 E.,
Sec. 2, Tract Nos. 51 and 52;
Sec. 11, Tract Nos. 48, 49, and 50, and a portion of Tract No. 47;
Sec. 12, Portion of Tract No. 47;
Sec. 13, Portion of Tract No. 46;
Sec. 14, Portion of Tract No. 46.

The area described contains 146.65 acres, more or less, in Roosevelt County.

The above-described land is a portion of an abandoned channel of the Missouri River created by an avulsive action. The Missouri River has been

determined to be navigable. Therefore, under the Equal Footing Doctrine, it is the BLM's determination that the abandoned channel lying east of the surveyed medial line as shown on Certificate of Filing 367416 Survey, File 5811, Plat 288A, records of Roosevelt County, Montana, falls under the jurisdiction of the State of Montana and that the United States does not own any interest in the land. A Recordable Disclaimer of Interest may be issued if no objections are received.

On or before January 22, 2010, all persons who wish to submit comments, suggestions, or objections in connection with the proposed legislative withdrawal may present their views in writing to the BLM, Chief, Branch of Land Resources, at the above address.

Comments, including names and street addresses of respondents, will be available for public review at the BLM Montana State Office at the address above during regular business hours.

Individual respondents may request confidentiality. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised 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 from public review your personal identifying information, we cannot guarantee that we will be able to do so. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations of businesses, will be made available for public inspection in their entirety.

Cynthia Staszak,

Chief, Branch of Land Resources.

[FR Doc. E9–30518 Filed 12–22–09; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORB06000.L10200000]

Notice of Reestablishment of the Steens Mountain Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act of 1972, Public Law 92–463. Notice is hereby given that the Secretary of the Interior (Secretary) has renewed the Bureau of Land Management's Steens Mountain Advisory Council.

FOR FURTHER INFORMATION CONTACT: Allison Sandoval, Legislative Affairs and Correspondence (600), Bureau of Land Management, 1620 L Street, NW., MS–LS–401, Washington, DC 20036, telephone (202) 452–7704.

SUPPLEMENTARY INFORMATION: The purpose of the Council will be to advise the Secretary in managing and promoting cooperative management of the Steens Mountain Cooperative Management and Protection Area.

Certification Statement

I hereby certify that the renewal of the Steens Mountain Advisory Council is necessary and in the public interest in connection with the Secretary of the Interior's responsibilities to manage the lands, resources, and facilities administered by the Bureau of Land Management.

Dated: December 16, 2009.

Ken Salazar,

Secretary of the Interior.

[FR Doc. E9–30448 Filed 12–22–09; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORB00000–L10200000.DD0000; HAG 9–0357]

Notice To Solicit Nominations, Steens Mountain Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Solicitation of nominations.

SUMMARY: The Secretary is requesting nominations for five representatives for the Steens Mountain Advisory Council. The Council will advise the Secretary on planning in the Steens Mountain Cooperative Management and Protection Area through the Bureau of Land Management (BLM).

DATES: Submit nomination packages on or before January 22, 2010.

ADDRESSES: Send completed Advisory Council nominations to BLM Burns District Office, 28910 Highway 20 West, Hines, Oregon 97738–9424. Nomination forms are also available at the BLM Burns District Office.

FOR FURTHER INFORMATION CONTACT: Christi Courtemanche, Burns District BLM Office (541) 573–4541, or *christi_courtemanche@blm.gov.*

SUPPLEMENTARY INFORMATION: The Steens Mountain Advisory Council advises the BLM on implementing the Steens Mountain Cooperative Management and Protection Act (CMPA) of 2000, as described in Title 1, Subtitle D, of Public Law 106–399. The Bureau of Land Management is publishing this notice to request the public to submit nominations for membership on the Steens Mountain Advisory Council. Nomination forms may be obtained from the BLM Burns District Office. Nominees must be qualified through education, training, knowledge, or experience to give informed advice regarding an industry, discipline, or interest to be represented. Current Council members may submit an updated nomination application for reappointment. Any individual may nominate himself/herself or others to serve on the Council. All nomination applications should include letters of reference and/or recommendations from the represented interests or organizations, and any other information explaining the nominee's qualifications (e.g., resume, curriculum vitae). Nominations may be made for the following categories of interest:

- A private landowner in the CMPA, appointed from nominees submitted by the county court for Harney County;
- A person interested in fish and recreational fishing in the CMPA, appointed from nominees submitted by the Governor of Oregon;
- A member of the Burns Paiute Tribe, appointed from nominees submitted by the Burns Paiute Tribe;
- A person who is a recognized environmental representative, who shall represent the State as a whole, appointed from nominees submitted by the Governor of Oregon;
- A person who is a recreational permit holder or is a representative of a commercial recreation operation in the CMPA, appointed from nominees submitted jointly by the Oregon State Director of the BLM and the county court for Harney County, Oregon.

The specific category the nominee wishes to represent should be identified in the letter of nomination. The BLM Burns District will collect the nomination forms and letters of reference and distribute them to the officials responsible for submitting nominations (County Court of Harney County, the Governor of Oregon, the Burns Paiute Tribe and the BLM). The BLM will then forward recommended nominations to the Secretary of the

Interior, who has responsibility for making the appointments.

Members of the Steens Mountain Advisory Council are appointed for terms of three years. All positions will expire October 2012, except the vacated Burns Paiute Tribe position, which will end October 2010.

The Steens Mountain Advisory Council shall meet only at the call of the Designated Federal Official, but not less than once per year.

(Authority: Title I, Subtitle D of Pub. L. 106–399)

Edward W. Shepard,

State Director Oregon/Washington.

[FR Doc. E9–30519 Filed 12–22–09; 8:45 am]

BILLING CODE 4310–33–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–288]

Ethyl Alcohol for Fuel Use: Determination of the Base Quantity of Imports

AGENCY: United States International Trade Commission.

ACTION: Notice of determination.

SUMMARY: Section 423(c) of the Tax Reform Act of 1986, as amended (19 U.S.C. 2703 note), requires the United States International Trade Commission to determine annually the amount (expressed in gallons) that is equal to 7 percent of the U.S. domestic market for fuel ethyl alcohol during the 12-month period ending on the preceding September 30. This determination is to be used to establish the ''base quantity'' of imports of fuel ethyl alcohol with a zero percent local feedstock requirement that can be imported from U.S. insular possessions or CBERA-beneficiary countries. The base quantity to be used by U.S. Customs and Border Protection in the administration of the law is the greater of 60 million gallons or 7 percent of U.S. consumption, as determined by the Commission.

For the 12-month period ending September 30, 2009, the Commission has determined the level of U.S. consumption of fuel ethyl alcohol to be 10.57 billion gallons; 7 percent of this amount is 739.8 million gallons (these figures have been rounded). Therefore, the base quantity for 2010 should be 739.8 million gallons.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street, SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.usitc.gov/secretary/edis.htm.*

FURTHER INFORMATION: For information specific to this investigation, contact project leader Douglas Newman (202) 205–3328, *douglas.newman@usitc.gov,* in the Commission's Office of Industries. For information on legal aspects of the investigation contact William Gearhart, *william.gearhart@usitc.gov,* of the Commission's Office of the General Counsel at (202) 205–3091. The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: The Commission published its notice instituting this investigation in the **Federal Register** of March 21, 1990 (55 FR 10512), and published its most recent previous determination for the 2009 amount in the **Federal Register** of December 28, 2008 (73 FR 75770). The Commission uses official statistics of the U.S. Department of Energy to make these determinations, as well as the PIERS database of the Journal of Commerce, which is based on U.S. export declarations.

By order of the Commission.

Issued: December 18, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–30507 Filed 12–22–09; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–655]

In the Matter of Certain Cast Railway Wheels, Certain Processes for Manufacturing or Relating to Same and Certain Products Containing Same; Notice of Commission Determination Not To Review a Final Initial Determination Finding a Violation of Section 337; Request for Written Submissions Regarding Remedy, Bonding, and the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review a final initial determination (''ID'') of the presiding administrative law judge (''ALJ'') finding a violation of section 337 in the above-captioned investigation, and is requesting written submissions regarding remedy, bonding, and the public interest.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., telephone 202–708–2310, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on September 16, 2008, based on a complaint filed on August 14, 2008, by Amsted Industries Incorporated (''Amsted'') of Chicago, Illinois. 73 FR. 53441–53442 (Sept. 16, 2008). The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain cast steel railway wheels and certain products containing same by reason of misappropriation of

trade secrets, the threat or effect of which is to substantially injure an industry in the United States. The complaint named four respondents: Tianrui Group Company Limited of China; Tianrui Group Foundry Company Limited of China (collectively ''Tianrui''); Standard Car Truck Company (''SCT''), Inc. of Park Ridge, Illinois; and Barber Tianrui Railway Supply, LLC (''Barber'') of Park Ridge, Illinois.

On October 16, 2009, the ALJ issued his final ID finding a violation of section 337 by respondents. He also issued his recommendation on remedy and bonding during the period of Presidential review. On October 30, 2009, SCT and Barber (''SCT-Barber'') filed a joint petition for review of the final ID. Tianrui filed a petition for review and complainant Amsted filed a contingent petition for review on November 2, 2009. Amsted filed responses to SCT-Barber's and Tianrui's petitions on November 9 and 10, respectively, and SCT-Barber and Tianrui filed their responses on November 10. The Commission investigative attorneys filed responses to the three petitions on November 10. The Commission has determined not to review the subject ID.

In connection with the final disposition of this investigation, the Commission may issue an order that results in the exclusion of the subject articles from entry into the United States. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

When the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

When the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* section 337(j), 19 U.S.C. 1337(j) and the Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles are entitled to enter the United States under bond, in an amount determined by the Commission. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding, and such submissions should address the recommended determination by the ALJ on remedy and bonding. The complainant and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the HTSUS numbers under which the accused articles are imported. The written submissions and proposed remedial orders must be filed no later than close of business on December 29, 2009. Reply submissions must be filed no later than the close of business on January 6, 2010. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in sections 210.42–210.46 of the Commission's Rules of Practice and Procedure, 19 CFR 210.42–210.46.

By order of the Commission.

Issued: December 17, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–30509 Filed 12–22–09; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'')

Notice is hereby given that on December 11, 2009 a proposed Consent Decree in *United States* v. *United Technologies Corporation,* Civil Action No. 2:09-cv-2801–BBD-cgc, was lodged with the United States District Court for the Western District of Tennessee, Memphis Division.

In this action the United States sought judgment against defendant in favor of the United States for all previously un-reimbursed costs incurred by the United States in response to the release or threatened release of hazardous substances at Sixty One Industrial Park Superfund Site (the ''Site'') located at 5607 Highway 61 South in Memphis, Shelby County, Tennessee. Under the terms of the Consent Decree, United Technologies Corporation will undertake the remedial action selected by the United States Environmental Protection Agency for the Site. Further, the terms of the Consent Decree require United Technologies Corporation to reimburse the United States for past costs, all future oversight costs, plus interest, incurred or to be incurred in the future by the government in connection with the remedial action at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *United Technologies Corporation,* D.J. Ref. 90–11–2–09486.

The Consent Decree may be examined at the Office of the United States Attorney, Western District of Tennessee, 167 North Main Street, Suite 800, Memphis, TN 38103, and at U.S. EPA

Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree 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 $ 12.50 (25 cents per page reproduction cost)for a copy of the Consent Decree without appendices, or $43.00 (25 cents per page reproduction cost) for a copy of the Consent Decree including appendices, payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–30445 Filed 12–22–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Wage and Hour Division

Proposed Extension of the Approval of Information Collection Requirements

AGENCY: Wage and Hour Division, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95). 44 U.S.C. 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 requirements on respondents can be properly assessed. Currently, the Wage and Hour Division is soliciting comments concerning its proposal to extend the Office of Management and Budget (OMB) approval of the Information Collection: Fair Labor Standards Act General Recordkeeping and Employer Information Collections Related to Overtime and Youth Employment. A copy of the proposed information collection request can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before February 22, 2010.

ADDRESSES: You may submit comments, identified by Control Number 1215–0017, by either one of the following methods:

E-mail: WHDPRAComments@dol.gov.

Mail, Hand Delivery, Courier: Regulatory Analysis Branch, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210.

Instructions: Please submit one copy of your comments by only one method. All submissions received must include the agency name and Control Number identified above for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via e-mail or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for Office of Management and Budget approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Michel Smyth, Chief, Regulatory Analysis Branch, Division of Interpretations and Regulatory Analysis, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape or Disc), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TDD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. *Background:* The Fair Labor Standards Act (FLSA), 29 U.S.C. 201, *et seq.,* sets the Federal minimum wage, overtime pay, recordkeeping, and youth employment standards of most general application. *See* 29 U.S.C. 206; 207; 211; 212. FLSA requirements apply to employers of employees engaged in interstate commerce or in the production of goods for interstate commerce and of employees in certain enterprises, including employees of a public agency; however, the FLSA contains exemptions that apply to employees in certain types of employment. *See* 29 U.S.C. 213, *et al.*

FLSA section 11(c) requires all employers covered by the FLSA to make, keep, and preserve records of employees and of wages, hours, and other conditions and practices of employment. *See* 29 U.S.C. 211(c). A FLSA covered employer must maintain the records for such period of time and make such reports as prescribed by regulations issued by the Secretary of Labor. *Id.*

The DOL has promulgated regulations 29 CFR part 516 to establish the basic FLSA recordkeeping requirements. The DOL has also issued specific sections of regulations 29 CFR parts 505, 519, 520, 525, 530, 547, 548, 549, 551, 552, 553, 570, 575, and 794 to supplement the part 516 requirements and to provide for the creation and maintenance of records relating to various FLSA exemptions and special provisions.

The Wage and Hour Division (WHD) uses this information to determine whether covered employers have complied with various FLSA requirements. Employers use the records to document FLSA compliance, including showing qualification for various FLSA exemptions.

The WHD intends to seek approval to merge several currently approved information collection control numbers related to various FLSA recordkeeping requirements into this collection. This merger will allow the agency to improve its management of FLSA information collection requirements, and this transition will be seamless for respondents. While characterized as a revision, because of the proposal to merge information collection control numbers, this notice proposes no changes to the substantive information collection requirements. The affected OMB control numbers are shown at the end of this notice.

II. *Review Focus:* The DOL is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. *Current Actions:* The DOL seeks the approval of the extension of the subject information collection requirements in order to carry out the angency's enforcement responsibilities.

Type of Review: Revision and Extension.

Agency: Wage and Hour Division.

Titles: Fair Labor Standards Act General Recordkeeping and Employer Information Collections Related to Overtime and Youth Employment.

OMB Numbers: 1215–0017, 1215–0083, 1215–0119, 1215–0120, 1215–0121, 1215–0175.

Agency Numbers: Form WH–14.

Affected Public: Businesses or other for-profits, farms, not-for-profit institutions; State, local, and Tribal governments.

Respondents: 3,486,025.

Total Annual Responses: 39,462,547.

Estimated Total Burden Hours: 853,924.

Estimated Time per Response: 6 minutes.

Frequency: On Occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Dated: December 16, 2009.

Michel Smyth,

Regulatory Analysis Branch Chief.

[FR Doc. E9–30433 Filed 12–22–09; 8:45 am]

BILLING CODE 4510–27–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Site visit review of the Materials Research Science and Engineering Center (MRSEC) at New York University by NSF Division of Materials Research (DMR) #1203.

Date & Time: Friday, January 29, 2010; 8 a.m.–4 p.m.

Place: New York University, New York, NY.

Type of Meeting: Part-open.

Contact Person: Dr. Thomas P. Rieker, Program Director, Materials Research Science and Engineering Centers Program, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–4914.

Purpose of Meeting: To provide advice and recommendations concerning progress of the MRSEC at New York University.

Agenda

Friday, January 29, 2010

8 a.m.–2 p.m. Open—Review of New York Univ MRSEC.

2 p.m.–4 p.m. Closed—Executive Session.

Reason for Closing: The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: December 18, 2009.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E9–30467 Filed 12–22–09; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Call for Nominations

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Call for nominations.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is advertising for nominations for the diagnostic radiologist position on the Advisory Committee on the Medical Uses of Isotopes (ACMUI). Nominees should currently be practicing diagnostic radiology in a clinical setting.

DATES: Nominations are due on or before February 22, 2010.

Nomination Process: Submit an electronic copy of resume or curriculum vitae, along with a cover letter, to Ms. Ashley Cockerham, *ashley.cockerham@nrc.gov.* The cover letter should describe the nominee's current duties and responsibilities and express the nominee's interest in the position. Please ensure that resume or curriculum vitae includes the following information, if applicable: Education; certification; professional association membership and committee membership activities; duties and responsibilities in current and previous clinical, research, and/or academic position(s).

FOR FURTHER INFORMATION CONTACT: Ms. Ashley Cockerham, U.S. Nuclear Regulatory Commission, Office of Federal and State Materials and Environmental Management Programs; (240) 888–7129; *ashley.cockerham@nrc.gov.*

SUPPLEMENTARY INFORMATION: The ACMUI diagnostic radiologist provides advice to NRC staff on issues associated with the regulation of diagnostic applications of byproduct material. This advice includes providing input on NRC proposed rules and guidance documents; providing recommendations on the training and experience requirements for physicians specializing in diagnostic radiology and nuclear medicine; evaluating non-routine medical uses of byproduct material; bringing key issues in the diagnostic radiology community to the attention of NRC staff; and other diagnostic radiology issues as they relate to radiation safety and NRC medical-use policy.

ACMUI members are selected based on their educational background, certification(s), work experience, involvement and/or leadership in professional society activities, and other information obtained in nomination letters or during the selection process. ACMUI members currently serve a four-year term and may be considered for reappointment to an additional term. The current membership is comprised of the following professionals: (a) Nuclear medicine physician; (b) nuclear cardiologist; (c) nuclear medicine physicist; (d) therapy medical physicist; (e) radiation safety officer; (f) nuclear pharmacist; (g) two radiation oncologists; (h) patients' rights advocate; (i) Food and Drug Administration representative; (j) Agreement State representative; (k) health care administrator; and (l) diagnostic radiologist. For additional information about membership on the ACMUI, visit the ACMUI Membership Web page, *http://www.nrc.gov/about-nrc/regulatory/advisory/acmui/membership.html.*

Nominees must be U.S. citizens and be able to devote approximately 160 hours per year to Committee business. Members are expected to attend semi-annual meetings in Rockville, Maryland and to participate in teleconferences, as needed. Members who are not Federal employees are compensated for their service. In addition, these members are reimbursed for travel and correspondence expenses. Full-time Federal employees are reimbursed travel expenses only.

Security Background Check: The selected nominee will undergo a thorough security background check. Security paperwork may take the nominee several weeks to complete. Nominees will also be required to complete a financial disclosure statement to avoid conflicts of interest.

Dated at Rockville, Maryland, this 17th day of December 2009.

For the U.S. Nuclear Regulatory Commission.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E9–30497 Filed 12–22–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–395; NRC–2009–0566]

South Carolina Electric and Gas Company, Virgil C. Summer Nuclear Station, Unit 1; Exemption

1.0 Background

The South Carolina Electric and Gas Company (the licensee) is the holder of Facility Operating License No. NPF–12 which authorizes operation of the Virgil C. Summer Nuclear Station, Unit 1. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect. The facility consists of a pressurized-water reactor located in Fairfield County in South Carolina.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR), Part 50, Appendix E, Section IV.F.2.b requires that ''Each licensee at each site shall conduct an exercise of its onsite emergency plan every 2 years. * * *'' By letters dated October 15, and November 3, 2009, the licensee requested a one-time exemption from this requirement that would allow postponing the onsite portion of the biennial emergency preparedness exercise from October 2009 until April 2010.

The licensee states that it has made a good faith effort to comply with the regulation in that the biennial exercise was previously scheduled to be performed on October 7, 2009. The licensee further states, ''However, a plant trip occurred on October 2, 2009 due to failure of the main generator output breaker. The plant trip required redirection of station resources to respond to the forced outage and to perform recovery activities. Since the recovery efforts were a major distraction, the decision was made to postpone the exercise.'' The licensee states that it did participate in the offsite portion of the exercise on October 7, 2009, with Federal, state and local authorities. Therefore, since the scenario for the exercise is known to the licensee emergency response organization (ERO) team members designated for the offsite portion of the exercise, the scenario will require modification for the forthcoming onsite portion of the exercise and a new ERO team will need to be selected to participate in the onsite portion of the biennial exercise.

In summary, as a result of the impact of the combined need to repair the generator output breaker, an ongoing extensive refueling outage, the associated unavailability of key station personnel and the need to perform activities to support the onsite portion of the exercise, the licensee requests an exemption that would allow rescheduling the onsite portion of the exercise from the year 2009 until April 2010.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, Appendix E, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present.

Authorized by Law

This exemption would allow the licensee to accommodate these impacts upon its resources by postponing the onsite portion of the exercise from the previously scheduled date of October 2009 until April 2010.

As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR Part 50, Appendix E. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

The underlying purpose of 10 CFR 50, Appendix E, Section IV.F.2.b requiring licensees to conduct a biennial exercise is to ensure that ERO personnel are familiar with their duties and to test the adequacy of emergency plans. In addition, 10 CFR 50, Appendix E, Section IV.F.2.b also requires licensees to maintain adequate emergency response capabilities during the intervals between biennial exercises by conducting drills to exercise the principal functional areas of emergency response. In order to accommodate the scheduling of full participation exercises, the NRC has allowed licensees to schedule the exercises at any time during the calendar biennium. Conducting the VCSNS full-participation exercise in calendar year 2010 places the exercise past the previously scheduled biennial calendar year of 2009. Since the last biennial exercise on October 2, 2007, the licensee has conducted nine full-Station participation training drills to exercise these principal functional areas, including an after-hours augmentation drill. In addition, at the request of the Federal Emergency Management Agency (FEMA), the licensee supported the State and local authorities with the offsite portion of the biennial exercise on October 7, 2009, thereby facilitating the FEMA evaluation of the State and local authorities. The NRC staff considers the intent of this requirement is met by having conducted these series of training drills.

Based on the above, no new accident precursors are created by allowing the licensee to postpone the onsite portion of the exercise from the previously scheduled date of October 2009 until April 2010. Thus, the probability and consequences of postulated accidents are not increased. Therefore, there is no undue risk to public health and safety.

Consistent With Common Defense and Security

The proposed exemption would allow rescheduling of the onsite portion of the biennial emergency planning exercise from the previously scheduled date of October 2009 until April 2010. This change to the emergency planning exercise schedule has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

Special Circumstances

For regulations that require special circumstances for exemptions in accordance with 10 CFR 50.12, special circumstances are present whenever application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR 50, Appendix E, Section IV.F.2.b requiring licensees to conduct a biennial exercise is to ensure that ERO personnel are familiar with their duties and to test the adequacy of

emergency plans. As a result of the licensee participating in the offsite portion of the exercise performed on October 7, 2009, the exercise scenario would be compromised with respect to having the licensee's ERO subsequently conduct the onsite exercise in accordance with that scenario. Thus, to ensure exercise integrity, the scenario will require modification and a new ERO will be selected to participate in the onsite portion of the biennial exercise. The licensee states that with the station currently in a refueling outage, key personnel are not available to complete the scenario modification activities and conduct the exercise prior to the end of calendar year 2009. Section IV.F.2.b of 10 CFR Part 50, Appendix E requires licensees at each site to conduct an exercise of onsite emergency plans biennially with full-participation by each offsite authority having a role under the plan. Since the licensee has conducted nine full-Station participation training drills and supported the FEMA evaluation of the State and local authorities, the NRC staff considers that these measures are adequate to maintain an acceptable level of emergency preparedness during this period, satisfying the underlying purpose of the rule. Therefore, since the underlying purpose of 10 CFR 50, Appendix E, Section IV.F.2.b is achieved, the special circumstances required by 10 CFR 50.12 for the granting of an exemption exist.

Under 10 CFR 50.12(a)(2)(v), special circumstances are also present whenever the exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation. The NRC staff finds that the licensee has made good faith efforts to comply with the emergency planning regulations in that it had previously scheduled the onsite portion of the exercise for October 2009 and it had also implemented other emergency planning requirements by conducting the series of onsite drills and the offsite portion of the exercise, as discussed above.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission, hereby grants South Carolina Electric and Gas Company an exemption from the requirements of 10 CFR Part 50, Appendix E, Section IV.F.2.b to conduct the onsite portion of the biennial emergency planning exercise required for 2009, to permit that part of the exercise to be conducted by April 30, 2010 for the Virgil C. Summer Nuclear Station, Unit 1.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (74 FR 66697).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 17th day of December 2009.

For the Nuclear Regulatory Commission.

Joseph. G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–30482 Filed 12–22–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0565]

License Renewal Interim Staff Guidance LR–ISG–2007–02: Changes to Generic Aging Lessons Learned Report Aging Management Program XI.E6, Electrical Cable Connections Not Subject to 10 CFR 50.49 Environmental Qualification Requirements''; Notice of Availability

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of availability.

SUMMARY: The NRC is issuing the final License Renewal Interim Staff Guidance (LR–ISG), LR–ISG–2007–02, ''Changes to Generic Aging Lessons Learned (GALL) Report Aging Management Program (AMP) XI.E6, ''Electrical Cable Connections Not Subject to 10 CFR 50.49 Environmental Qualification Requirements.'' LR–ISG–2007–02 revises current NRC guidance in Section XI.E6 of NUREG–1801, Revision 1, ''Generic Aging Lessons Learned (GALL) Report,'' Volume 2, dated September 2005 (GALL Report). Volume 2 of the GALL Report is available in the NRC's Agencywide Documents Access and Management System (ADAMS) under Accession No. ML052780376. The revised GALL Report Section XI.E6 recommends an AMP with a one-time inspection for electrical cable connections not subject to 10 CFR 50.49 environmental qualification requirements, instead of the periodic inspection as currently recommended in the GALL Report. The NRC staff has determined that a one-time inspection, on a representative sample basis, is adequate to ensure that either aging of metallic cable connections is not occurring and/or that an existing preventive maintenance program is effective such that a periodic inspection is not required. The final LR–ISG–2007–02 is available under Accession No. ML091940093.

FOR FURTHER INFORMATION CONTACT: Mr. Matthew Homiack, Division of License Renewal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–1683; or e-mail *Matthew.Homiack@nrc.gov.*

ADDRESSES: Documents created or received after November 1, 1999, are available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* From this site, the public can gain entry into ADAMS. If you do not have access to the Internet or if there are any problems in accessing the documents located in ADAMS, contact the NRC Public Document Room reference staff at 1–800–397–4209, 301–415–4737, or by e-mail at *PDR.Resource@nrc.gov.*

The NRC posts LR–ISGs on its public web page under the ''License Renewal'' heading at *http://www.nrc.gov/reading-rm/doc-collections/isg.*

SUPPLEMENTARY INFORMATION:

Background

The NRC issues LR–ISGs to communicate insights and lessons learned and to address emergent issues that are not addressed in the guidance documents NRC published to facilitate implementation of Part 54, ''Requirements for Renewal of Operating Licenses for Nuclear Power Plants,'' of Title 10 of the Code of Federal Regulations (10 CFR Part 54). The NRC staff and stakeholders use LR–ISGs until their guidance is incorporated into a formal license renewal guidance document revision.

By letter dated September 5, 2006 (ML062770105), the Nuclear Energy Institute (NEI) submitted a white paper to the NRC regarding GALL AMP XI.E6 (ML062770111). NEI expressed several concerns regarding the AMP and asked that the NRC staff consider the position in the white paper in order to eliminate GALL AMP XI.E6 or minimize its scope and redundancy. On November 30, 2006, the NRC staff met with NEI representatives to discuss the white paper, as documented in ''Summary of the License Renewal Meeting between the U.S. Nuclear Regulatory Commission Staff and the Nuclear Energy Institute Regarding Generic

Aging Lessons Learned Aging Management Program XI.E6,'' dated January 26, 2007 (ML063600004). In a letter dated March 16, 2007 (ML070400349), the NRC staff responded to each of the concerns identified in NEI's white paper. By letter dated May 25, 2007 (ML071590175 and ML071590182), NEI submitted comments on the staff's responses.

After reviewing NEI's white paper and comments, the NRC staff determined that current operating experience does not support the periodic inspections as recommended in GALL AMP XI.E6. Instead, the staff determined that a one-time inspection of the metallic portion of electrical cable connections is warranted due to the limited number of age-related failures of cable connections.

The NRC staff developed LR–ISG–2007–02 to revise GALL AMP XI.E6. On September 6, 2007, the NRC requested public comments on the proposed LR–ISG–2007–02 in the **Federal Register** (72 FR 51256). The NRC issued the proposed LR–ISG to clarify and recommend a one-time inspection to ensure that either aging of metallic cable connections is not occurring or that an existing preventive maintenance program is effective, such that a periodic inspection program is not needed.

The public comment period ended on October 22, 2007. The NRC received comments from the NEI by letter dated October 18, 2007 (ML072960480). No other comments were received. The NRC staff has considered NEI's comments in developing the final LR–ISG–2007–02, as discussed in the ''Comments and Responses'' section of this notice.

Final Action

By this action, the NRC is making the final LR–ISG–2007–02 available. The NRC staff approves of this LR–ISG for NRC staff and industry use. The NRC staff will also incorporate the approved LR–ISG into the next revision of the GALL Report.

The final LR–ISG–2007–02 revises GALL AMP XI.E6. As revised, the AMP recommends a one-time inspection for electrical cable connections not subject to 10 CFR 50.49 environmental qualification requirements instead of the periodic inspection as currently recommended in GALL AMP XI.E6. The NRC staff has determined that one-time inspection, on a representative sample basis, is adequate to ensure that either aging of metallic cable connections is not occurring and/or that an existing preventive maintenance program is effective such that a periodic inspection program is not required. Additional details on the staff's position and rationale for revising GALL AMP XI.E6 are in the final LR–ISG–2007–02.

Comments and Responses

The NEI comments, in general, indicated that the revised GALL AMP XI.E6 should provide options, where appropriate, for the use of visual inspection to detect aging effects on covered connections. NEI stated that, while the proposed LR–ISG would permit testing of components without removing insulation, frequent testing cannot be performed on covered connections with the insulation in-place. Visual inspection is used in the industry for detecting loose connections and is preferable to potentially damaging sound connections while removing the insulation to perform testing. NEI further stated that including an option to perform visual inspections to detect aging effects for covered connections reduces the likelihood of damaging components and is an effective and practical alternative to testing.

In response, the NRC staff has determined that resistance measurement or thermography is the preferred method for testing loose cable connections. However, if resistance measurement cannot be performed with the insulation in place, and for reasons of personnel safety, energized equipment cannot be accessed to perform thermography, then visual inspection is an acceptable alternative inspection method for cable connections covered with insulation material. The staff has previously permitted visual inspection for covered bus connections in GALL AMP XI.E4, ''Metal Enclosed Bus.'' If visual inspection is chosen as an alternative to thermography or resistance measurement of cable connections covered with insulating materials (heat shrink tapes, sleeving, insulation boots, etc.), then a one-time inspection cannot be used and periodic visual inspections must be performed. Periodic visual inspections can effectively detect loosening of cable connections by inspecting insulation materials for discoloration, cracking, chipping, or surface contamination. This NRC staff position is reflected in the final LR–ISG–2007–02.

NEI also provided comments in the form of a mark-up to the proposed GALL AMP XI.E6 revision. The NRC staff has incorporated these comments in the final LR–ISG as appropriate.

Dated at Rockville, Maryland, this 15th day of December 2009.

For the Nuclear Regulatory Commission.

Brian E. Holian,

Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E9–30483 Filed 12–22–09; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Regulation R, Rule 701; SEC File No. 270–562; OMB Control No. 3235–0624.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Regulation R, Rule 701 (17 CFR 247.701) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Regulation R, Rule 701 requires a broker or dealer (as part of a written agreement between the bank and the broker or dealer) to notify the bank if the broker or dealer makes certain determinations regarding the financial status of the customer, a bank employee's statutory disqualification status, and compliance with suitability or sophistication standards.

The Commission estimates that brokers or dealers would, on average, notify 1,000 banks approximately two times annually about a determination regarding a customer's high net worth or institutional status or suitability or sophistication standing as well as a bank employee's statutory disqualification status. Based on these estimates, the Commission anticipates that Regulation R, Rule 701 would result in brokers or dealers making approximately 2,000 notices to banks per year. The Commission further estimates (based on the level of difficulty and complexity of the applicable activities) that a broker or dealer would spend approximately 15 minutes per notice to a bank. Therefore, the estimated total annual reporting and recordkeeping burden for the

requirements in Regulation R, Rule 701 are 500 [1] hours for brokers or dealers.

Written comments are invited on: (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 estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed to Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

December 16, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30431 Filed 12–22–09; 8:45 am]

BILLING CODE 8011–01–P

[1] (2000 notices × 15 minutes) = 30,000 minutes/60 minutes = 500 hours.

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 30e–1; SEC File No. 270–21; OMB Control No. 3235–0025.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

The title for the collection of information is: Rule 30e–1 (CFR 270.30e–1) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) Reports to Stockholders of Management Companies. Section 30(e) (15 U.S.C. 80a–29(e)) of the Investment Company Act of 1940 (''Investment Company Act'') requires a registered investment company (''fund'') to transmit to its shareholders, at least semi-annually, reports containing financial statements and other financial information as the Commission may prescribe by rules and regulations. In addition, Section 30(f) permits the Commission to require by rule that semi-annual reports include such other information as the Commission deems necessary or appropriate in the public interest or for the protection of investors. Rule 30e–1 generally requires a fund to transmit to its shareholders, at least semi-annually, reports containing the information that is required to be included in such reports by the fund's registration statement form under the Investment Company Act. Failure to require the collection of this information would seriously impede the amount of current information available to shareholders and the public about funds and would prevent the Commission from implementing the regulatory program required by statute. Approximately 2,800 funds, with a total of approximately 10,460 portfolios, respond to rule 30e–1 annually. The proposed frequency of response is semi-annual. The estimate of the total annual reporting burden of the collection of information is approximately 114.2 hours per portfolio, and the total estimated annual burden for the industry is 1,194,532 hours (114.2 hours × 10,460 portfolios). Providing the information required by rule 30e–1 is mandatory. Responses will not be kept confidential. Estimates of the burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

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.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to Shagufta Ahmed at *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

December 16, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30432 Filed 12–22–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form N–5; SEC File No. 270–172; OMB Control No. 3235–0169.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Form N–5 (17 CFR 239.24 and 274.5)—Registration Statement of Small Business Investment Companies Under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) and the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*). Form N–5 is the integrated registration statement form adopted by the Commission for use by a small business investment company which has been licensed as such under the Small Business Investment Act of 1958 and has been notified by the Small Business Administration that the company may submit a license application, to register its securities under the Securities Act of 1933 (''Securities Act''), and to register as an investment company under section 8 of the Investment Company Act of 1940 (''Investment Company Act''). The purpose of registration under the Securities Act is to ensure that investors are provided with material information concerning securities offered for public sale that will permit investors to make informed decisions regarding such securities. The Commission staff reviews the registration statements for the adequacy and accuracy of the disclosure contained therein. Without Form N–5, the Commission would be unable to carry out the requirements to the Securities Act and Investment Company Act for registration of small business investment companies. The respondents to the collection of information are small business investment companies seeking to register under the Investment

Company Act and to register their securities for sale to the public under the Securities Act. The estimated number of respondents is one and the proposed frequency of response is annually. The estimate of the total annual reporting burden of the collection of information is approximately 352 hours per respondent, for a total annual burden of 352 hours. Providing the information on Form N–5 is mandatory. Responses will not be kept confidential. Estimates of the burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms. 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.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to Shagufta Ahmed at *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: December 16, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30430 Filed 12–22–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–29093; File No. 812–13728]

Investools Inc., *et al.;* Notice of Application and Temporary Order

December 16, 2009.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 (''Act'').

SUMMARY OF APPLICATION: Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against Investools Inc. (''Investools'') on December 16, 2009 by the United States District Court for the District of Columbia (the ''Injunction''), until the Commission takes final action on an application for a permanent order. Applicants also have applied for a permanent order.

APPLICANTS: Investools, Amerivest Investment Management, LLC (''Amerivest''), and TDAM USA Inc. (''TDAM USA'') (collectively, other than Investools, the ''Fund Servicing Applicants,'' and together with Investools, the ''Applicants'').[1]

FILING DATE: The application was filed on December 11, 2009, and amended on December 11, 2009 and December 16, 2009.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 11, 2010, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants: Investools, 13947 S. Minuteman Dr., Draper, UT 84020; Amerivest, 1005 North Ameritrade Place, Bellevue, NE 68005; and TDAM USA, 161 Bay Street, 35th Floor, TD Canada Trust Tower, Toronto, Ontario, Canada M5J 2T2.

FOR FURTHER INFORMATION CONTACT: Steven I. Amchan, Senior Counsel, at (202) 551–6826, or Jennifer L. Sawin, Branch Chief, at (202) 551–6821, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a temporary order and a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. Investools and Amerivest are indirect, wholly-owned subsidiaries of TD AMERITRADE Holding Corporation (''TD Ameritrade Holding''). The Toronto-Dominion Bank (''TD Bank'') owns approximately 45% of the outstanding common stock of TD Ameritrade Holding. TDAM USA is a direct, wholly-owned subsidiary of TD Bank. Investools was acquired by TD Ameritrade Holding in June 2009 as part of TD Ameritrade Holding's acquisition of thinkorswim Group, Inc. Investools does not provide, and no existing company of which Investools is an affiliated person (other than the Fund Servicing Applicants) currently provides, Fund Service Activities to any registered investment company.[2]

2. The Fund Servicing Applicants are registered as investment advisers under the Investment Advisers Act of 1940 and provide investment advisory or sub-advisory services to Funds.

3. On December 16, 2009, the United States District Court for the District of Columbia entered a judgment against Investools (''Judgment'') in a matter brought by the Commission.[3] The Commission alleged in the complaint (''Complaint'') that Defendants Michael J. Drew (''Drew'') and Eben D. Miller (''Miller''), employees of Investools, committed fraud during sales presentations at workshops held by Investools. The Complaint also alleged that while Investools had compliance policies requiring speakers to have proof of the validity of success claims, it did not require Drew, Miller, or other speakers to provide it with substantiating documentation after learning they were claiming that their securities trading was tremendously profitable. The Complaint alleges that Investools is liable as a controlling person under section 20(a) of the Securities Exchange Act of 1934 (''Exchange Act'') for violations by its speakers of section 10(b) of the Exchange Act and rule 10b–5

[1] Applicants request that any relief granted pursuant to the application also apply to any other company of which Investools is or hereafter may become an affiliated person within the meaning of section 2(a)(3) of the Act (together with the Applicants, the ''Covered Persons'').

[2] ''Fund Service Activities'' refers to serving or acting in the capacity of employee, officer, director, member of an advisory board, investment adviser, or depositor of any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face-amount certificate company. Any registered investment company to which a Covered Person provides Fund Service Activities is a ''Fund.''

[3] *Securities and Exchange Commission* v. *Investools Inc., Michael J. Drew and Eben D. Miller,* Final Judgment as to Defendant Investools Inc., 09 Civ. 02343 (D.D.C. December 16, 2009).

thereunder. Without admitting or denying the allegations in the Complaint, except as to jurisdiction, Investools consented to the entry of the Judgment that included, among other things, the entry of the Injunction.

Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from, among other things, engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered unit investment trust or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any ''affiliated person'' of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines ''affiliated person'' to include, among others, any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that Investools is an affiliated person of each of the Fund Servicing Applicants within the meaning of section 2(a)(3) of the Act. Applicants state that the entry of the Injunction results in Applicants being subject to the disqualification provisions of section 9(a) of the Act.

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) of the Act if it is established that these provisions, as applied to the Applicants, are unduly or disproportionately severe or that the Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the exemption. Applicants have filed an application pursuant to section 9(c) seeking a temporary and permanent order exempting them and Covered Persons from the disqualification provisions of section 9(a) of the Act.

3. Applicants believe they meet the standards for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of the Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that the alleged conduct giving rise to the Injunction did not involve any of the Applicants providing Fund Service Activities to any registered investment company and that the alleged conduct occurred prior to TD Ameritrade Holding's acquisition of thinkorswim Group, Inc. when the Fund Servicing Applicants were not affiliated persons of Investools. Applicants also state that none of the current or former directors, officers, or employees of the Fund Servicing Applicants had any knowledge of, or participation in, the violative conduct alleged in the Complaint. Applicants further state that the personnel at Investools who were involved in the violations alleged in the Complaint have had no, and will not have any future, involvement in providing Fund Service Activities to Funds.

5. Applicants state that the inability of the Fund Servicing Applicants to continue to serve as investment adviser or sub-adviser to the Funds would result in potential hardship for the Funds and their shareholders. Applicants will distribute to the boards of directors of the Funds (''Boards''), as soon as reasonably practicable and to the extent not already completed, written materials regarding the Judgment, any impact on the Funds, and the application. These materials will include an offer to meet in person to discuss the materials with each Board, including the directors who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Fund, and their independent legal counsel as defined in rule 0–1(a)(6) under the Act, if any. Applicants state they will provide each Board with all information concerning the Judgment and the application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. Applicants also state that, if the Fund Servicing Applicants were barred from providing investment advisory services to the Funds, the effect on their businesses and employees would be severe. Applicants state that the Fund Servicing Applicants have committed substantial capital and other resources to establish an expertise in advising and sub-advising Funds. Applicants further state that prohibiting the Applicants from engaging in Fund Service Activities would not only adversely affect their businesses, but would also adversely affect approximately 52 employees who are actively involved in those activities.

7. Applicants previously have received exemptions under section 9(c) as the result of conduct that triggered section 9(a) as described in greater detail in the application.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including, without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

It is hereby ordered, pursuant to section 9(c) of the Act, that Applicants and any other Covered Persons are granted a temporary exemption from the provisions of section 9(a), solely with respect to the Injunction, subject to the condition in the application, from December 16, 2009, until the Commission takes final action on their application for a permanent order.

By the Commission.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30428 Filed 12–22–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29094; File No. 812–13678]

Cash Account Trust, *et al.;* Notice of Application

December 16, 2009.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f-2 under the Act, as well as from certain disclosure requirements.

SUMMARY OF APPLICATION: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval and would grant relief from certain disclosure requirements.

APPLICANTS: Cash Account Trust, Cash Management Portfolio, Cash Reserve

Fund, Inc., DWS Advisor Funds, DWS Balanced Fund, DWS Blue Chip Fund, DWS Communications Fund, Inc., DWS Equity Trust, DWS Equity 500 Index Portfolio, DWS Global/International Fund, Inc., DWS High Income Series, DWS Income Trust, DWS Institutional Funds, DWS International Fund, Inc., DWS Investment Trust, DWS Investments VIT Funds, DWS Money Funds, DWS Money Market Trust, DWS Municipal Trust, DWS Mutual Funds, Inc., DWS Portfolio Trust, DWS Securities Trust, DWS State Tax-Free Income Series, DWS State Tax Free Trust, DWS Strategic Government Securities Fund, DWS Strategic Income Fund, DWS Target Date Series, DWS Target Fund, DWS Tax Free Trust, DWS Technology Fund, DWS Value Equity Trust, DWS Value Series, Inc., DWS Variable Series I, DWS Variable Series II, Investors Cash Trust, Tax-Exempt California Money Market Fund (each a ''DWS Investment Company'' and collectively, the ''DWS Investment Companies''), and Deutsche Investment Management Americas Inc. (''Advisor'' and collectively, ''Applicants'').

FILING DATES: The application was filed on July 30, 2009, and amended on December 10, 2009 and December 16, 2009.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 11, 2010 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, One Beacon Street, 14th Floor, Boston, Massachusetts 02108.

FOR FURTHER INFORMATION CONTACT: Barbara T. Heussler, Senior Attorney, at (202) 551–6990, or Jennifer L. Sawin, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. Each DWS Investment Company is organized as a Massachusetts business trust, a New York trust, or a Maryland corporation and is registered with the Commission as an open-end management investment company under the Act. Each DWS Investment Company may offer one or more series of shares (each a ''Series'' and collectively, ''Series'') [1] with its own distinct investment objectives, policies and restrictions. The Advisor, a Delaware corporation, is an investment adviser registered under the Investment Advisers Act of 1940, as amended (''Advisers Act''). The Advisor is an indirect, wholly owned subsidiary of Deutsche Bank AG (''Deutsche Bank''). Deutsche Bank is a major global financial institution that is engaged in a wide range of financial services, including investment management, mutual funds, retail, private and commercial banking, investment banking and insurance. The Advisor serves as investment adviser to each Series pursuant to an investment advisory agreement with the applicable DWS Investment Company (each, an ''Investment Management Agreement''). Each Investment Management Agreement was initially approved by the board of directors of the applicable DWS Investment Company (each, a ''Board''), including a majority of those directors who are not ''interested persons'' of the Series or the Advisor as defined in section 2(a)(19) of the Act (''Independent Board Members'') and by the shareholders of relevant Series in the manner required by sections 15(a) and 15(c) of the Act and rule 18f-2 thereunder.[2]

2. Under the terms of each Investment Management Agreement, the Advisor, subject to the oversight of the relevant Board, provides continuous investment management of the assets of each Series. The Advisor periodically reviews each Series' investment policies and strategies and based on the need of a particular Series may recommend changes to the investment policies and strategies of the Series for consideration by its Board. For its services to each Series, the Advisor receives an investment management fee from that Series as specified in the applicable Investment Management Agreement based on either the average net assets of that Series or that Series' investment performance over a particular period compared to a benchmark. The terms of each Investment Management Agreement permit the Advisor, subject to the approval of the relevant Board, including a majority of the Independent Board Members, and the shareholders of the applicable Series (if required by applicable law), to delegate portfolio management responsibilities of all or a portion of the assets of the Series to one or more subadvisers (''Sub-Advisors''). The Advisor has entered into sub-advisory agreements (''Sub-Advisory Agreements'') with Sub-Advisors to provide investment management services to various Series.[3] The Advisor may also, in the future, enter into Sub-Advisory Agreements on behalf of other Series. Each Sub-Advisor is, and any future Sub-Advisor will be, an investment adviser as defined in section 2(a)(20) of the Act as well as registered with the Commission as an ''investment adviser'' under the Advisers Act. The Advisor evaluates, allocates assets to and oversees the Sub-Advisors, and makes recommendations about their

[1] The term ''Series'' also includes the DWS Investment Companies listed above that do not offer multiple series.

[2] Applicants also request relief with respect to existing and future Series and any other existing or future registered open-end management investment company or series thereof that: (i) Is advised by the Advisor or any person controlling, controlled by, or under common control with the Advisor or its successors; (ii) uses the multi-manager structure described in this application; and (iii) complies with the terms and conditions of this application (together with any Series that currently uses Sub-Advisors, each a ''Subadvised Series'' and collectively, the ''Subadvised Series''). All registered open-end investment companies that currently intend to rely on the requested order are named as Applicants. For purposes of the requested order, ''successor'' is limited to an entity or entities that result from a reorganization into another jurisdiction or a change in the type of business organization. If the name of any Subadvised Series contains the name of a Sub-Advisor, the name of the Advisor or the name of the entity controlling, controlled by, or under common control with the Advisor that serves as the primary adviser to the Subadvised Series, or a trademark or trade name that is owned by them, will precede the name of the Sub-Advisor.

[3] The Advisor has entered into Sub-Advisory Agreements with Aberdeen Asset Management Inc., (''AAMI''), Dreman Value Management, LLC (''DVM''), Northern Trust Investments, N.A. (''NTI''), and Turner Investment Partners, Inc. (''Turner''). The Advisor has also entered into Sub-Advisory Agreements with certain affiliated subadvisers: Deutsche Asset Management International GmbH (''DeAMi''), Deutsche Asset Management (Japan) Limited (''DeAMJ''), and RREEF America LLC (''RREEF'') to provide investment management services to various Series. The requested relief will not extend to DeAMi, DeAMJ or RREEF or any other Affiliated Sub-Adviser, as defined below.

hiring, termination and replacement to the relevant Board, at all times subject to the authority of the relevant Board. Sub-Advisors recommended to a Board are, and the Sub-Advisors identified above were, selected and initially approved by that Board, including a majority of the Independent Board Members. The specific investment decisions for each Subadvised Series will be made by that Sub-Advisor which has discretionary authority to invest the assets or a portion of the assets of that Subadvised Series. The Advisor will compensate each Sub-Advisor out of the fee paid to the Advisor under the relevant Investment Management Agreement.

3. Applicants request an order to permit the Advisor, subject to Board approval, to select certain Sub-Advisors to manage all or a portion of the assets of a Series pursuant to a Sub-Advisory Agreement and materially amend an existing Sub-Advisory Agreement without obtaining shareholder approval. The requested relief will not extend to any Sub-Advisor who is an affiliated person, as defined in section 2(a)(3) of the Act, of the Series or of the Advisor, other than by reason of serving as a Sub-Advisor to one or more of the Series (''Affiliated Sub-Advisor'').

4. Applicants also request an order exempting the Subadvised Series from certain disclosure provisions described below that may require the Applicants to disclose fees paid by the Advisor to each Sub-Advisor. Applicants seek an order to permit each Subadvised Series to disclose (as a dollar amount and a percentage of a Subadvised Series' net assets) only: (i) the aggregate fees paid to the Advisor and any Affiliated Sub-Advisors, and (ii) the aggregate fees paid to Sub-Advisors other than Affiliated Sub-Advisors (collectively, the ''Aggregate Fee Disclosure''). A Subadvised Series that employs an Affiliated Sub-Advisor will provide separate disclosure of any fees paid to such Affiliated Sub-Advisor.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by a vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series investment company affected by a matter must approve that matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 14(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser's compensation.[4]

3. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 (''Exchange Act''). Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fees,'' a description of the ''terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Form N–SAR is the semi-annual report filed with the Commission by registered investment companies. Item 48 of Form N–SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including the Sub-Advisors.

5. Regulation S–X sets forth the requirements for financial statements required to be included as part of a registered investment company's registration statement and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require a registered investment company to include in its financial statement information about the investment advisory fees.

6. Section 6(c) of the Act provides that the Commission by order upon application may conditionally or unconditionally exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that their requested relief meets this standard for the reasons discussed below.

7. Applicants assert that the shareholders expect the Advisor, subject to the review and approval of the relevant Board, to select the Sub-Advisors who are best suited to achieve the Subadvised Series' investment objective. Applicants assert that, from the perspective of the shareholder, the role of the Sub-Advisor is substantially equivalent to that of the individual portfolio managers employed by an investment adviser to a traditional investment company. Applicants state that requiring shareholder approval of each Subadvisory Agreement would impose unnecessary delays and expenses on the Subadvised Series, and may preclude the Subadvised Series from acting promptly in a manner considered advisable by the Advisor and the Board. Applicants note that the Investment Management Agreement for each Series and Sub-Advisory Agreements with Affiliated Sub-Advisors (if any) will continue to be subject to the shareholder approval requirements of section 15(a) of the Act and rule 18f–2 under the Act.

8. Applicants assert that the requested disclosure relief would benefit shareholders of the Subadvised Series because it would improve the Advisor's ability to negotiate the fees paid to Sub-Advisors. Applicants state that the Advisor may be able to negotiate rates that are below a Sub-Advisor's ''posted'' amounts if the Advisor is not required to disclose the Sub-Advisors' fees to the public. Applicants submit that the relief requested to use Aggregate Fee Disclosure will encourage Sub-Advisors to negotiate lower subadvisory fees with the Advisor if the lower fees are not required to be made public.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Subadvised Series may rely on the order requested herein, the operation of the Subadvised Series in the manner described in this application will be approved by a majority of the Subadvised Series' outstanding voting securities as defined in the Act, or, in the case of a Subadvised Series whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder before such Subadvised Series' shares are offered to the public.

2. The prospectus for each Subadvised Series will disclose the existence, substance, and effect of any order granted pursuant to the application. In addition, each Subadvised Series will hold itself out to the public as employing the multi-manager structure as described in this application. The prospectus will prominently disclose that the Advisor has the ultimate responsibility, subject to oversight by the Board, to oversee the Sub-Advisors and recommend their hiring, termination, and replacement.

[4] Form N–1A was recently amended by the Commission, effective March 31, 2009, and Item 14(a)(3) should be read to refer to Item 19(a)(3) for each Series when that Series begins using the revised form.

3. Within 90 days of the hiring of a new Sub-Advisor, shareholders of the relevant Subadvised Series will be furnished all information about the new Sub-Advisor that would be included in a proxy statement, except as modified to permit Aggregate Fee Disclosure. This information will include Aggregate Fee Disclosure and any change in disclosure caused by the addition of a new Sub-Advisor. To meet this obligation, the Advisor will provide shareholders of the applicable Subadvised Series within 90 days of the hiring of a new Sub-Advisor with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Exchange Act, except as modified by the order to permit Aggregate Fee Disclosure.

4. The Advisor will not enter into a Sub-Advisory Agreement with any Affiliated Sub-Advisor without that agreement, including the compensation paid thereunder, being approved by the shareholders of the applicable Subadvised Series.

5. At all times, at least a majority of the Board will be Independent Board Members, and the nomination of new or additional Independent Board Members will be placed within the discretion of the then-existing Independent Board Members.

6. Independent Legal Counsel, as defined in rule 0–1(a)(6) under the Act, will be engaged to represent the Independent Board Members. The selection of such counsel will be within the discretion of the then-existing Independent Board Members.

7. Whenever a Sub-Advisor change is proposed for a Subadvised Series with an Affiliated Sub-Advisor, the Board, including a majority of the Independent Board Members, will make a separate finding, reflected in the Board minutes, that the change is in the best interests of the Subadvised Series and its shareholders, and does not involve a conflict of interest from which the Advisor or the Affiliated Sub-Advisor derives an inappropriate advantage.

8. Whenever a Sub-Advisor is hired or terminated, the Advisor will provide the Board with information showing the expected impact on the profitability of the Advisor.

9. The Advisor will provide general investment management services to each Subadvised Series, including overall supervisory responsibility for the general management and investment of the Subadvised Series' assets, and subject to review and approval of the Board, will: (i) Set the Subadvised Series' overall investment strategies; (ii) evaluate, select and recommend Sub-Advisors to manage all or a portion of the Subadvised Series' assets; (iii) allocate and when appropriate, reallocate the Subadvised Series' assets among Sub-Advisors, (iv) monitor and evaluate the Sub-Advisors' performance; and (v) implement procedures reasonably designed to ensure that the Sub-Advisors comply with the Subadvised Series' investment objective, policies and restrictions.

10. The Advisor will provide the Board, no less frequently than quarterly, with information about the profitability of the Advisor on a per-Subadvised Series basis. The information will reflect the impact on profitability of the hiring or termination of any Sub-Advisor during the applicable quarter.

11. No Board Member or officer of a DWS Investment Company or director or officer of the Advisor will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Sub-Advisor, except for (i) ownership of interests in the Advisor or any entity that controls, is controlled by or is under common control with the Advisor; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Sub-Advisor or an entity that controls, is controlled by, or is under common control with a Sub-Advisor.

12. Each Subadvised Series will disclose in its registration statement the Aggregate Fee Disclosure.

13. In the event the Commission adopts a rule under the Act providing substantially similar relief to that in the order requested in the application, the requested order will expire on the effective date of that rule.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61174]

Order Granting Application for Extension of a Temporary Conditional Exemption Pursuant to Section 36(a) of the Exchange Act by the International Securities Exchange, LLC Relating to the Ownership Interest of International Securities Exchange Holdings, Inc. in an Electronic Communications Network

December 16, 2009.

I. Introduction

On December 22, 2008, the Securities and Exchange Commission (''Commission'') approved a proposal filed by the International Securities Exchange, LLC (''ISE'' or ''Exchange'') in connection with corporate transactions (the ''Transactions'') in which, among other things, the parent company of ISE, International Securities Exchange Holdings, Inc. (''ISE Holdings''), purchased a 31.54% ownership interest in Direct Edge Holdings LLC (''Direct Edge''), the owner and operator of Direct Edge ECN (''DECN''), a registered broker-dealer and electronic communications network (''ECN'').[1] Following the closing of the Transactions (the ''Closing''), Direct Edge's wholly-owned subsidiary, Maple Merger Sub LLC (''Merger Sub'') began to operate a marketplace for the trading of U.S. cash equity securities by Equity Electronic Access Members of ISE (the ''Facility''), under ISE's rules and as a ''facility,'' as defined in Section 3(a)(2) of the Securities Exchange Act of 1934 (''Exchange Act''),[2] of ISE.[3]

DECN, which operates as an ECN and submits its limit orders to the Facility for display and execution, is an affiliate of ISE through ISE Holdings' equity interest in DE Holdings. DECN also is a facility, as defined in Section 3(a)(2) of the Exchange Act, of ISE because it is an affiliate of ISE used for the purpose of effecting and reporting securities transactions. Because DECN is a facility of ISE, ISE, absent exemptive relief,

[1] *See* Securities Exchange Act Release No. 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (order approving File No. SR–ISE–2008–85).

[2] 15 U.S.C. 78c(a)(2).

[3] Under Section 3(a)(2) of the Act, the term ''facility,'' when used with respect to an exchange, includes ''its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service.''

would be obligated under Section 19(b) of the Exchange Act to file with the Commission proposed rules governing the operation of DECN's systems and subscriber fees.

On December 22, 2008, the Commission exercised its authority under Section 36 of the Exchange Act to grant ISE a temporary exemption, subject to certain conditions, from the requirements under Section 19(b) of the Exchange Act with respect to DECN's proposed rules.[4] On June 19, 2009, the Commission extended this temporary exemption for an additional 180 days, subject to certain conditions.[5]

On November 16, 2009, ISE filed with the Commission, pursuant to Rule 0–12[6] under the Exchange Act, an application under Section 36(a)(1) of the Exchange Act[7] to extend the relief granted in the June Extension for an additional 180 days, subject to certain conditions.[8] This order grants ISE's request for a temporary extension of the relief provided in the June Extension, subject to the satisfaction of certain conditions, which are outlined below.

II. Application for an Extension of the Temporary Conditional Exemption From the Section 19(b) Rule Filing Requirements

On November 16, 2009, ISE requested that the Commission exercise its authority under Section 36 of the Exchange Act to temporarily extend, subject to certain conditions, the temporary conditional exemption granted in the June Extension from the rule filing procedures of Section 19(b) of the Exchange Act in connection with ISE Holdings' equity ownership interest in DE Holdings and the continued operation of DECN as a facility of ISE.[9]

The Extension Request notes that on May 7, 2009, EDGA Exchange, Inc., and EDGX Exchange, Inc. (together, the ''Exchange Subsidiaries''), two wholly-owned subsidiaries of DE Holdings, filed with the Commission Form 1 applications (the ''Form 1 Applications'') to register as national securities exchanges under Section 6 of the Exchange Act.[10] According to the Extension Request, DECN intends to file a ''Cessation of Operations Report'' with the Commission and to cease operations as an ECN shortly following any Commission approval of the Form 1 Applications and the Exchange Subsidiaries commencing operations as national securities exchanges.[11]

Because DECN will cease operations as an ECN if the Commission approves the Form 1 Applications, ISE expects that DECN will continue to operate as a facility of ISE for a relatively brief period.[12] In addition, ISE believes that it would be unduly burdensome and inefficient to require DECN's operating rules to be separately subject to the Section 19(b) rule filing process because the published rules of the Exchange Subsidiaries ''substantially align with DECN's operations in practice and DECN is only operating temporarily as a facility of ISE while the Commission considers the Form 1 Applications.''[13]

ISE has asked the Commission to exercise its authority under Section 36 of the Exchange Act to grant ISE a 180-day extension of the June Extension's relief, subject to certain conditions, from the Section 19(b) rule filing requirements that otherwise would apply to DECN as a facility of ISE.[14] The extended temporary conditional exemption would commence immediately and would permit the continued operation of DECN while the Commission considers the Form 1 Applications that, if approved, would allow the Exchange Subsidiaries to operate in place of DECN.[15] ISE believes that the extended temporary conditional exemption will help to ensure an orderly transition from DECN to the proposed Exchange Subsidiaries.[16]

ISE states, in addition, that the extended exemption will not diminish the Commission's ability to monitor ISE and DECN.[17] In this regard, ISE notes that to the extent that ISE makes changes to its systems, including the Facility, during the extended temporary exemption period, or thereafter, it remains subject to Section 19(b) and thus obligated to file proposed rule changes with the Commission.[18] Further, in the Extension Request, ISE commits to satisfying certain conditions, as outlined below, which are identical to the conditions in the Exemption Order and the June Extension.[19] For example, as a condition to the extended temporary exemption, ISE will be required to submit proposed rule changes with respect to any material changes to DECN's functions during the exemption period.[20] ISE notes, however, that neither ISE nor DECN anticipates any material changes to DECN's functionality during the extended temporary exemption period.[21]

III. Order Granting Extension of Temporary Conditional Section 36 Exemption

In 1996, Congress gave the Commission greater flexibility to regulate trading systems, such as DECN, by granting the Commission broad authority to exempt any person from any of the provisions of the Exchange Act and to impose appropriate conditions on their operation.[22] Specifically, NSMIA added Section 36(a)(1) to the Exchange Act, which provides that ''the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.''[23] In enacting Section 36, Congress indicated that it expected that ''the Commission will use this authority to promote efficiency, competition and capital formation.''[24] It particularly intended to give the Commission sufficient flexibility to respond to changing market and competitive conditions:

> The Committee recognizes that the rapidly changing marketplace dictates that effective regulation requires a certain amount of flexibility. Accordingly, the bill grants the SEC general exemptive authority under both the Securities Act and the Securities Exchange Act. This exemptive authority will allow the Commission the flexibility to

[4] *See* Securities Exchange Act Release No. 59133 (December 22, 2008), 73 FR 79940 (December 30, 2008) (''Exemption Order'').

[5] *See* Securities Exchange Act Release No. 60152 (June 19, 2009), 74 FR 30334 (June 25, 2009) (''June Extension'').

[6] 17 CFR 240.0–12.

[7] 15 U.S.C. 78mm(a)(1).

[8] *See* letter from Michael J. Simon, General Counsel and Secretary, ISE, to Elizabeth M. Murphy, Secretary, Commission, dated November 16, 2009 (''Extension Request'').

[9] *See* Extension Request at 1.

[10] *Id.* at 2. The Form 1 Applications have been published for notice and comment. *See* Securities Exchange Act Release No. 60651 (September 11, 2009), 74 FR 47827 (September 17, 2009) (''Form 1 Applications Notice'').

[11] *See* Extension Request at 2.

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] According to ISE, it would be impracticable for DECN to display its limit orders other than on the Facility. *See* Extension Request at 2–3.

[16] *See* Extension Request at 3.

[17] *Id.*

[18] *Id.*

[19] ISE also represents that it has complied with the conditions in the Exemption Order and the June Extension and that it will continue to comply with these conditions during any extension of the relief granted. *See* Extension Request at 3.

[20] *See* Extension Request at note 6.

[21] *See* Extension Request at note 5.

[22] 15 U.S.C. 78mm(a). Section 36 of the Exchange Act was enacted as part of the National Securities Markets Improvements Act 1996, Pub. L. No. 104–290 (''NSMIA'').

[23] 15 U.S.C. 78mm(a)(1).

[24] H.R. Rep. No. 104–622, 104th Cong., 2d Sess. 38 (1996).

explore and adopt new approaches to registration and disclosure. It will also enable the Commission to address issues relating to the securities markets more generally. For example, the SEC could deal with the regulatory concerns raised by the recent proliferation of electronic trading systems, which do not fit neatly into the existing regulatory framework.[25]

As noted above, in December 2008 the Commission exercised its Section 36 exemptive authority to grant ISE a temporary exemption, subject to certain conditions, from the 19(b) rule filing requirements in connection with the Transaction.[26] On June 19, 2009, the Commission extended ISE's temporary exemption for an additional 180 days.[27] In addition, the Commission previously granted similar exemptive relief in connection with Nasdaq's acquisition of Brut, LLC, the operator of the Brut ECN.[28]

Section 19(b)(1) of the Exchange Act requires a self-regulatory organization (''self-regulatory organization'' or ''SRO''), including ISE, to file with the Commission its proposed rule changes accompanied by a concise general statement of the basis and purpose of the proposed rule change. Once a proposed rule change has been filed with the Commission, the Commission is required to publish notice of it and provide an opportunity for public comment. The proposed rule change may not take effect unless approved by the Commission by order, unless the rule change is within the class of rule changes that are effective upon filing pursuant to Section 19(b)(3)(A) of the Act.[29]

Section 19(b)(1) of the Exchange Act defines the term ''proposed rule change'' to mean ''any proposed rule or rule change in, addition to, or deletion from the rules of [a] self-regulatory organization.'' Pursuant to Section 3(a)(27) and 3(a)(28) of the Exchange Act, the term ''rules of a self-regulatory organization'' means (1) the constitution, articles of incorporation, bylaws and rules, or instruments corresponding to the foregoing, of an SRO, and (2) such stated policies, practices and interpretations of an SRO (other than the Municipal Securities Rulemaking Board) as the Commission, by rule, may determine to be necessary or appropriate in the public interest or for the protection of investors to be deemed to be rules. Rule 19b–4(b) under the Exchange Act,[30] defines the term ''stated policy, practice, or interpretation'' to mean generally ''any material aspect of the operation of the facilities of the self-regulatory organization or any statement made available to the membership, participants, or specified persons thereof that establishes or changes any standard, limit, or guideline with respect to rights and obligations of specified persons or the meaning, administration, or enforcement of an existing rule.''

The term ''facility'' is defined in Section 3(a)(2) of the Exchange Act, with respect to an exchange, to include ''its premises, tangible or intangible property whether on the premises or not, any right to use such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service.''

In its Extension Request, ISE acknowledges that since the Closing, Merger Sub has operated the Facility as a facility of ISE.[31] Absent an exemption, Section 19(b) of the Exchange Act and Rule 19b–4 thereunder would require ISE to file proposed rules with the Commission to allow ISE to operate DECN as a facility of ISE.

In its Extension Request, ISE notes that the Exchange Subsidiaries have filed Form 1 Applications, which have been published for comment,[32] and that DECN intends to cease operations as an ECN shortly after any Commission approval of the Form 1 Applications and the Exchange Subsidiaries' commencement of operations as national securities exchanges.[33] Accordingly, ISE expects that DECN will continue to operate as a facility of ISE for a relatively brief period of time.[34] ISE represents that it has complied with the conditions in the Exemption Order and the June Extension and that it will continue to comply with these conditions during an extension of the relief granted in the June Extension.[35]

The Commission believes that it is appropriate to grant a temporary extension of the relief provided in the June Extension, subject to the conditions described below, to allow DECN to continue to operate as a facility of ISE without being subject to the rule filing requirements of Section 19(b) of the Exchange Act for a temporary period.[36] Accordingly, the Commission has determined to grant ISE's request for an extension of the relief provided in the June Extension, subject to certain conditions, for a period not to exceed

[25] S. Rep. No. 104–293, 104th Cong., 2d Sess. 15 (1996).

[26] *See* Exemption Order, *supra* note 4.

[27] *See* June Extension, *supra* note 5.

[28] *See* Securities Exchange Act Release No. 50311 (September 3, 2004), 69 FR 54818 (September 10, 2004). Although granting the ISE's Extension Request would result in a temporary exemption longer than the exemption granted in connection with Nasdaq's acquisition of Brut, LLC, the Commission believes that an extended exemption is warranted, in this case, to provide adequate time to address the regulatory issues raised by ISE's ownership structure. In this regard, the Commission notes that, as a result of ISE's equity ownership interest in Direct Edge, the non-U.S. owners of ISE will have an indirect ownership interest in Direct Edge and in the Exchange Subsidiaries, as well as in ISE. When the Commission approved the 2007 transaction in which ISE Holdings became a wholly-owned indirect subsidiary of Eurex Frankfurt AG, the corporate governing documents of ISE Holdings and its parent company, U.S. Exchange Holdings, and corporate resolutions adopted by the non-U.S. owners, included provisions (the ''Regulatory Provisions'') designed to maintain the independence of the regulatory function of ISE, the sole national securities exchange then owned by ISE Holdings. *See* Securities Exchange Act Release No. 56955 (December 13, 2007), 72 FR 71979 (December 19, 2007) (File No. SR–ISE–2007–101). In connection with ISE Holdings' subsequent purchase of an ownership interest in Direct Edge, ISE has filed proposed changes to the governing documents of ISE Holdings and U.S. Exchange Holdings that apply the Regulatory Provisions to any national securities exchange, or facility thereof, controlled, directly or indirectly, by ISE Holdings. *See, e.g.,* Securities Exchange Act Release Nos. 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (File No. SR–ISE–2008–85) (approving changes to the Certificate of Incorporation and Bylaws of ISE Holdings); and 61005 (November 16, 2009) (notice of filing of File No. SR–ISE–2009–90) (proposing changes to Trust Agreement and to the Certificate of Incorporation and Bylaws of U.S. Exchange Holdings). Similarly, the Form 1 Applications included forms of supplemental corporate resolutions, to be adopted by the non-U.S. owners prior to any Commission approval of the Form 1 Applications. These supplemental corporate resolutions will apply the Regulatory Provisions to the Exchange Subsidiaries. Accordingly, the amended corporate governing documents of ISE Holdings and U.S. Exchange Holdings, and the supplemental corporate resolutions of the non-U.S. owners, will apply to the Exchange Subsidiaries following any Commission approval of the Form 1 Applications. In light of the time required to amend the corporate governing documents of ISE Holdings and U.S. Exchange Holdings, and to supplement the corporate resolutions of the non-U.S. owners, the Commission believes that it is appropriate to grant the ISE's Extension Request.

[29] 15 U.S.C. 78s(b)(3)(A).

[30] 17 CFR 240.19b–4(b).

[31] *See* Extension Request at 1. As discussed above, ISE owns a 31.54% ownership interest in DE Holdings, the sole owner of Merger Sub.

[32] *See* Form 1 Applications Notice, *supra* note 10.

[33] *See* Extension Request at 2. The Commission must approve an application for registration as a national securities exchange, or institute proceedings to determine whether the application should be denied, within 90 days of publication of notice of filing of the application, or within such longer period as to which the applicant consents. *See* Exchange Act Section 19(a)(1), 15 U.S.C. 78s(a)(1).

[34] *Id.* at 2.

[35] *Id.* at 3.

[36] In granting this relief, the Commission makes no finding regarding whether ISE's operation of DECN as a facility would be consistent with the Exchange Act.

180 days. The Commission finds that the temporary extended conditional exemption from the provisions of Section 19(b) of the Exchange Act is appropriate in the public interest and is consistent with the protection of investors. In particular, the Commission believes that the temporary extended exemption should help promote efficiency and competition in the market by allowing DECN to continue to operate as an ECN for a limited period of time while the Commission considers the Form 1 Applications. In this regard, the Commission notes ISE's belief that it would be unduly burdensome and inefficient to require DECN's operating rules to be separately subjected to the Section 19(b) rule filing and approval process because DECN will operate only temporarily as a facility of ISE while the Commission considers the Form 1 Applications. In addition, the Commission notes that the Form 1 Applications, which include the rules of the Exchange Subsidiaries, were published for comment on September 17, 2009.[37] According to ISE, the rules of the Exchange Subsidiaries ''substantially align'' with DECN's operations in practice.[38] Accordingly, the publication of the Form 1 Applications should help to mitigate any concerns regarding transparency with respect to the rules under which DECN operates temporarily as a facility of ISE.

To provide the Commission with the opportunity to review and act upon any proposal to change DECN's fees or to make material changes to DECN's operations as an ECN during the period covered by the extended temporary exemption, as well as to ensure that the Commission's ability to monitor ISE and DECN is not diminished by the extended temporary exemption, the Commission is imposing the following conditions while the extended temporary exemption is in effect.[39] The Commission believes such conditions are necessary and appropriate in the public interest for the protection of investors. Therefore, the Commission is granting to ISE an extended temporary exemption, pursuant to Section 36 of the Exchange Act, from the rule filing requirements imposed by Section 19(b) of the Exchange Act as set forth above, provided that ISE and DECN comply with the following conditions:

(1) DECN remains a registered broker-dealer under Section 15 of the Exchange Act[40] and continues to operate as an ECN;

(2) DECN operates in compliance with the obligations set forth under Regulation ATS;

(3) DECN and ISE continue to operate as separate legal entities;

(4) ISE files a proposed rule change under Section 19 of the Exchange Act[41] if any material changes are sought to be made to DECN's operations. A material change would include any changes to a stated policy, practice, or interpretation regarding the operation of DECN or any other event or action relating to DECN that would require the filing of a proposed rule change by an SRO or an SRO facility;[42]

(5) ISE files a proposed rule change under Section 19 of the Exchange Act if DECN's fee schedule is sought to be modified; and

(6) ISE treats DECN the same as other ECNs that participate in the Facility, and, in particular, ISE does not accord DECN preferential treatment in how DECN submits orders to the Facility or in the way its orders are displayed or executed.[43]

In addition, the Commission notes that the Financial Industry Regulatory Authority is currently the Designated Examining Authority for DECN.

For the reasons discussed above, the Commission finds that the extended temporary conditional exemptive relief requested by ISE is appropriate in the public interest and is consistent with the protection of investors.

It is ordered, pursuant to Section 36 of the Exchange Act,[44] that the application for an extended temporary conditional exemption is granted for a period of 180 days, effective immediately.

By the Commission.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30426 Filed 12–22–09; 8:45 am]

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[37] *See* Securities Exchange Act Release No. 60651 (September 11, 2009), 74 FR 47827 (September 17, 2009).

[38] *See* Exemption Request at 2.

[39] *See* Extension Request at note 6.

[40] 15 U.S.C. 78*o.*

[41] 15 U.S.C. 78s.

[42] *See* Section 19(b) of the Exchange Act and Rule 19b–4 thereunder. The Commission notes that a material change would include, among other things, changes to DECN's operating platform; the types of securities traded on DECN; DECN's types of subscribers; or the reporting venue for trading that takes place on DECN. The Commission also notes that any rule filings must set forth the operation of the DECN facility sufficiently so that the Commission and the public are able to evaluate the proposed changes.

[43] *See* Extension Request at note 6.

[44] 15 U.S.C. 78mm.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61172; File No. SR–OC–2009–03]

Self-Regulatory Organizations; One Chicago, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change, as Modified by Amendment No. 1, Changing Its Listing Standards in Conformance With Amended Joint Order

December 16, 2009.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–7 under the Act,[2] notice is hereby given that on December 2, 2009, One Chicago, LLC (''OneChicago'') 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 the self-regulatory organization. On December 3, 2009, OneChicago filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified, from interested persons. OneChicago also filed the proposed rule change with the Commodity Futures Trading Commission (''CFTC'') under Section 5c(c) of the Commodity Exchange Act[3] on December 2, 2009.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

OneChicago is proposing to amend Rule 906(a)(1) and (4) to conform its listing standards to those approved by both the SEC and the CFTC (together the ''Commissions'') in their Joint Order dated November 19, 2009 (''JO–2009'').[4] The text of the proposed rule change is available on the Exchange's Web site at *http://www.onechicago.com,* on the Commission's Web site at *http://www.sec.gov,* at OneChicago, and at the Commission's Public Reference Room. A copy of this filing is available on the Exchange's Web site at *http://www.onechicago.com,* at the Exchange's principal office and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] 7 U.S.C. 7a–2(c).

[4] Securities and Exchange Commission Release No. 34–61027 (November 19, 2009). Joint Order Modifying the Listing Standards Requirements under Section 6(h) of the Securities Exchange Act of 1934 and the Criteria under Section 2(a)(1) of the Commodity Exchange Act.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OneChicago has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to permit security futures to maintain comparability with the options markets and to provide competitive financial tools that offer a variety of investing and hedging products for the public as set forth in the Commissions JO–2009. This proposed change is simply to conform to JO–2009.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act [5] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to protect investors and the public interest, and to remove impediments to and perfect the mechanism for a free and open market and a national market system. In particular, the proposed rule change will maintain comparability with the listed options markets. Additionally, the changes are consistent with those set forth in JO–2009.

B. Self-Regulatory Organization's Statement on Burden on Competition

OneChicago does not believe that the proposed rule change will have an impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the OneChicago proposed rule change have not been solicited and none has been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change will become effective on December 3, 2009. Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.[6]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–OC–2009–03 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–OC–2009–03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OC–2009–03 and should be submitted on or before January 13, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30422 Filed 12–22–09; 8:45 am]

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[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(1).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61173; File No. SR–CHX–2009–16]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Modifying the Definition of Cross and Cross With Size Order Types

December 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 December 15, 2009, Chicago Stock Exchange, Inc. (''Exchange'' or ''CHX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. CHX has designated the proposed rule change as constituting a rule change 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CHX proposes to amend its rules to change the definition of Cross and Cross With Size order types. The text of this proposed rule change is available on the Exchange's Web site at (*http://www.chx.com*) and in 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 CHX included statements concerning the purpose of and basis for the proposed rule changes and discussed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its definitions of the ''cross'' and ''cross with size'' order types to eliminate a latent ambiguity about the processing of such orders in the Exchange's Matching System.[4] A cross order is an order to buy and sell the same security at a specific price which is better than the best bid and offer displayed in the Matching System. A cross with size order type is a cross order which also has a limited exception to the priority rules of the exchange. Generally, where there are multiple orders to be executed at the same price, the first order received by the Matching System is the first to be executed.[5] Certain large cross orders submitted to the Matching System may be executed notwithstanding the fact that a bid or offer at the same price as the proposed cross transaction and with time priority may reside in our trading facility.[6]

The current definitions of the cross and cross with size order types also require that the price of the proposed trade be ''equal to or better than the NBBO [National Best Bid or Offer].'' [7] We propose to delete this reference for both order types and substitute the requirement that the price of the cross transaction ''which would not constitute a trade-through under Reg NMS (including all applicable exceptions and exemptions).'' This proposed formulation better comports with the history of the cross and cross with size provisions and removes any possible confusion over the proper application of our rules.

The cross and cross with size order provisions have existed in our rules in number of different forms.[8] The current cross and cross with size order types were defined as part of our transition to the New Trading Model (''NTM'') in 2006 and 2007.[9] As originally written, the NBBO limitation as to cross and cross with size orders only applied to transactions in securities listed on the NYSE, Amex or any other exchange except Nasdaq. The NBBO limitation applied to Nasdaq-listed securities only upon the implementation of Reg NMS. The apparent purpose of this formulation was to ensure that the then-existing trade-though provisions of the Intermarket Trading System (''ITS'') applied to the cross transactions.[10]

While the Exchange believes that most transactions can and should be executed at or within the NBBO, we note that the Commission has authorized a number of exemptions to the trade-through provisions of Reg NMS. For example, trade through exemptions are provided within Rule 611 of Reg NMS for, *inter alia,* non-regular way settlements, certain single-priced opening, reopening and closing transactions, when the NBBO is crossed, for Intermarket Sweep Orders (''ISOs''), and where the better-priced market was satisfied.[11] Moreover, the Commission has issued exemptive orders to the trade-through prohibition for certain transactions in non-convertible preferred securities,[12] qualified contingent trades,[13] certain error correction transactions [14] and certain print protection transactions.[15] To the extent that a Participant can submit a cross or cross with size order which is also exempt from Reg NMS trade-through prohibition, the Exchange believes that such orders should be eligible for execution notwithstanding the fact that they are priced outside the NBBO, assuming all other requirements are satisfied. In evaluating whether any applicable exemption applied to a cross or cross with size order, the CHX would require Participants to indicate in its order submission the nature of the exemption relied upon.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general,[16] and furthers the objectives of Section 6(b)(5) in particular,[17] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest. In this case, the proposed change in the definition of the cross and cross with size order types will remove any potential confusion among Participants over the proper handling and treatment of such orders. The changes should also provide Participants with additional options in seeking trade executions on our trading facilities by allowing them to more fully utilize existing exemptions to the Reg NMS trade through restrictions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or 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

[4] The Matching System is our core trading facility.

[5] *See* Article 20, Rule 8(b)(1), (d)(1).

[6] Such cross orders must be for at least 5,000 shares and $100,000 in total value to qualify for ''cross with size'' treatment. Article 1, Rule 2(g); Article 20, Rule 4(b)(6).

[7] ''NBBO'' is defined as ''the size and price associated with the best protected bid and best protected offer that are calculated and disseminated in an NMS security during regular trading hours.'' Article 1, Rule 1(o).

[8] *See* former Article XX, Rule 23 (cross orders) and Interpretation and Policy .02 thereto (cross with size).

[9] The New Trading Model was designed to be a fully electronic exchange in order to qualify as an automated trading center under Reg NMS and thereby, *inter alia,* qualify for trade through protection.

[10] *See* SR–CHX–2006–05 (Sept. 26, 2006) (approving the NTM-related rule changes), at notes 27–30 and accompanying text. The ITS trade-through provisions applied only to securities listed on a national securities exchange and not to stocks listed on the Nasdaq Stock Market. Once Reg NMS Rule 611 became effective (supplanting the ITS rules), the trade through restriction applied equally to exchange-listed and Nasdaq securities.

[11] Reg NMS Rule 611(b).

[12] Order Exempting Non-Convertible Preferred Securities from Rule 611(a) of Regulation NMS under the Securities Exchange Act of 1934 (Rel. No. 34–57621, April 4, 2008).

[13] Order Granting an Exemption for Qualified Contingent Trades from Rule 611(a) of Regulation NMS under the Securities Exchange Act of 1934 (Rel. No. 34–54389, Aug. 31, 2006), *modified,* (Rel. No. 34–57620, April 4, 2008).

[14] Order Exempting Certain Error Correction Transactions from Rule 611 of Regulation NMS under the Securities Exchange Act of 1934 (Rel. No. 34–55884, June 8, 2007).

[15] Order Exempting Certain Print Protection Transactions from Rule 611 of Regulation NMS under the Securities Exchange Act of 1934 (Rel. No. 34–55883, June 8, 2007).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [18] and Rule 19b–4(f)(6) thereunder.[19]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [20] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6) [21] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that it may immediately provide participants the benefits of the clarified order types. The Commission believes that waiving the 30-day operative delay [22] is consistent with the protection of investors and the public interest because it will allow the Exchange to immediately modify the rules relating to the cross and cross-with-size order types to account for the exceptions and exemptions with respect to Rule 611 of Regulation NMS.[23] For this reason, the Commission designates that the proposed rule change become operative upon filing.

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–CHX–2009–16 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–CHX–2009–16. 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 publicly available. All submissions should refer to File Number SR–CHX–2009–16 and should be submitted on or before January 13, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30425 Filed 12–22–09; 8:45 am]

BILLING CODE 8011–01–P

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6).

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[23] Rule 611 of Regulation NMS includes various exceptions. *See* 17 CFR 242.611(b). In addition, the Commission has issued exemptive orders relating to Rule 611 of Regulation NMS. *See supra* notes 12–15.

[24] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–295 (Sub-No. 7X)]

The Indiana Rail Road Company—Abandonment Exemption—in Martin and Lawrence Counties, IN

On December 7, 2009, the Indiana Rail Road Company (INRD), filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon 22.80 miles of rail line in Martin and Lawrence Counties, IN, comprised of the Crane-Bedford Line extending from milepost 241.35 near Crane, IN, to milepost 262.50 in Bedford, IN, and the Bedford Industrial Track extending from Bedford Industrial Track railroad milepost 0.00 at Crane-Bedford milepost 262.40, to Bedford Industrial Track railroad milepost 1.65. The line traverses U.S. Postal Service Zip Codes 47581, 47470, and 47421, and includes the stations of Williams at milepost 251.40 and Bedford at milepost 262.50.

INDR states that the line does not contain Federally granted rights-of-way. Any documentation in INRD's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by March 26, 2010.[1]

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,500 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use.[2] Any

[1] In its petition, INRD requests that the Board render its decision on the petition immediately effective if it is issued after February 28, 2010. This request will be addressed in the decision on the merits of the petition.

[2] INRD notes that it acquired its interest in the line by quit claim. INRD states that it is investigating the nature of its title to the right-of-way, and that the outcome of this investigation may affect how it chooses to proceed with regard to trail use negotiations. INRD also states that part of the Crane-Bedford Line runs through the Naval Surface Warfare Center at Crane, and that security requirements may limit the availability of the right-of-way at that location.

request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than January 12, 2010.[3] Each trail use request must be accompanied by a $250 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–295 (Sub-No. 7X), and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001, and (2) John Broadley, John H. Broadley & Associates, P.C., 1054 31st Street, NW., Suite 200, Washington, DC 20007. Replies to INRD's petition are due on or before January 12, 2010.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs and Compliance at (202) 245–0238 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA generally will be within 30 days of its service.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

Decided: December 18, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–30473 Filed 12–22–09; 8:45 am]

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[3] INRD also petitions for exemption from any condition imposed under 49 U.S.C. 10905 that would prohibit or delay the recovery and reuse of the line's rail, ties, and other track materials and ballast. The Board will address this request in the decision on the merits, if necessary.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35314]

Massachusetts Coastal Railroad, LLC—Acquisition—CSXT Transportation, Inc.

AGENCY: Surface Transportation Board.

ACTION: Decision No. 2 in STB Finance Docket No. 35314; Notice of Acceptance of Application; Issuance of Procedural Schedule.

SUMMARY: The Surface Transportation Board (Board) is accepting for consideration the application seeking Board approval of the acquisition by Massachusetts Coastal Railroad, LLC (Mass Coastal) of a permanent rail freight easement on about 33 miles of the rail lines of CSX Transportation, Inc. (CSXT) in Massachusetts. Collectively, Mass Coastal and CSXT will be referred to as ''Applicants.'' If the application is approved, Mass Coastal would replace CSXT as the only railroad providing freight service on these rail lines.

In the proposed transaction (the Acquisition), which is governed by 49 U.S.C. 11323–26, Mass Coastal would acquire a rail freight easement in CSXT's ''South Coast Lines'' consisting of: (1) The New Bedford Subdivision, which is 18.40 miles between milepost QN 13.40 at Cotley Junction and milepost QN 31.80 at New Bedford; (2) the Fall River Subdivision, which is 14.20 miles between milepost QNF 0.00 at Myricks and milepost QNF 14.20 at the Fall River, Massachusetts—Rhode Island state line; and (3) 0.08 miles of the North Dartmouth Industrial Track between milepost QND 0.00 and milepost QND 0.08, a total distance of approximately 32.68 miles.

The Board finds that the Acquisition is a ''minor transaction'' under 49 CFR 1180.2(c) and adopts a procedural schedule for consideration of the application, providing for the Board's final decision to be issued on March 29, 2010, and to become effective on April 28, 2010.

In related matters, CSXT has agreed to sell the real estate, track, and materials in the South Coast Lines, among other property interests in other rail lines, to the Massachusetts Department of Transportation (MassDOT) and to retain a permanent freight easement over the South Coast Lines (the MassDOT Transaction). Consequently, MassDOT also filed on November 24, 2009, a notice of exemption under 49 CFR 1150.31 and a concurrent motion to dismiss the notice, in STB Finance Docket No. 35312, *Massachusetts Department of Transportation—Acquisition Exemption—Certain Assets of CSX Transportation, Inc.,* which was served and published in the **Federal Register** (74 FR 65589) on December 10, 2009, to become effective December 24, 2009. If approved, the Acquisition would occur concurrently with the MassDOT Transaction.

In a second transaction, CSXT has agreed to grant Mass Coastal certain overhead trackage rights [1] so that Mass Coastal can connect the South Coast Lines to its existing lines (the Trackage Rights Transaction). This agreement led to the concurrent filing of a notice of exemption under 49 C.F.R. 1180.2(d)(7) in STB Finance Docket No. 35314 (Sub-No. 1X), *Massachusetts Coastal Railroad, LLC—Trackage Rights Exemption—CSX Transportation, Inc.,* which also was served and published in the **Federal Register** (74 FR 65592–93) on December 10, 2009, to become effective December 24, 2009.[2]

DATES: The effective date of this decision is December 23, 2009. Any person who wishes to participate in this proceeding as a party of record (POR) must file a notice of intent to participate no later than January 6, 2010. All comments, protests, requests for conditions, and any other evidence and argument in opposition to the application, including filings by the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT), must be filed by January 25, 2010. Any responses to such filings and rebuttal in support of the application must be filed by February 12, 2010. If a public hearing or oral argument is held, it will be on a date to be determined by the Board. The Board expects to issue a final decision on March 29, 2010. For further information respecting dates, see Appendix A (Procedural Schedule).

ADDRESSES: Any filing submitted in this proceeding must be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions found on the Board's Web site at ''*www.stb.dot.gov*'' at the ''E-FILING'' link. Any person submitting a

[1] These trackage rights are on CSXT's Middleboro Subdivision (1) between Mass Coastal's interchange tracks at Taunton, MA, at approximately milepost QN 11.6, and milepost QN 13.4, a distance of approximately 1.8 miles; and (2) between milepost QNB 13.3 and Mass Coastal's interchange tracks at Middleboro, MA, at approximately milepost QNB 20.4, a distance of about 7.1 miles, for a total distance of approximately 8.9 miles.

[2] The related exemptions are permissive and do not require the parties to consummate those transactions.

filing in the traditional paper format should send an original and 10 paper copies of the filing (and also an electronic version) to: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each filing in this proceeding must be sent (and may be sent by e-mail only if service by e-mail is acceptable to the recipient) to each of the following: (1) Secretary of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3109, Department of Justice, Washington, DC 20530; (3) John H. Broadley (representing Mass Coastal), John H. Broadley & Associates, PC, 1054 Thirty-First Street, NW., Suite 200, Washington, DC 20007; and (4) any other person designated as a POR on the service-list notice (to be issued as soon after January 6, 2010, as practicable).

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 245–0359. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Mass Coastal is a Class III rail carrier operating approximately 58.5 miles of freight lines at Taunton and between Middleboro and points on Cape Cod, all within Massachusetts. CSXT is a Class I rail carrier that owns and operates about 21,000 miles of railroad in Alabama, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, and the Canadian Provinces of Ontario and Quebec.

Mass Coastal and CSXT have entered into a Purchase and Sale Agreement of Permanent Freight Easement (the Agreement), to be effective on May 14, 2010, by which Mass Coastal will purchase a permanent rail freight easement in the South Coast Lines. Through this sale, CSXT seeks to reduce its capital needs, rationalize its rail system, and restructure its business. In turn, Mass Coastal would replace CSXT as the carrier providing freight rail service to local customers on these lines. Applicants believe that Mass Coastal can provide more effective and personalized service to shippers on the South Coast Lines.

In the related MassDOT Transaction, MassDOT proposes to acquire certain CSXT property in two stages. The first stage—proposed to close on May 14, 2010—pertains to this application. In this closing, MassDOT would acquire from CSXT the rail assets and real estate in the South Coast Lines, among other property interests in other rail lines, and CSXT would retain a permanent freight rail easement to serve shippers on all the acquired lines.[3] CSXT has agreed, with the consent of MassDOT, to sell the permanent freight easement over the South Coast Lines to Mass Coastal. CSXT will continue to interchange with Mass Coastal at Middleboro pursuant to the Trackage Rights Transaction and will consolidate its Taunton interchange (at Cotley Junction) to include traffic for the South Coast Lines.

Passenger Service Impacts. There is no passenger or commuter service over the South Coast Lines today. Applicants expect the Massachusetts Bay Transportation Authority (MBTA), in the future, to expand its commuter system to provide service on the South Coast Lines. Applicants state that after MassDOT acquires the track, materials, and real estate of the South Coast Lines pursuant to the MassDOT Transaction, MBTA would be able to upgrade the South Coast Lines to the condition necessary for commuter service.

Discontinuances/Abandonments. Mass Coastal does not anticipate discontinuing service or abandoning any portion of the South Coast Lines.

Financial Arrangements. According to Applicants, Mass Coastal does not plan to enter into any new financial arrangements for the Acquisition and will make any payments to CSXT from cash on hand. Mass Coastal does not expect any fixed charges as a result of the Acquisition.

Time Schedule for Consummation. The Acquisition is scheduled to be consummated on May 14, 2010, concurrent with the transfer of the physical assets in the South Coast Lines to MassDOT and the reservation of a permanent freight easement by CSXT.

Public Interest Considerations. Mass Coastal believes that the Acquisition will improve the adequacy of transportation to the shipping public because, as a short line, it expects to respond more quickly and devote more attention to the local and smaller shippers on the South Coast Lines than can a large rail carrier. Mass Coastal will continue to provide the same frequency of service on these lines as CSXT currently provides[4] and will provide more frequent service if traffic growth justifies expanded service.

As a result of the Acquisition, according to Applicants, there is not likely to be any lessening of competition, or creation of a monopoly or restraint of trade, in freight surface transportation in any region of the United States. Applicants state that the South Coast Lines are a self-contained, light density railroad line in southeastern Massachusetts currently rail-served only by CSXT and that there is truck and barge competition for the lines' traffic today. Upon consummation of the Acquisition, Mass Coastal would replace CSXT as the sole rail operator of the South Coast Lines. There are no interchange commitments in the agreements between CSXT and Mass Coastal. If the application is approved, Mass Coastal would interchange traffic with CSXT at Cotley Junction (near Taunton) and at Middleboro and with the Bay Colony Railroad, at a point north of New Bedford.[5]

Environmental Impacts. Applicants state that no environmental documentation is required because there will be no operational changes that would exceed the thresholds established in 49 CFR 1105.7(e)(4) or (5) for requiring environmental review and there will be no action that would normally require environmental documentation. Applicants further indicate that an historic report is not required because they will operate the lines and would require further Board approval to discontinue or abandon any service. They state that there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 or more years old.

Labor Impacts. CSXT anticipates that, as a result of the Acquisition and the related Trackage Rights Transaction, the 2 train crews who work out of Middleboro would experience somewhat reduced overtime opportunities. Mass Coastal expects to hire about 4 or 5 new employees to operate the South Coast Lines, including 1 locomotive engineer, 1 conductor, and 2 to 3 maintenance-of-way employees. Applicants acknowledge that the

[3] In a letter dated December 16, 2009, submitted in the related MassDOT Transaction proceeding (STB Finance Docket No. 35312), counsel for MassDOT informed the Board that CSXT has sent to the shippers that CSXT serves on the lines whose assets MassDOT would acquire copies of the Notice of Exemption and Motion to Dismiss that had been filed in that proceeding on November 24, 2009.

[4] CSXT currently provides service 3 days per week between Cotley Junction and New Bedford and 2 days per week between Cotley Junction and Fall River.

[5] The Providence & Worcester Railroad Company (P&W) previously was granted trackage rights over the South Coast Line between Cotley Junction and the southern end at Fall River. P&W is not using the trackage rights because its connecting line at the southern end is out of service. Applicants state that, if P&W reopens its line, Mass Coastal will be required to allow P&W to use its trackage rights over the South Coast Line.

Acquisition would be subject to employee protective conditions in *New York Dock Ry.—Control—Brooklyn Eastern District Terminal,* 360 I.C.C. 60 (1979), as modified by *Wilmington Term. RR, Inc.—Pur. & Lease—CSX Transp., Inc.,* 6 I.C.C.2d 799, 814–826 (1990), *aff'd sub nom. Railway Labor Execs. Ass'n* v. *ICC,* 930 F.2d 511 (6th Cir. 1991).

Application Accepted. The Board finds that the Acquisition would be a ''minor transaction'' under 49 CFR 1180.2(c), and the Board accepts the application for consideration because it is in substantial compliance with the applicable regulations governing minor transactions. *See* 49 CFR part 1180; 49 U.S.C. 11321–26. The Board reserves the right to require the filing of further information as necessary to complete the record.

The statute and Board regulations treat a transaction that does not involve two or more Class I railroads differently depending upon whether the transaction would have ''regional or national transportation significance.'' 49 U.S.C. 11325. Under our regulations, at 49 CFR 1180.2, a transaction that does not involve two or more Class I railroads is to be classified as ''minor''—and thus not having regional or national transportation significance—if a determination can be made either: (1) That the transaction clearly will not have any anticompetitive effects; or (2) that any anticompetitive effects will clearly be outweighed by the anticipated contribution to the public interest in meeting significant transportation needs. A transaction not involving the control or merger of two or more Class I railroads is ''significant'' if neither of these determinations can clearly be made.

The Board finds the Acquisition to be a ''minor transaction'' because it appears on the face of the application that there would not be any anticompetitive effects from the transaction. The Board's findings regarding the anticompetitive impact are preliminary. The Board will give careful consideration to any claims that the Acquisition will have anticompetitive effects that are not apparent from the application itself.

Public Inspection. The application and filings in the related matters are available for inspection in the library (Room 131) at the Surface Transportation Board, 395 E Street, SW., in Washington, DC. In addition, the application and filings in the related matters may be obtained from Mr. Broadley (representing Mass Coastal) at the address indicated above.

Procedural Schedule. The Board has considered Applicants' suggestion of an expedited procedural schedule, under which the Board would issue its final decision before the statutory deadline of 180 days after the filing of the application. Applicants seek to consummate the Acquisition, if approved, at the same time as the consummation of the related sale of the physical assets in the South Coast Lines to MassDOT. With some internal adjustments to the suggested filing dates, we will adopt the requested procedural schedule, and we anticipate issuing a final decision by the requested date.

Under the procedural schedule adopted by the Board: Any person who wishes to participate in this proceeding as a POR must file a notice of intent to participate no later than January 6, 2010; all comments, protests, requests for conditions, and any other evidence and argument in opposition to the application, including filings by DOJ and DOT, must be filed by January 25, 2010; and responses to comments, protests, requests for conditions, and other opposition and rebuttal in support of the application must be filed by February 12, 2010. A public hearing or oral argument may be held on a date to be determined by the Board. The Board plans to issue its final decision by March 29, 2010, and make any such approval effective by April 28, 2010. For further information respecting dates, see Appendix A (Procedural Schedule).

Notice of Intent To Participate. Any person who wishes to participate in this proceeding as a POR must file with the Board, no later than January 6, 2010, a notice of intent to participate, accompanied by a certificate of service indicating that the notice has been properly served on the Secretary of Transportation, the Attorney General of the United States, and Mr. Broadley (representing Mass Coastal).

If a request is made in the notice of intent to participate to have more than one name added to the service list as a POR representing a particular entity, the extra name will be added to the service list as a ''Non-Party.'' The list will reflect the Board's policy of allowing only one official representative per party to be placed on the service list. Any person designated as a Non-Party will receive copies of Board decisions, orders, and notices but not copies of official filings. Persons seeking to change their status must accompany that request with a written certification that he or she has complied with the service requirements set forth at 49 CFR 1180.4, and any other requirements set forth in this decision.

Service-List Notice. The Board will serve, as soon after January 6, 2010, as practicable, a notice containing the official service list (the service-list notice). Each POR will be required to serve upon all other PORs, within 10 days of the service date of the service-list notice, copies of all filings previously submitted by that party (to the extent such filings have not previously been served upon such other parties). Each POR also will be required to file with the Board, within 10 days of the service date of the service-list notice, a certificate of service indicating that the service required by the preceding sentence has been accomplished. Every filing made by a POR after the service date of the service-list notice must have its own certificate of service indicating that all PORs on the service list have been served with a copy of the filing. Members of the United States Congress (MOCs) and Governors (GOVs) are not parties of record and need not be served with copies of filings, unless any MOC or GOV has requested to be, and is designated as, a POR.

Comments, Protests, Requests for Conditions, and Other Opposition Evidence and Argument, Including Filings by DOJ and DOT. All comments, protests, requests for conditions, and any other evidence and argument in opposition to the application, including filings by DOJ and DOT, must be filed by January 25, 2010.

Because the Acquisition proposed in the application is a minor transaction, no responsive applications will be permitted. *See* 49 CFR 1180.4(d)(1).

Protesting parties are advised that, if they seek either the denial of the application or the imposition of conditions upon any approval, they must present substantial evidence in support of their positions. *See Canadian National Railway Company and Grand Trunk Corporation—Control—EJ&E West Company,* STB Finance Docket No. 35087 (STB served Dec. 24, 2008).

Responses to Comments, Protests, Requests for Conditions, and Other Opposition; Rebuttal in Support of the Application. Responses to comments, protests, requests for conditions, and other opposition submissions, and any rebuttal in support of the application must be filed by February 12, 2010.

Public Hearing/Oral Argument. The Board may hold a public hearing or an oral argument in this proceeding on a date to be determined by the Board.

Discovery. Discovery may begin immediately. Requests for discovery from Applicants are due on January 11, 2010. Applicants' responses are due on January 18, 2010. The parties are

encouraged to resolve all discovery matters expeditiously and amicably.

Environmental Matters. The National Environmental Policy Act (NEPA) requires that the Board take environmental considerations into account in its decisionmaking. Under both the regulations of the President's Council on Environmental Quality implementing NEPA and the Board's own environmental rules, actions are separated into three classes that prescribe the level of documentation required in the NEPA process. Actions that may significantly affect the environment generally require the Board to prepare an Environmental Impact Statement (EIS).[6] Actions that may or may not have a significant environmental impact ordinarily require the Board to prepare a more limited Environmental Assessment (EA).[7] Finally, actions whose environmental effects are ordinarily insignificant may be excluded from NEPA review across the board, without a case-by-case review.

As pertinent here, an acquisition transaction normally requires the preparation of an EA or EIS where certain thresholds would be exceeded.[8] Applicants indicate that the thresholds for environmental review would not be exceeded here because Applicants expect to provide the same frequency of freight service that CSXT has been providing. Based on this information, it appears that environmental documentation and review are not required in this proceeding.

Historic Review. In accordance with section 106 of the National Historic Preservation Act (NHPA), the Board is required to determine the effects of its licensing actions on cultural resources.[9] The Board's environmental rules establish exceptions to the need for historic review in certain cases, including the sale of a rail line for the purpose of continued rail operations where further Board approval is required to abandon any service and there are no plans to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older.[10] Applicants state that the proposed transaction fits within this exception. They assert that they have no plans to alter or dispose of properties 50 or more years old, and that any future line abandonment or construction activities by Applicants would be subject to the Board's jurisdiction. Based on this information, it appears that historic review under the NHPA is not required in this case.

Filing/Service Requirements. Persons participating in this proceeding may file with the Board and serve on other parties: a notice of intent to participate (due by January 6, 2010); a certificate of service indicating service of prior pleadings on persons designated as PORs on the service-list notice (due by the 10th day after the service date of the service-list notice); any comments, protests, requests for conditions, and any other evidence and argument in opposition to the application (due by January 25, 2010); and any responses to comments, etc., and any rebuttal in support of the application (due by February 12, 2010).

Filing Requirements. Any document filed in this proceeding must be filed either via the Board's e-filing format or in the traditional paper format as provided for in the Board's rules. Any person using e-filing should attach a document and otherwise comply with the instructions found on the Board's Web site at ''*http://www.stb.dot.gov*'' at the ''E-FILING'' link. Any person filing a document in the traditional paper format should send an original and 10 paper copies of the document (and also an electronic version) to: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

Service Requirements. One copy of each document filed in this proceeding must be sent to each of the following (any copy may be sent by e-mail only if service by e-mail is acceptable to the recipient): (1) Secretary of Transportation, 1200 New Jersey Avenue, S.E., Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3109, Department of Justice, Washington, DC 20530; (3) John H. Broadley, (representing Mass Coastal), John H. Broadley & Associates, PC, 1054 Thirty-First Street, NW., Suite 200, Washington, DC 20007; and (4) any other person designated as a POR on the service-list notice.

Service of Decisions, Orders, And Notices. The Board will serve copies of its decisions, orders, and notices only on those persons who are designated on the official service list as either POR, MOC, GOV, or Non-Party. All other interested persons are encouraged to obtain copies of decisions, orders, and notices via the Board's Web site at ''*http://www.stb.dot.gov*'' under ''E-LIBRARY/Decisions & Notices.''

Access to Filings. An interested person does not need to be on the service list to obtain a copy of the application or any other filing made in this proceeding. Under the Board's rules, any document filed with the Board (including applications, pleadings, etc.) shall be promptly furnished to interested persons on request, unless subject to a protective order. 49 CFR 1180.4(a)(3). In Decision No. 1 in this proceeding, served December 8, 2009, the Board issued a Protective Order to establish appropriate procedures for the submission of evidence containing confidential or proprietary information. The public version of the application and other filings in this proceeding will also be available on the Board's Web site at ''*http://www.stb.dot.gov*'' under ''E-LIBRARY/Filings.''

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The application is accepted for consideration.

2. The parties to this proceeding must comply with the procedural schedule adopted by the Board in this proceeding as shown in Appendix A.

3. The parties to this proceeding must comply with the procedural requirements described in this decision.

4. This decision is effective on December 23, 2009.

Decided: December 18, 2009.

By the Board, Chairman Elliott, Vice Chairman Nottingham, and Commissioner Mulvey.

Jeffrey Herzig,

Clearance Clerk.

APPENDIX A: PROCEDURAL SCHEDULE

November 24, 2009 ...	Application, Motion for Protective Order, and Petition Suggesting Procedural Schedule filed.
December 8, 2009	Protective Order Issued.
December 23, 2009 ...	Board notice of acceptance of application published in the FEDERAL REGISTER.

[6] *See* 49 CFR 1105.4(f), 1105.10(a).

[7] *See* 49 CFR 1105.4(d), 1105.10(b).

[8] *See* 49 CFR 1105.6(b)(4), 1105.7(e)(4) and (5).

[9] *See* 49 CFR 1105.8.

[10] *See* 49 CFR 1105.8(b)(1).

APPENDIX A: PROCEDURAL SCHEDULE—Continued

January 6, 2010	Notices of intent to participate in this proceeding due.
January 11, 2010	Discovery requests due to Applicants.
January 18, 2010	Responses to discovery due.
January 25, 2010	All comments, protests, requests for conditions, and any other evidence and argument in opposition to the application, including filings of DOJ and DOT, due.
March 13, 2010	Responses to comments, protests, requests for conditions, and other opposition due. Applicants' rebuttal in support of the application due.
TBD	A public hearing or oral argument may be held.
March 29, 2010	Final decision to be served.[11]
April 28, 2010	Final decision to become effective.

[11] Under 49 U.S.C. 11325(d)(2), a final decision would have to be issued by May 23, 2010. As previously discussed, we have shortened the time for issuing a final decision in this case to accommodate the Applicants' desire that this sale and the sale of assets in these and other rail lines to Mass Coastal can be consummated simultaneously.

[FR Doc. E9–30501 Filed 12–22–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Admintstration (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 October 16, 2009, vol. 74, no. 199, pages 53313–53314.

Approval is needed for security reasons such as mortgages submitted by the public for recording against aircraft, engines, propellers, and spare parts locations.

DATES: Please submit comments by January 22, 2010.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Recording of Aircraft Conveyances and Security Documents.

Type of Request: Extension without change of a currently approved collection.

OMB Control Number: 2120–0043.

Forms(s): 8050–41.

Affected Public: An estimated 45,469 Respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden per Response: Approximately 1 hour per response.

Estimated Annual Burden Hours: An estimated 45,469 hours annually.

Abstract: Approval is needed for security reasons such as mortgages submitted by the public for recording against aircraft, engines, propellers, and spare parts locations.

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 December 15, 2009.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E9–30306 Filed 12–22–09; 8:45 am]

BILLING CODE 4910–13–M

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 October 16, 2009, vol. 74, no. 199, page 53310. Operators and repair stations are required to report any malfunctions and defects to the Administrator.

DATES: Please submit comments by January 22, 2010.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Service Difficulty Report.

Type of Request: Extension without change of a currently approved collection.

OMB Control Number: 2120–0663.

Form(s): 8070–1.

Affected Public: An estimated 7,695 Respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden per Response: Approximately 9 minutes per response.

Estimated Annual Burden Hours: An estimated 6,107 hours annually.

Abstract: The administrator has determined, based on evaluation of previous accidents and other incidents, that certain events involving malfunctions and defects may be precursors to the recurrence of these

accidents. As a result, operators and repair stations are required to report any malfunctions and defects to the Administrator.

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 December 14, 2009.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E9–30309 Filed 12–22–09; 8:45 am]

BILLING CODE 4910–13–M

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 October 16, 2009, vol. 74, no. 199, pages 53317–53318. This action responds to the Wendall H. Ford Investment and Reform Act for the 21st Century by requiring that all persons who remove any life-limited aircraft part have a method to prevent the installation of that part after it has reached its life limit.

DATES: Please submit comments by January 22, 2010.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Safe Disposition of Life-Limited Aircraft Parts.

Type of Request: Extension without change of a currently approved collection.

OMB Control Number: 2120–0665.

Form(s): There are no FAA forms associated with this collection.

Affected Public: An estimated 8,000 Respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden per Response: Approximately 1.04 hours per response.

Estimated Annual Burden Hours: An estimated 104,000 hours annually.

Abstract: This action responds to the Wendall H. Ford Investment and Reform Act for the 21st Century by requiring that all persons who remove any life-limited aircraft part have a method to prevent the installation of that part after it has reached its life limit. This action reduces the risk of life-limited parts being used beyond their life limits. This action would also require that manufacturers of life-limited parts provide marking instructions when requested.

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 December 14, 2009.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E9–30310 Filed 12–22–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2008–0184; Notice 2]

Goodyear Tire and Rubber Company, Grant of Petition for Decision of Inconsequential Noncompliance

Goodyear Tire and Rubber Company (Goodyear), has determined that certain passenger car tires manufactured from June 2, 2008, through July 10, 2008, did not fully comply with paragraphs S5.5(e) and S5.5(f) of Federal Motor Vehicle Safety Standards (FMVSS) No. 139 *New Pneumatic Radial Tires for Light Vehicles.* Goodyear has filed an appropriate report pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.*

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Goodyear has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety. Notice of receipt of the petition was published, with a 30-day public comment period, on December 18, 2008, in the **Federal Register** (73 FR 77105). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System Web site at: *http://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2008–0184.''

For further information on this decision, contact Mr. George Gillespie, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5299, facsimile (202) 366–7002.

Affected are approximately 112 size P265/60R18 109S Dunlop Rover AT passenger car tires manufactured from June 2, 2008, through July 10, 2008.

Paragraphs S5.5(e) and S5.5(f) of FMVSS No. 139 require in pertinent part:

S5.5 Tire markings. Except as specified in paragraphs (a) through (i) of S5.5, each tire must be marked on each sidewall with the information specified in S5.5(a) through (d) and on one sidewall with the information specified in S5.5(e) through (i) according to the phase-in schedule specified in S7 of this standard. The markings must be placed between the maximum section width and the bead on at least one sidewall, unless the maximum section width of the tire is located in an area that is not more than one-fourth of the distance from the bead to the shoulder of the tire. If the maximum section width falls within that area, those markings must appear between the bead and a point one-half the distance from the bead to the shoulder of the tire, on at least one sidewall. The markings must be in letters and numerals not less than 0.078 inches high and raised above or sunk below the tire surface not less than 0.015 inches* * *

(e) The generic name of each cord material used in the plies (both sidewall and tread area) of the tire;

(f) The actual number of plies in the sidewall, and the actual number of plies in the tread area, if different* * *

Goodyear explains that the noncompliance is that, due to a mold labeling error, the sidewall marking incorrectly describes the plies in the tread area of the tires. Specifically, the tires in question were inadvertently manufactured with ''Tread 2 Polyester + 2 Steel + 1 Nylon'' marked on the sidewall. The labeling should have been ''Tread 2 Polyester + 2 Steel.''

Goodyear makes the argument that this noncompliance is inconsequential to motor vehicle safety because the noncompliant sidewall marking does not affect the safety of the tire and that the tires as built are in compliance with all other sidewall identification markings and all applicable tire performance requirements specified in FMVSS No. 139.

Goodyear points out that NHTSA has previously granted petitions for sidewall marking noncompliances that it believes are similar to the instant noncompliance.

Goodyear also stated that it has corrected the problem that caused these errors so that they will not be repeated in future production.

In summation, Goodyear states that it believes that because the noncompliances are inconsequential to motor vehicle safety that no corrective action is warranted.

NHTSA Decision

The agency agrees with Goodyear that the noncompliances are inconsequential to motor vehicle safety. The agency believes that the true measure of inconsequentiality to motor vehicle safety in this case is that there is no effect of the noncompliance on the operational safety of vehicles on which these tires are mounted.

Although tire construction affects the strength and durability, neither the agency nor the tire industry provides information relating tire strength and durability to the number of plies and types of ply cord material in the tread and sidewall. Therefore, tire dealers and customers should consider the tire construction information along with other information such as the load capacity, maximum inflation pressure, and tread wear, temperature, and traction ratings, to assess performance capabilities of various tires. In the agency's judgment, the incorrect labeling of the tire construction information will have an inconsequential effect on motor vehicle safety because most consumers do not base tire purchases or vehicle operation parameters on the ply material or number of plies in a tire.

The agency also believes the noncompliance will have no measurable effect on the safety of the tire retread, repair, and recycling industries. The use of steel cord construction in the sidewall and tread is the primary safety concern of these industries. In this case, since the tire sidewalls are marked correctly for the number of steel plies, this potential safety concern does not exist.

In consideration of the foregoing, NHTSA has decided that Goodyear has met its burden of persuasion that the subject FMVSS No. 139 labeling noncompliance is inconsequential to motor vehicle safety. Accordingly, Goodyear's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the subject noncompliance under 49 U.S.C. 30118 and 30120.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8)

Issued on: December 17, 2009.

Claude Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. E9–30444 Filed 12–22–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Seventh Meeting, Special Committee 213/EUROCAE WG 79: Enhanced Flight Vision Systems/Synthetic Vision Systems (EFVS/SVS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 213/EUROCAE WG 79: Enhanced Flight Vision Systems/ Synthetic Vision Systems (EFVS/SVS).

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 213/ EUROCAE WG 79: Enhanced Flight Vision Systems/Synthetic Vision Systems (EFVS/SVS).

DATES: The meeting will be held January 26–28, 2010. Sign-in: 8:30 a.m. on January 26, 2010. Meeting: 9 a.m.–5 p.m.

ADDRESSES: The meeting will be held at FAA Long Beach Aircraft Evaluation Group (LGB AEG), 3960 Paramount Blvd., Lakewood, California 90712–4137, 1st Floor Conference Rooms A, B, & C, 562–627–5216 (conf. room A).

Objective: Per Terms of Reference, this meeting will review draft MASPS for EFVS approach and landing and potential draft MASPS material for SVS.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.* For further meeting information, contact Harold Moses 202–330–0654; Web site *HMoses@rtca.org*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 213/ EUROCAE WG 79: Enhanced Flight Vision Systems/Synthetic Vision Systems (EFVS/SVS) meeting. The agenda will include:

Tuesday, 26 January

- Sign-in at 8:30 a.m.;
- 9 a.m.–5 p.m.—Plenary (including breaks and lunch);
- Welcome, introductions, review agenda, minutes approval, and objectives;
- Plenary work group updates, action item review;
- Separate work group 1 and 2 discussions if needed.

Wednesday, 27 January

- 9 a.m.–5 p.m.—Plenary including breaks and lunch.

Thursday, 28 January

- 9 a.m.–3 p.m.—Plenary (including breaks and lunch);
- Agree on draft MASPS;
- Review action items;
- Review administrative items.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen,

members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

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

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. E9–30437 Filed 12–22–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2009–0119]

Surface Transportation Project Delivery Pilot Program; Caltrans Audit Report

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for comment.

SUMMARY: Section 6005 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) established the Surface Transportation Project Delivery Pilot Program, codified at 23 U.S.C. 327. To ensure compliance by each State participating in the Pilot Program, 23 U.S.C. 327(g) mandates semiannual audits during each of the first 2 years of State participation. This notice announces and solicits comments on the fourth audit report for the California Department of Transportation (Caltrans).

DATES: Comments must be received on or before January 22, 2010.

ADDRESSES: Mail or hand deliver comments to Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590. You may also submit comments electronically at *http://www.regulations.gov,* or fax comments to (202) 493–2251.

All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments in any one of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, (Volume 65, Number 70, Pages 19477–78) or you may visit *http://DocketsInfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Ruth Rentch, Office of Project Development and Environmental Review, (202)–366–2034, *Ruth.Rentch@dot.gov*, or Mr. Michael Harkins, Office of the Chief Counsel, (202) 366–4928, *Michael.Harkins@dot.gov*, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded from the Office of the Federal Register's home page at *http://www.archives.gov* and the Government Printing Office's Web site at *http://www.access.gpo.gov*.

Background

Section 6005 of SAFETEA–LU (codified at 23 U.S.C. 327) established a pilot program to allow up to five States to assume the Secretary of Transportation's responsibilities for environmental review, consultation, or other actions under any Federal environmental law pertaining to the review or approval of highway projects. In order to be selected for the pilot program, a State must submit an application to the Secretary.

On June 29, 2007, Caltrans and FHWA entered into a Memorandum of Understanding (MOU) that established the assignments to and assumptions of responsibility to Caltrans. Under the MOU, Caltrans assumed the majority of FHWA's responsibilities under the National Environmental Policy Act, as well as the FHWA's responsibilities under other Federal environmental laws for most highway projects in California.

To ensure compliance by each State participating in the Pilot Program, 23 U.S.C. 327(g) requires the Secretary to conduct semiannual audits during each of the first 2 years of State participation; and annual audits during each subsequent year of State participation. The results of each audit must be presented in the form of an audit report and be made available for public comment. This notice announces the availability of the fourth audit report for Caltrans and solicits public comment on same.

Authority: Section 6005 of Pub. L. 109–59; 23 U.S.C. 315 and 327; 49 CFR 1.48.

Issued on: December 15, 2009.

Victor M. Mendez,

Administrator.

Surface Transportation Project Delivery Pilot Program

Federal Highway Administration Audit of California Department of Transportation, July 27–31, 2009

Introduction

Overall Audit Opinion

Based on the information reviewed, it is the Federal Highway Administration (FHWA) audit team's opinion that as of July 31, the California Department of Transportation (Caltrans) has continued to make progress toward meeting all responsibilities assumed under the Surface Transportation Project Delivery Pilot Program (Pilot Program), as specified in the Memorandum of Understanding (MOU) [1] with FHWA and in the Caltrans Application for Assumption (Application).

With the completion of FHWA's fourth audit, Caltrans has been operating under the Pilot Program for 2 years. In compliance with the time specifications for the required audits, FHWA has completed the four semiannual audits in the first 2 years of State participation. As required under the Pilot Program, FHWA audits of Caltrans will now be on an annual basis. During the four audits conducted, the audit team has completed on-site audits at 9 of the 12 Caltrans Districts and the remaining Districts were within the scope of the Caltrans Regional Offices that were audited. The audit team continues to identify significant differences across the Districts in terms of the Pilot Program. Examples of such differences include: Resource availability and allocation; methods of implementation; processes and their improvement; and progress toward meeting all commitments. It is the audit team's opinion that the highly decentralized nature of Caltrans' operations is a major contributing factor to the variation observed. The decentralized nature of the organization necessitates clear, consistent, and ongoing oversight by Caltrans Headquarters over Districts' implementation and operation of the

[1] Caltrans MOU between FHWA and Caltrans available at: *http://environment.fhwa.dot.gov/strmlng/safe_cdot_pilot.asp.*

Pilot Program. A robust oversight program will help foster the exchange of information and the sharing of best practices and resources between Districts and will put the entire organization in a better position to more fully implement all assumed responsibilities and meet all Pilot Program commitments.

The FHWA commends Caltrans for its implementation of corrective actions in response to previous audit findings. However, these corrective actions and ''fixes'' have been put into practice on a case-by-case basis. The FHWA recommends that Caltrans develop a departmentwide, holistic corrective action management approach and system that will develop and implement an internal process review to determine needed improvements to existing processes and procedures.

Due to the multiyear timeframes associated with more complex and controversial projects, the full lifecycle of the environmental review aspect of project development (proceeding from initiation of environmental studies and concluding with the issuance of a record of decision or equivalent decision document) has yet to be fully realized within the period of the Pilot Program. Over the past 2 years, the FHWA California Division has continued to execute the FHWA role for 22 project reviews and decisions excluded from the Pilot Program. Caltrans continues to gain experience in understanding the resource requirements and processes necessary to administer its Pilot Program. It is the audit team's opinion that Caltrans needs to continue to refine its approaches and resources to meet all Pilot Program commitments, especially given the likelihood of increasing resource demands associated with exclusively managing ever-more complex and controversial projects under the Pilot Program.

During the on-site audit, Caltrans staff and management continued to express ongoing interest in receiving feedback from the FHWA audit team related to program successes and areas in need of improvement. By addressing all findings in this report, Caltrans will continue to move its program toward full compliance with all assumed responsibilities and meeting all Pilot Program commitments.

Limitations of the Audit

The conclusions presented in this report are opinions based upon interviews of selected persons knowledgeable about past and current activities related to the execution of the Pilot Program at Caltrans, and a review of selected documents over a limited time period. The FHWA audit team's ability to conduct the audit and make determinations of Caltrans successful participation in having met its commitments under the Pilot Program during the four audits conducted have been further limited by the following:

- Not every District was audited. Each audit (including this audit) consisted of visits to selected Caltrans Districts.
- Incomplete project files. Project files and associated project documentation have, when reviewed, not always been complete (i.e., a full administrative record was not always available for review by the auditor team). This is especially true for projects where the project or related studies were initiated prior to commencement of the Pilot Program.
- The limited scope of Pilot Program activity to date conducted by Caltrans. Since Caltrans has not been operating under the Pilot Program for the period of time that is generally agreed to be required to complete the full lifecycle of most Environmental Impact Statements (EIS) and other complex projects, FHWA is not yet able to fully determine how Caltrans complies with all the responsibilities assumed in those project situations.
- Insufficient data to determine time savings. Similarly, it is too early in Caltrans' participation in the Pilot Program, and there is not enough data available, for FHWA to be able to report conclusively on time savings being achieved as a result of Caltrans participation in the Pilot Program.
- Lack of ability to view legal comments provided by Caltrans staff attorneys. As in prior audits, Caltrans did not permit access to its attorneys' written comments on assigned environmental documents. The inability to document the existence (not the substance) of such comments has made it difficult for the audit team to determine if the legal sufficiency process is being implemented in an effective—as opposed to a timely—manner. While recognizing Caltrans' expressed concerns about the attorney-client privilege and acknowledging the dialogue that has taken place regarding these concerns and the appropriate documentation of this process, the audit team, mindful of the provisions of 23 CFR 1.5 as well as sections 8.1.6, 8.2.2, and 8.2.4 of the MOU, is considering whether documentation beyond the timeline provided by Caltrans Legal Division's Legal Information Computer System database and individual findings of legal sufficiency is necessary for FHWA to evaluate fully Caltrans' compliance with these requirements.
- Distinction between the two Categorical Exclusion (CE) assumption processes. Since the assumption by Caltrans of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU, Pub L. 109–59) Section 6004 CE process is not a part of these audits, it is not possible to validate the correctness of determinations placing individual CEs under the aegis of each assumed responsibility.
- Continued errors in the quarterly reports. Since the quarterly reports continue to contain errors, it is difficult to have confidence that all National Environmental Policy Act (NEPA) documents have been reported and thus can be part of the FHWA audit plans.

Background

The SAFETEA–LU Section 6005(a) established the Pilot Program, codified at title 23, United States Code, section 327. The Pilot Program allows the Secretary of Transportation (Secretary) to assign, and the State to assume, the Secretary's responsibilities under NEPA for one or more highway projects. Upon assigning NEPA responsibilities, the Secretary may further assign to the State all or part of the Secretary's responsibilities for environmental review, consultation, or other action required under any Federal environmental law pertaining to the review of a specific highway project. When a State assumes the Secretary's responsibilities under this program, the State becomes solely responsible and is liable for carrying out the responsibilities it has assumed, in lieu of the FHWA.

To ensure compliance by each State participating in the Pilot Program, 23 U.S.C. 327(g) mandates that FHWA, on behalf of the Secretary, conduct semiannual audits during each of the first 2 years of State participation; and annual audits during each subsequent year of State participation. The focus of the FHWA audit process is fourfold: (1) To assess a Pilot State's compliance with the required MOU and applicable Federal laws and policies, (2) to collect information needed to evaluate the success of the Pilot Program, (3) to evaluate Pilot State progress in meeting its performance measures, and (4) to collect information for use in the Secretary's annual report to Congress on the administration of the Pilot Program. Additionally, 23 U.S.C. 327(g) requires FHWA to present the results of each audit in the form of an audit report that is published in the **Federal Register**. This audit report must be made available for public comment, and FHWA must respond to public

comments received no later than 60 days after the date on which the period for public comment closes.

Caltrans published its Application under the Pilot Program on March 14, 2007, and made it available for public comment for 30 days. After considering public comments, Caltrans submitted its Application to FHWA on May 21, 2007, and FHWA, after soliciting the views of Federal agencies, reviewed and approved the Application. Then on June 29, 2007, Caltrans and FHWA entered into an MOU that established the assignments to and assumptions of responsibility to Caltrans, which became effective July 1, 2007. Under the MOU, Caltrans assumed the majority of FHWA's responsibilities under NEPA, as well as FHWA's responsibilities under other Federal environmental laws for most highway projects in California. Caltrans' participation in the Pilot Program is effective through August 2011 (23 U.S.C. 327(i)(1)).

Scope of the Audit

This is the fourth FHWA audit of the Caltrans Pilot Program. The on-site portion of the audit was conducted in California from July 27 through July 31, 2009. As required in SAFETEA–LU, each FHWA audit must assess compliance with the roles and responsibilities assumed by the Pilot State in the MOU. The audit also includes recommendations to assist Caltrans in administering a successful Pilot Program.

The audit primarily focused on the continued review of compliance with assumed responsibilities.

Prior to the on-site audit, FHWA conducted telephone interviews with Federal resource agency staff at the U.S. Army Corps of Engineers (USACE), the U.S. Fish and Wildlife Service (USFWS), the National Park Service, the National Oceanic and Atmospheric Administration and the Environmental Protection Agency regional office in California. The on-site audit included visits to the Caltrans Offices in District 5 (San Luis Obispo), District 7 (Los Angeles), District 11 (San Diego), and District 12 (Irvine). Additionally, Caltrans legal staff was interviewed in Sacramento and USACE office in Irvine was visited.

This report documents findings within the scope of the audit as of the completion date of the on-site audit on July 31, 2009.

Audit Process and Implementation

The intent of each FHWA audit completed under the Pilot Program is to ensure that each Pilot State complies with the commitments in its MOU with FHWA. The FHWA does not evaluate specific project-related decisions made by the State because these decisions are the sole responsibility of the Pilot State. However, the FHWA audit scope does include the review of the processes and procedures (including documentation) used by the Pilot State to reach project decisions in compliance with MOU section 3.2.

In addition, Caltrans committed in its Application (incorporated by reference in MOU section 1.1.2) to implement specific processes to strengthen its environmental procedures in order to assume the responsibilities assigned by FHWA under the Pilot Program. The FHWA audits review how Caltrans is meeting each commitment and assesses Pilot Program performance in the core areas specified in the *Scope of the Audit* section of this report.

The Caltrans' Pilot Program commitments address:

- Organization and Procedures under the Pilot Program
- Expanded Quality Control Procedures
- Independent Environmental Decisionmaking
- Determining the NEPA Class of Action
- Consultation and Coordination with Resource Agencies
- Issue Identification and Conflict Resolution Procedures
- Record Keeping and Retention
- Expanded Internal Monitoring and Process Reviews
- Performance Measures to Assess the Pilot Program
- Training to Implement the Pilot Program
- Legal Sufficiency Review.

The FHWA team for the fourth audit included representatives from the following offices or agencies:

- FHWA Office of Project Development and Environmental Review
- FHWA Office of the Chief Counsel
- FHWA Alaska Division Office
- FHWA Resource Center Environmental Team
- Volpe National Transportation Systems Center
- USFWS.

During the onsite audit, FHWA interviewed 80 staff from the Caltrans four District offices, Caltrans legal staff, and the USACE. The audit team interviewed a cross-section of staff including top senior managers, senior environmental planners, generalists, associate planners, and technical experts. The audit team also reviewed project files and records for over 45 projects managed under the Pilot Program.

The FHWA acknowledges that Caltrans identified specific issues during its fourth self-assessment performed under the Pilot Program (required by MOU section 8.2.6), and has established processes to address most issues. Some issues described in the Caltrans self assessment may overlap with FHWA findings identified in this audit report.

In accordance with MOU section 11.4.1, FHWA provided Caltrans with a 30-day comment period to review this draft audit report. The FHWA reviewed comments received from Caltrans and revised sections of the draft report, where appropriate, prior to publishing it in the **Federal Register** for public comment.

Status of Findings Since Last Audit

As part of the fourth audit, FHWA evaluated the corrective actions implemented by Caltrans in response to the audit findings in the third audit report.

Most of the compliant findings in the third audit report involved specific processes and procedures of the North and Central Region offices. As these offices were not visited during this fourth audit, we cannot report on the continuance of their compliance.

The FHWA reviewed the current status of ''Deficient'' and ''Needs Improvement'' audit findings identified during the third FHWA audit in January 2009.

''Deficient'' audit findings status:

1. *Quarterly Reports*—The quarterly reports Caltrans provides to FHWA under section 8.2.7 of the MOU continue to include an inaccurate listing of all approvals and decisions under the Pilot Program. This continued area of deficiency was also reported by Caltrans in their fourth self assessment.

2. *Performance Measure—''Monitor relationships with Federal and State resource agencies''*—Caltrans reported in its fourth self-assessment that a survey was conducted in early 2009 with those Federal and State resource agencies that it works with on Pilot Program projects.

3. *Delegation of Signature Authority*—This issue has been rectified through issuance of clarifying direction to staff.

4. *Assignment of Section 6002 Responsibility under the Pilot Program*—Caltrans has revised its *Standard Environmental Reference* (SER) to correct and clarify the template letters for inviting cooperating and participating agencies to participate in an EIS project, as per section 6002 of SAFETEA–LU.

''Needs Improvement'' audit findings:

1. *Quality Assurance/Quality Control (QA/QC) Certification Process*—Ongoing improvement was observed in the completion of the QC certification forms. Nevertheless incorrect and incomplete QC certification forms were still identified.

2. *Self Assessment and Process Reviews*—As per the suggestion of this finding, the Caltrans fourth self assessment included review of ongoing projects as well as completed projects.

3. *Air Quality Conformity Determinations*—The project files reviewed during the fourth audit contained the necessary FHWA air quality conformity determination documentation, where applicable.

4. *Project Files/Uniform File System (UFS)*—Some project files reviewed during this audit met the requirements of Section 8.2.4 of the MOU and SER Chapter 38 while other files reviewed did not meet these requirements.

5. *Commitment of Resources*—Inconsistencies continued to be observed with regard to charging time spent on pilot program activities to the official Pilot Program code (6DELE).

6. *Training on Air Quality Conformity*—Caltrans reported in its fourth self assessment that Air Quality training has been offered and is to be provided in the upcoming training plan.

7. *Assignments under the Pilot Program*—Caltrans staff interviewed indicated a better understanding of the SAFETEA–LU Section 6002 (23 U.S.C. 139) environmental review process requirements than indicated in the third audit.

8. *Performance Measure—''Monitor relationships with the general public''*—The fourth Caltrans self assessment reported a new process for monitoring this performance measure had been implemented. Monitoring of how the relationships are evolving is now being conducted.

9. *Documentation of Class of Action Determination*—For projects initiated under the Pilot Program, project files for class of action determination reviewed during the fourth audit, contained this documentation.

10. *Local Assistance Training Plan*—This finding was not revisited as to its status during the fourth audit.

Effective Practices

The FHWA audit team observed the following effective practices during the fourth audit:

1. One Caltrans District training coordinator implemented a system to capture and track which employees in that district completed online training courses by creating and assigning a unique billing code for time spent taking such courses. This training coordinator then manually input this information into an employee's training plans.

2. In some Districts, electronic files are set up and organized to mirror the UFS headings.

3. In one Caltrans District, new environmental staff are required to attend an internal 23-day ''boot camp'' that introduces them to the processes, procedures, and related information needed for their position.

4. The use of a memorandum to the file with a complete explanation of the circumstances and details regarding the ''down-scoping'' of a project from an EIS to an environmental assessment (EA), or from an EA to a CE.

5. Explanatory notes in a project file under one UFS tab stating where the information for that tab is found filed under another tab within the project file.

Findings Definitions

The FHWA audit team carefully examined Pilot Program areas to assess compliance in accordance with established criteria in the MOU and Application. The time period covered by this fourth audit report is from the start of the Caltrans Pilot Program (July 1, 2007) through completion of the third onsite audit (July 31, 2009) with the focus of the audit on the most recent 6 month period. This report presents audit findings in three areas:

- *Compliant*—Audit verified that a process, procedure or other component of the Pilot Program meets a stated commitment in the Application and/or MOU.
- *Needs Improvement*—Audit determined that a process, procedure or other component of the Pilot Program as specified in the Application and/or MOU is not fully implemented to achieve the stated commitment or the process or procedure implemented is not functioning at a level necessary to ensure the stated commitment is satisfied. *Action is recommended to ensure success.*
- *Deficient*—Audit was unable to verify if a process, procedure or other component of the Pilot Program met the stated commitment in the Application and/or MOU. *Action is required to improve the process, procedure or other component prior to the next audit;*

or

Audit determined that a process, procedure or other component of the Pilot Program did not meet the stated commitment in the Application and/or MOU. *Corrective action is required prior to the next audit.*

or

Audit determined that for a past Needs Improvement finding, the rate of corrective action has not proceeded in a timely manner; is not on the path to timely resolution of the finding.

Summary of Findings—July 2009

Compliant

(C1) *Legal Sufficiency Timeline*—Caltrans' Legal Division has developed a consistent process to conduct required legal sufficiency reviews by attorneys (per 23 CFR 771.125(b) and 774.7(d)). Based on interviews with staff and information provided during the audit, legal reviews of NEPA and Section 4(f) of the U.S. DOT Act of 1966 (Section 4(f)) documents appear to be conducted within the times allotted by Caltrans internal performance goals.

Needs Improvement

(N1) *Inadequate Guidance in the SER*—Section 8.2.5 of the MOU requires ''At a minimum, Caltrans' quality control and quality assurance activities will include the review and monitoring of its processes relating to project decisions, environmental analysis, project file documentation, checking for errors and omissions, legal sufficiency reviews, and taking appropriate corrective action as needed.'' Several instances were identified where the guidance provided in the SER was unclear, misleading, or incomplete. This resulted in documents incorrectly completed and/or processes not implemented correctly. Examples of such instances were:

(a) SER Chapter 38 requires that the SEP sign the Environmental Document Review Checklist once it is completed. Review of project files revealed Environmental Document Review Checklists that were either not signed by a Senior Environmental Planner (SEP) or not signed at all. Additionally, different versions of the checklist were found in various project files, none of which designated which signature line was to be completed by the SEP. These various instances of noncompliance with the SER requirement were observed within individual Districts and also from District to District.

(b) SER Chapter 38 guidance does not distinguish between the ''pilot program'' citation required to appear in individual Section 4(f) Evaluations prepared for Section 6005 CE projects and those prepared for Section 6004 CE projects. The statement in the SER regarding the project being carried out by Caltrans under its assumption of responsibility pursuant to 23 U.S.C. 327 is only applicable to Section 4(f) evaluations for Section 6005 CEs under the Pilot

Program. The CEs completed by Caltrans under the Section 6004 CE assumption should refer to 23 U.S.C. 326. Through interviews and project file reviews, confusion about this was identified and, at least in some cases, the apparent misunderstanding that the same language is to be used for both Section 6004 and Section 6005 CEs with individual Section 4(f) evaluations.

(c) SER Chapter 33 discusses the process and documentation for conducting NEPA re-evaluations (to comply with 23 CFR 771.129). The chapter, last updated November 10, 2008, does not provide clear direction on how to process a re-evaluation under the Pilot Program. The chapter includes a reference to a joint FHWA/Caltrans guidance on NEPA consultation and re-evaluation, dated June 21, 2007, that states, ''When the NEPA Pilot Program (NEPA assumption) begins, the joint guidance and the NEPA/CEQA Revalidation form will be revised as necessary.'' The FHWA/Caltrans joint guidance has not been revised to take the Pilot Program into consideration. There is a link to a review form that matches the form contained in the joint FHWA/Caltrans guidance and has FHWA removed as having approval authority; however, there is no guidance on the appropriate use of the form.

(d) SER Chapter 25 references FHWA Order 6640.2 *FHWA Actions to address Environmental Justice in minority and Low-Income Populations;* however, the flowchart and guidance provided in that chapter do not fully reflect the definition of Disproportionately High and Adverse Effect on Minority and Low-Income Populations provided in that Order, nor does it clearly state the need to identify population served and/or affected by race, or national origin, and income level when determining such effects. The SER chapter provides discussion points and some sources for reference material, but does not provide specific guidance to NEPA practitioners for how to integrate a project level review into a NEPA process, to document proposed steps to guard against disproportionately high and adverse effects, or to document meaningful public involvement opportunities and consider the results.

(N2) *Procedural and Substantive Requirements*—MOU Section 5.1.4 states that Caltrans will work with all other appropriate Federal agencies concerning the laws, guidance, and policies that such other Federal agencies are responsible for administering. Areas in need of improvement in working with Federal agencies included:

(a) Through interviews with USACE and USFWS staff located in California, instances were identified where there was confusion as to the implementation of the Endangered Species Act (ESA) Section 7 process and how it is related to the USACE permitting process. Verbal comments were made by resource agency staff that when working on local agency projects, the local project sponsors lacked clarity on the information regarding the ESA Section 7 compliance needed for the USACE permitting process. It was also learned that on more than one occasion, local agencies inappropriately acted as lead agency for ESA Section 7 consultation and Section 404 of the Clean Water Act coordination.

(b) The SER Chapter 38, *Consultation and Coordination with Federal Agencies,* requires Caltrans to include the following specific language in consultation documents being transmitted directly to Federal resource agencies:

> Caltrans is [transmitting/initiating * * * (describe product or action)] as the NEPA lead agency under the provisions of *the Memorandum of Understanding (MOU) between the Federal Highway Administration and the California Department of Transportation Concerning the State of California's Participation in the Surface Transportation Project Delivery Pilot Program,* which became effective on July 1, 2007. The MOU was signed pursuant to Section 6005 of the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) which allows the Secretary of Transportation to assign, and the State of California to assume, responsibility for FHWA's responsibilities under other Federal environmental laws. As this project is covered by the Pilot Program MOU, FHWA has assigned and Caltrans has assumed FHWA responsibility for environmental review, consultation, and coordination on this project. Please direct all future correspondence on this project to Caltrans.

A letter in a project file from Caltrans to USFWS requesting initiation of formal ESA Section 7 consultation did not include the required language regarding the responsibilities assumed by Caltrans.

(N3) *Section 4(f) Documentation*—MOU Section 5.1.1 affirms that Caltrans is subject to the same procedural and substantive requirements that apply to the DOT in carrying out the responsibilities assumed under the Pilot Program. Through project file reviews and interviews with Caltrans staff, inconsistencies were identified with the *documentation* required in carrying out the Section 4(f) provisions. These included:

(a) For one project, no documentation was provided in the EA or in the project file to support the assertion that ''[t]emporary uses do not normally constitute 'use' under Section 4(f) policy.'' The FHWA regulation regarding ''temporary occupancies of land,'' 23 CFR 774.13(d), states in pertinent part that there must be documented agreement with the official with jurisdiction over the Section 4(f) resource that the requisite conditions have been met. 23 CFR 774.13(d)(5).

(b) Two project files that together contained inadequate documentation of three potential Section 4(f) resources were identified. Documentation did not fully support statements that these resources were not, in fact, Section 4(f) resources. In one case, the official with jurisdiction even disputed the statement in the environmental document that the subject property was not a Section 4(f) resource and provided information to support a Section 4(f) resource identification. In another document, there was an implied *de minimis* effect by the use of the term; however, no supporting documentation was provided, nor was there any evidence of public involvement or coordination with the officials with jurisdiction over the Section 4(f) resource, as required by 49 U.S.C. 303(d) and 23 CFR 774.7(b).

(c) In four project files reviewed during the audit, documentation did not reflect that the current Section 4(f) regulations are being adhered to in all NEPA processes. In these four projects, references were made to the prior FHWA regulations at 23 CFR 771.135 rather than to the updated regulations at 23 CFR Part 774.

(N4) *Circulation of a Draft Section 4(f) Evaluation*—Project file reviews and interviews with Caltrans staff identified confusion as to the requirements for the circulation of the Section 4(f) Evaluation to the Department of the Interior (DOI) for review. In one instance, Caltrans staff contacted the FHWA Division Office to determine circulation requirements and documentation indicates that the Section 4(f) Evaluation was sent to FHWA for forwarding to DOI.

(N5) *Section 4(f) Implementation*—MOU Section 5.1.1 requires Caltrans to be subject to the same procedural and substantive requirements that apply to the DOT when carrying out the responsibilities it has assumed. Through project file reviews and interviews of Caltrans staff, several inconsistencies with the *implementation and general understanding* required in carrying out the Section 4(f) provisions were identified. These include:

(a) Text in an EA that cited the Section 4(f) ''policy'' should have referred to the Section 4(f) ''regulations.'' The correct citation for this Section 4(f) Evaluation should have been the FHWA regulations, 23 CFR Part 774.

(b) Review of a final Environmental Assessment/Finding of No Significant Impact (EA/FONSI) and project files revealed a lack of understanding regarding the applicability of FHWA's Nationwide Programmatic Section 4(f) evaluation for the rehabilitation or replacement of historic bridges. Under the Programmatic, all five criteria of applicability set forth in this programmatic must be met and the explanation for meeting the criteria must be included in the document and the project file (*http://www.environment.fhwa.dot.gov/projdev/4fbridge.asp*). In addition, the draft EA for this project reached a Section 4(f) conclusion prior to executing the Section 106 MOU with the State Historic Preservation Office.

(N6) *Legal Division Staff*—Caltrans' Legal Division consists of four largely autonomous

offices [2] serving different regions of the State. The MOU section 4.2.2 requires Caltrans ''to obtain adequate * * * staff capability'' including ''without limitation * * * [d]emonstrating, in a consistent manner, the capacity to perform Caltrans' assumed responsibilities under this MOU and applicable Federal laws.'' As noted in a previous audit report, Caltrans maintains a staff of attorneys in each of the four offices trained to support the Pilot Program, and tracks the training each of these attorneys receives related to environmental law. The audit team notes that many of the attorneys assigned to the Pilot Program have a great deal of general legal experience; however, over the life of the Pilot it has become apparent that the four legal offices vary widely when it comes to attorneys with significant experience in Federal environmental law. During this audit, it became clear that this inconsistency increased following the retirement of a highly experienced attorney near the end of 2008. This retirement has resulted in two of Caltrans' legal offices—each of which serves some of Caltrans' largest and busiest Districts—having on staff no attorneys with substantial experience in Federal environmental law. It is the audit team's understanding that legal sufficiency reviews are conducted independently within these autonomous offices, increasing the potential that legal sufficiency reviews may be applied in an inconsistent manner across the State.

(N7) *Training*—Section 4.2.2 of the MOU requires Caltrans to maintain adequate organizational and staff capacity to effectively carry out the responsibilities it has assumed under Section 3 of the MOU. The following inconsistencies were noted during interviews:

(a) Interviews and personnel training record reviews identified two tools used by Caltrans to determine the capacity of Caltrans staff to carry out Pilot Program responsibilities including a Learning Management System (LMS) and Individual Development Plans (IDPs). The audit team observed that these tools, and possibly others, are used in varying ways and with varying success across Districts to (1) identify training needs or gaps in areas of expertise and (2) plan and track the training each employee receives. Given this variation and use of these tools and approaches, it is unclear how District leadership ensures that all Caltrans employees have the capacity to carry out assigned responsibilities assumed under the Pilot Program and how this information can be collected.

(b) Interviews reflected a lack of knowledge in two areas. As is detailed in other portions of this audit report, several instances of inadequate staff capacity for determining compliance process requirements related to the Section 4(f) and ESA Section 7 processes were observed during this audit. This is an example of a needed competency that does not appear to be being met and/or being tracked. As was also noted earlier in this report, there is varying understanding of the re-evaluation process and requires additional training for staff to be competent in the understanding of this process.

(c) As the demand for and use of online training courses increases, there is currently no consistent method for Caltrans to track which employees have completed online training courses and to incorporate this information into the LMS and into the employee IDPs. In order to ensure that Caltrans employees implementing NEPA duties have the knowledge and skills to assume the responsibilities under Section 3 of the MOU, Caltrans should begin to track this information and also determine which online training courses should be prerequisites for performing certain NEPA assumption activities.

(N8) *Maintenance of Project and General Administrative Files*—Section 8.2.4 of the MOU requires Caltrans to maintain project and general administrative files pertaining to its discharge of the responsibilities assumed under the Pilot Program. Caltrans has instituted specific procedures for maintaining project files and has provided training on these procedures. Inconsistencies in the application of these procedures, reported in previous audit findings, were also identified in this audit. Inconsistencies in 12 of the 47 project files reviewed during the audit, including:

(a) Required project documentation was missing from several project files. Examples of missing documentation included: a Biological Opinion; ESA Section 7 concurrence documentation; internal and external communications related to the project; letters from the District Local Agency Engineer to the local agency transmitting the Preliminary Environmental Study form with the list of the required technical studies for the project; and noise abatement decision report.

(b) Some required file documentation missing from project files was eventually located elsewhere in the District Office. Examples of items missing from the project file, but brought to auditors upon request, included cooperating agencies' letters, FHWA project level air quality conformity determinations, Caltrans' noise abatement decision reports, a project's Section 106 MOA, and evidence of the circulation of Section 4(f) documents to the DOI. Required documentation could not be located during the audit.

(c) The required documentation according to 23 CFR 771.111(h)(2)(vi), which states that the State must provide ''transcript of each public hearing and a certification that a required hearing or hearing opportunity was offered'' could not be located during the audit. In two instances, the public hearing transcript was not found nor was any certification (or other documentation) that a hearing had been held.

(d) In several instances, project files were missing required UFS tabs (though they contained pertinent documentation) and some sections contained no information or explanation as to why the tabs were missing or tab sections were empty.

(N9) *Varying Oversight/Analysis of Commitment of Resources*—Section 4.2.2 of the MOU requires that ''Caltrans will maintain adequate organizational and staff capability, including competent and qualified consultants where necessary or desirable, to effectively carry out the responsibilities it has assumed under part 3 of this MOU. This includes, without limitation:

- Using appropriate environmental technical and managerial expertise;
- Devoting adequate staff resources; and
- Demonstrating, in a consistent manner, the capacity to perform Caltrans' assumed responsibilities under this MOU and applicable Federal laws.''

Previous audits have tried to determine how Caltrans monitors its resources to implement the Pilot Program, but based on audit interviews, were unable to identify a uniform process. Through interviews and material reviewed during this audit, it was determined that the existing system used by Caltrans to track resources showed inconsistent use of billing codes and in one case identified an error not previously found by Caltrans. During the interviews with Caltrans environmental personnel, inconsistencies continued to be identified in the reporting and use of these Pilot Program codes. These inconsistencies include:

(a) Lack of familiarity with the activities eligible to be billed to the Pilot Program,

(b) Lack of supervisory direction as to what activities should be billed to the Pilot Program;

(c) Failure to report all times eligible for billing under the appropriate codes for both Capital and Local Assistance programs (codes 6DELE and 6LADELE, respectively);

(d) Varying degrees of oversight, or no oversight of the billing codes for the Pilot Program performed in the Districts.

Deficient

(D1) *Quality Control Quality (QA/QC) Assurance*—Under the Pilot Program, and as reflected in the language cited on each environmental document assigned to Caltrans per MOU Section 3.2.5, NEPA documentation should reflect that FHWA has no role in the environmental review and decisionmaking process for assigned projects. Through project file and document reviews, three instances were observed where in a document or in the project file, there were references to FHWA being involved in the decisionmaking process.

(D2) *QA/QC Certification Process*—Section 8.2.5 of the MOU and SER Chapter 38 require Caltrans staff to review each environmental document in accordance with the policy memorandum titled ''Environmental Document Quality Control Program under the NEPA Pilot Program'' (July 2, 2007). Incomplete and incorrectly completed QC certification forms continue to be identified. Five of the seven identified instances occurred in 2008. Examples of these are:

(a) Four instances in which review signatures on QA/QC forms were not obtained the proper sequence in accordance with the Caltrans established QA/QC processes;

(b) Three project files where QA/QC forms were either incomplete or missing.

(D3) *Quarterly Reporting*—MOU Section 8.2.7 requires Caltrans to submit a report to FHWA each quarter for the first 2 years of

[2] The four offices are located in Sacramento, San Francisco, Los Angeles, and San Diego.

Pilot program listing all approvals and decisions Caltrans makes with respect to responsibilities assumed under the MOU. Quarterly reports submitted by Caltrans for the first eight quarters of Pilot program participation were reviewed for this audit. Each of the first seven quarterly reports has been revised; some reports have been revised multiple times. In summary, for the first seven quarterly reports, a total of 63 new projects were added in report revisions and 29 projects initially reported were subsequently deleted. The reporting issues spanned across the majority of districts reporting projects, and seven districts submitted revisions to four or more quarterly reports. Inaccurate project reporting has been a consistent issue affecting the quarterly report process and has been identified in previous FHWA audit reports. Among the errors discovered were reporting errors related to incorrectly characterizing projects (*e.g.,* CEs under Section 6004 and Section 6005), and omissions associated with untimely reporting of project approvals and decisions by district staff (*i.e.,* a subsequent quarterly report included a project that was approved in the previous quarter). The approach used by each district to collect project information for the quarterly reports is highly variable and is one key contributor to continued reporting inaccuracies.

The current Caltrans approach to developing the quarterly reports continues to be deficient. The accuracy of the reports on project approvals and decisions affects FHWA oversight of the Pilot Program. For example, if Caltrans does not report to FHWA a project being administered under the Pilot Program, the project may not be included in the audit process. Additionally, now that the FHWA onsite audit process will move to an annual basis (semi-annual audits were required during the first 2 years of the Pilot Program), the project approval and decision reporting takes on increased significance as less in-field auditing will occur.

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Joint Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the Board, and the FDIC (the ''agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. On August 19, 2009, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), requested public comment for 60 days on a proposal to extend, with revision, the Consolidated Reports of Condition and Income (Call Report), which are currently approved collections of information. After considering the comments received on the proposal, the FFIEC and the agencies will proceed with most of the reporting changes with some limited modifications in response to the comments.

DATES: Comments must be submitted on or before January 22, 2010.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: You should direct all written comments to: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 2–3, Attention: 1557–0081, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov*. You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Board: You may submit comments, which should refer to ''Consolidated Reports of Condition and Income, 7100–0036,'' by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov*. Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov*. Include the OMB control number in the subject line of the message.
- *Fax:* 202–452–3819 or 202–452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments, which should refer to ''Consolidated Reports of Condition and Income, 3064–0052,'' by any of the following methods:

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal/propose.html*. Follow the instructions for submitting comments on the FDIC Web site.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: comments@FDIC.gov*. Include ''Consolidated Reports of Condition and Income, 3064–0052'' in the subject line of the message.
- *Mail:* Gary Kuiper (202–898–3877), Counsel, Attn: Comments, Room F–1072, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room E–1002, 3501 Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 5 p.m. on business days.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: For further information about the revisions

discussed in this notice, please contact any of the agency clearance officers whose names appear below. In addition, copies of the Call Report forms can be obtained at the FFIEC's Web site (*http://www.ffiec.gov/ffiec_report_forms.htm*).

OCC: Mary Gottlieb, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Michelle Shore, Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Gary Kuiper, Counsel, (202) 898–3877, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The agencies are proposing to revise and extend for three years the Call Report, which is currently an approved collection of information for each agency.

Report Title: Consolidated Reports of Condition and Income (Call Report).

Form Number: Call Report: FFIEC 031 (for banks with domestic and foreign offices) and FFIEC 041 (for banks with domestic offices only).

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

OCC:

OMB Number: 1557–0081.

Estimated Number of Respondents: 1,543 national banks.

Estimated Time per Response: 48.90 burden hours.

Estimated Total Annual Burden: 301,811 burden hours.

Board:

OMB Number: 7100–0036.

Estimated Number of Respondents: 861 state member banks.

Estimated Time per Response: 54.84 burden hours.

Estimated Total Annual Burden: 188,869 burden hours.

FDIC:

OMB Number: 3064–0052.

Estimated Number of Respondents: 4,955 insured state nonmember banks.

Estimated Time per Response: 38.94 burden hours.

Estimated Total Annual Burden: 771,791 burden hours.

The estimated time per response for the Call Report is an average that varies by agency because of differences in the composition of the institutions under each agency's supervision (*e.g.,* size distribution of institutions, types of activities in which they are engaged, and existence of foreign offices). The average reporting burden for the Call Report is estimated to range from 16 to 655 hours per quarter, depending on an individual institution's circumstances.

General Description of Reports

These information collections are mandatory: 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 (for state member banks), and 12 U.S.C. 1817 (for insured state nonmember commercial and savings banks). At present, except for selected data items, these information collections are not given confidential treatment.

Abstract

Institutions submit Call Report data to the agencies each quarter for the agencies' use in monitoring the condition, performance, and risk profile of individual institutions and the industry as a whole. Call Report data provide the most current statistical data available for evaluating institutions' corporate applications, identifying areas of focus for both on-site and off-site examinations, and considering monetary and other public policy issues. The agencies use Call Report data in evaluating interstate merger and acquisition applications to determine, as required by law, whether the resulting institution would control more than ten percent of the total amount of deposits of insured depository institutions in the United States. Call Report data are also used to calculate institutions' deposit insurance and Financing Corporation assessments and national banks' semiannual assessment fees.

Current Actions

I. Overview

On August 19, 2009, the agencies requested comment on proposed revisions to the Call Report (74 FR 41973). The agencies proposed to implement certain changes to the Call Report requirements in 2010 to provide data needed for reasons of safety and soundness or other public purposes. The proposed revisions responded, for example, to a change in accounting standards, a temporary increase in the deposit insurance limit, and credit availability concerns. As proposed, the Call Report changes would take effect as of March 31, 2010, except for new data items pertaining to reverse mortgages, which would be collected annually beginning December 31, 2010.

The agencies collectively received comments from seven respondents: four banks, one bankers' organization, one law firm, and a government agency. None of these commenters addressed every specific aspect of the proposal. Rather, individual respondents commented upon one or more of the proposed Call Report changes. Four of the commenters offered general views on the overall proposal. One bank expressed general support for the agencies' proposal and identified a few items that deserved further consideration. The bankers' organization commented that its members expressed no concerns with many of the proposed changes, but it urged the agencies to consider several suggested changes in the final revisions. The organization's suggested changes also included the proposed collection of data in one subject area that was not addressed in the agencies' proposal. The government agency supported the collection of the additional proposed Call Report data and noted that Call Report data are crucial to key components of the agency's economic analysis.

However, one bank opposed the proposed revisions, stating they would not improve the safety and soundness of any bank, yet would add to banks' costs of operations. While an important use of Call Report data is to assist the agencies in fulfilling their supervisory responsibilities with respect to the safety and soundness of individual banks as well as the banking system as a whole, Call Report data are also used for a variety of other purposes, such as determining deposit insurance assessments, supporting the conduct of monetary policy, and assessing the availability of credit. In this regard, Congress has recognized that Call Report data serve multiple purposes as demonstrated by Section 307 of the Riegle Community Development and Regulatory Improvement Act of 1994, which directed each federal banking agency to review the information banks are required to report in the Call Report and ''eliminate requirements that are not warranted for reasons of safety and soundness or other public purposes.'' Furthermore, in developing the Call Report revisions for 2010, the agencies carefully considered the purposes for which the proposed additional data would be used, which are described in the agencies' August 19, 2009, **Federal Register** notice and, to the extent appropriate, in this **Federal Register** notice. The agencies also considered the estimated cost and burden to banks of reporting these additional data.

The following section of this notice describes the proposed Call Report changes and discusses the agencies' evaluation of the comments received on

the proposed changes, including modifications that the FFIEC and the agencies have decided to implement in response to those comments. The following section also addresses the agencies' response to the recommendation from the bankers' organization's concerning the collection of certain additional data from banks that had not been included in the agencies' August 19, 2009, proposal.

After considering the comments received on the proposal, the FFIEC and the agencies will move forward in 2010 with most of the proposed reporting changes after making certain modifications in response to the comments. The agencies will not implement the items for interest expense and quarterly averages for brokered time deposits in 2010 as had been proposed, but will instead reconsider their data needs with respect to deposit funding and related costs. In addition, the FFIEC and the agencies will add four items to the Call Report on assets covered by FDIC loss-sharing agreements in response to the recommendation from the bankers' organization.

The agencies recognize institutions' need for lead time to prepare for reporting changes. Thus, consistent with longstanding practice, for the March 31, 2010, report date, banks may provide reasonable estimates for any new or revised Call Report item initially required to be reported as of that date for which the requested information is not readily available. This policy on the use of reasonable estimates will apply to the reporting of those new Call Report items that will be first implemented effective December 31, 2010. Furthermore, the specific wording of the captions for the new or revised Call Report data items discussed in this notice and the numbering of these data items should be regarded as preliminary.

Type of Review: Revision and extension of currently approved collections.

II. Discussion of Proposed Call Report Revisions

The agencies received either no comments on or comments expressing support for the following revisions, and therefore these revisions will be implemented effective March 31, 2010, as proposed:

- New Memorandum items in Schedule RI, Income Statement, identifying total other-than-temporary impairment losses on debt securities, the portion of the total recognized in other comprehensive income, and the net losses recognized in earnings, consistent with the presentation requirements of a recent accounting standard;
- A change in the reporting frequency for the number of certain deposit accounts from annually to quarterly, which is reported in Schedule RC–O, Other Data for Deposit Insurance and FICO Assessments; and
- The elimination of the item for internal allocations of income and expense from Schedule RI–D, Income from Foreign Offices, which is completed only by certain banks on the FFIEC 031 report form.

The agencies received one or more comments addressing or otherwise relating to each of the following proposed revisions:

- Clarification of the instructions for reporting unused commitments in Schedule RC–L, Derivatives and Off-Balance Sheet Items;
- Breakdowns of the existing items in Schedule RC–L for unused credit card lines and other unused commitments, with the former breakdown required only for certain institutions, and a related breakdown of the existing item for other loans in Schedule RC–C, part I, Loans and Leases;
- New items pertaining to reverse mortgages that would be collected annually in Schedule RC–C, part I, and Schedule RC–L beginning December 31, 2010;
- A breakdown of the existing item for time deposits of $100,000 or more (in domestic offices) in Schedule RC–E, Deposit Liabilities;
- Revisions of existing items for brokered deposits in Schedule RC–E;
- New items for the interest expense and quarterly averages for fully insured brokered time deposits and other brokered time deposits in Schedule RI, Income Statement, and Schedule RC–K, Quarterly Averages; and
- A change in the reporting frequency for small business and small farm lending data from annually to quarterly in Schedule RC–C, part II, Loans to Small Businesses and Small Farms.

The comments related to each of these proposed revisions are discussed in Sections II.A. through G. of this notice along with the agencies' response to these comments. The agencies also received one comment recommending the addition of data to the Call Report on assets covered by FDIC loss-sharing agreements, which the agencies had not proposed. This recommendation is discussed in Section II.H.

A. Clarification of the Instructions for Reporting Unused Commitments

Banks report unused commitments in item 1 of Schedule RC–L, Derivatives and Off-Balance Sheet Items. The instructions for this item identify various arrangements that should be reported as unused commitments, including but not limited to commitments for which the bank has charged a commitment fee or other consideration, commitments that are legally binding, loan proceeds that the bank is obligated to advance, commitments to issue a commitment, and revolving underwriting facilities. However, the agencies have found that some banks have not reported commitments that they have entered into until they have signed the loan agreement for the financing that they have committed to provide. Although the agencies consider these arrangements to be commitments to issue a commitment and within the scope of the existing instructions for reporting commitments in Schedule RC–L, they believe that these instructions may not be sufficiently clear. Therefore, the agencies proposed to revise the instructions for Schedule RC–L, item 1, ''Unused commitments,'' to clarify that commitments to issue a commitment at some point in the future are those where the bank has extended terms and the borrower has accepted the offered terms, even though the related loan agreement has not yet been signed.

One bank and the bankers' organization commented on this proposed revision to the instructions for reporting commitments to issue a commitment. The bank recommended that these instructions ''should include only terms extended and accepted in writing to allow the banks to develop a reliable tracking system.'' Similarly, the bankers' organization recommended that the commitment be in writing, but also stated that banks should only be required to report when the commitment ''has an expiration date of greater than 90 days.'' The bankers' organization further added that it ''would be exceedingly difficult to capture commitments that have an expiration date of 90 days or less and that are not in writing.'' The organization requested that the agencies delay the effective date of the revised instructions for reporting commitments to issue a commitment by at least six months ''to allow banks sufficient time to adjust their systems.''

The agencies generally agree with the recommendation that the instructions for reporting commitments to issue a commitment should cover situations where the terms extended and accepted are in writing. However, in those circumstances where the extension and acceptance of the terms are not in writing but are legally binding on both

the bank and the borrower under applicable law, the agencies believe that such commitments should be reported. Furthermore, when the terms of a commitment to issue a commitment have been extended and accepted in writing or, if not in writing, are legally binding, the agencies believe that it is a sound banking practice and a sound internal control for the bank entering into such commitments to maintain an appropriate tracking system for the commitments whether or not there is a related regulatory reporting requirement.

Accordingly, the agencies have revised the proposed instructional clarification pertaining to the reporting of commitments to issue a commitment in Schedule RC–L, item 1, ''Unused commitments,'' to state that commitments to issue a commitment at some point in the future are those where the bank has extended terms, the borrower has accepted the offered terms, and the terms extended and accepted are in writing or, if not in writing, are legally binding on the bank and the borrower, even though the related loan agreement has not yet been signed. Although the agencies have decided not to delay the effective date for this instructional clarification, banks are reminded that, because of the revision to the instructions for reporting commitments to issue a commitment in Schedule RC–L, item 1, they may provide a reasonable estimate of the amount of such commitments in their Call Reports for March 31, 2010.

After modifying the proposed revised instructions for Schedule RC–L, item 1, ''Unused commitments,'' in response to the comments received, the instructions for this item would read as follows, effective March 31, 2010:

Report in the appropriate subitem the unused portions of commitments. Unused commitments are to be reported gross, *i.e.,* include in the appropriate subitem the unused amount of commitments acquired from and conveyed or participated to others. However, exclude commitments conveyed or participated to others that the bank is not legally obligated to fund even if the party to whom the commitment has been conveyed or participated fails to perform in accordance with the terms of the commitment.

For purposes of this item, commitments include:

(1) Commitments to make or purchase extensions of credit in the form of loans or participations in loans, lease financing receivables, or similar transactions.

(2) Commitments for which the bank has charged a commitment fee or other consideration.

(3) Commitments that are legally binding.

(4) Loan proceeds that the bank is obligated to advance, such as:

(a) Loan draws;

(b) Construction progress payments; and

(c) Seasonal or living advances to farmers under prearranged lines of credit.

(5) Rotating, revolving, and open-end credit arrangements, including, but not limited to, retail credit card lines and home equity lines of credit.

(6) Commitments to issue a commitment at some point in the future, where the bank has extended terms, the borrower has accepted the offered terms, and the extension and acceptance of the terms are in writing or, if not in writing, are legally binding on the bank and the borrower, even though the related loan agreement has not yet been signed.

(7) Overdraft protection on depositors' accounts offered under a program where the bank advises account holders of the available amount of overdraft protection, for example, when accounts are opened or on depositors' account statements or ATM receipts.

(8) The bank's own takedown in securities underwriting transactions.

(9) Revolving underwriting facilities (RUFs), note issuance facilities (NIFs), and other similar arrangements, which are facilities under which a borrower can issue on a revolving basis short-term paper in its own name, but for which the underwriting banks have a legally binding commitment either to purchase any notes the borrower is unable to sell by the rollover date or to advance funds to the borrower.

Exclude forward contracts and other commitments that meet the definition of a derivative and must be accounted for in accordance with FASB Accounting Standards Codifications Subtopic 815–10, Derivatives and Hedging—Overall (formerly referred to as Statement No. 133), which should be reported in Schedule RC–L, item 12. Include the amount (not the fair value) of the unused portions of loan commitments that do not meet the definition of a derivative that the bank has elected to report at fair value under a fair value option. Also include forward contracts that do not meet the definition of a derivative.

The unused portions of commitments are to be reported in the appropriate subitem regardless of whether they contain ''material adverse change'' clauses or other provisions that are intended to relieve the issuer of its funding obligations under certain conditions and regardless of whether they are unconditionally cancelable at any time.

In the case of commitments for syndicated loans, report only the bank's proportional share of the commitment.

For purposes of reporting the unused portions of revolving asset-based lending commitments, the commitment is defined as the amount a bank is obligated to fund—as of the report date—based on the contractually agreed upon terms. In the case of revolving asset-based lending, the unused portions of such commitments should be measured as the difference between (a) the lesser of the contractual borrowing base (*i.e.,* eligible collateral times the advance rate) or the note commitment limit, and (b) the sum of outstanding loans and letters of credit under the commitment. The note commitment limit is the overall maximum loan amount beyond which the bank will not advance funds regardless of the amount of collateral posted. This definition of ''commitment'' is applicable only to revolving asset-based lending, which is a specialized form of secured lending in which a borrower uses current assets (*e.g.,* accounts receivable and inventory) as collateral for a loan. The loan is structured so that the amount of credit is limited by the value of the collateral.

B. Additional Categories of Unused Commitments and Loans

The extent to which banks are supplying credit during the current financial crisis has been of great interest to the Executive Branch, the Congress, and the banking agencies. Bank lending plays a central role in any economic recovery and the agencies need data to better determine when credit conditions have eased. One way to measure the supply of credit is to analyze the change in total lending commitments by banks, considering both the amount of loans outstanding and the volume of unused credit lines. These data are also needed for safety and soundness purposes because draws on commitments during periods when banks face significant funding pressures, such as during the fall of 2008, can place significant and unexpected demands on the liquidity and capital positions of banks. Therefore, the agencies proposed breaking out in further detail two categories of unused commitments on Schedule RC–L, Derivatives and Off-Balance Sheet Items. The agencies also proposed to break out in further detail one new loan category on Schedule RC–C, part I, Loans and Leases. These new data items would improve the agencies' ability to obtain timely and accurate readings on the supply of credit available to households and businesses. These data would also be useful in determining the effectiveness of the government's economic stabilization programs.

Unused commitments associated with credit card lines are reported in Schedule RC–L, item 1.b. This data item is not sufficiently meaningful for monitoring the supply of credit because it mixes consumer credit card lines with credit card lines for businesses and other entities. As a result of this aggregation, it is not possible to fully monitor credit available specifically to households. Furthermore, bank supervisors would benefit from splitting credit card lines into two data items, because the usage patterns, profitability, and evolution of credit quality through the business cycle are likely to differ for consumer credit cards and business credit cards. Therefore, the agencies proposed to split Schedule RC–L, item 1.b, into unused consumer credit card lines and other unused credit card lines.

This breakout would be reported by institutions with either $300 million or more in total assets or $300 million or more in unused credit card commitments.

Schedule RC–L, item 1.e, aggregates all other unused commitments, and includes unused commitments to fund commercial and industrial (C&I) loans (other than credit card lines to commercial and industrial enterprises, which are reported in item 1.b, and commitments to fund commercial real estate, construction, and land development loans not secured by real estate, which are reported in item 1.c.(2)). Separating these C&I lending commitments from the other commitments included in other unused commitments would considerably improve the agencies' ability to analyze business credit conditions. A very large percentage of banks responding to the Board's Senior Loan Officer Opinion Survey on Bank Lending Practices (FR 2018; OMB No. 7100–0058) reported having tightened lending policies for C&I loans and credit lines during 2008; however, C&I loans on banks' balance sheets actually expanded through the end of October 2008, reportedly as a result of substantial draws on existing credit lines. In contrast, other unused commitments reported on the Call Report contracted, but without the proposed breakouts of such commitments, it was not possible to know how total business borrowing capacity had changed. The FR 2018 data are qualitative rather than quantitative and are collected only from a sample of institutions up to six times per year. Having the additional unused commitment data reported separately on the Call Report, along with the proposed changes to Schedule RC–C described below, would have indicated more clearly whether there was a widespread restriction in new credit available to businesses.

Therefore, the agencies proposed to split Schedule RC–L, item 1.e, into three categories: unused commitments to fund commercial and industrial loans (which would include only commitments not reported in Schedule RC–L, items 1.b and 1.c.(2), for loans that, when funded, would be reported in Schedule RC–C, item 4), unused commitments to fund loans to financial institutions (defined to include depository institutions and nondepository financial institutions, i.e., real estate investment trusts, mortgage companies, holding companies of other depository institutions, insurance companies, finance companies, mortgage finance companies, factors and other financial intermediaries, short-term business credit institutions, personal finance companies, investment banks, the bank's own trust department, other domestic and foreign financial intermediaries, and Small Business Investment Companies), and all other unused commitments. With respect to Schedule RC–C, part I, the agencies also proposed to revise item 9, ''Other loans,'' by breaking out a new category for loans to nondepository financial institutions (as defined above). Banks already report data on loans to depository institutions in Schedule RC–C, part I, item 2.

Lending by nondepository financial institutions was a key characteristic of the recent credit cycle and many such institutions failed; however, little information existed on the exposure of the banking system to these firms as this information was obscured by the current structure of the Call Report's loan schedule. The proposed addition of separate items for unused commitments to financial institutions and loans to nondepository financial institutions, together with the existing data on loans to depository institutions, will allow supervisors and other interested parties to monitor more closely the exposure of individual banks to financial institutions and assess the impact of changes in credit availability to this sector on the larger economy.

Two commenters addressed these proposed revisions to Schedules RC–L and RC–C. The bankers' organization indicated that the proposed revisions relating to additional categories of unused commitments were acceptable. One bank expressed support for the proposed reporting of unused commitments and loans to nondepository financial institutions, agreeing that this information would be useful to the agencies in their monitoring of lending activity. However, this bank also asserted that the instructions for categorizing loans in Schedule RC–C ''are complex, require considerable effort, and introduce the potential for inconsistency across reporting institutions.'' The bank asked the agencies to consider simplifying the loan categorization requirements by ''(1) Consolidating reporting categories, where feasible; (2) creating a decision tree matrix with prioritization for competing criteria; (3) recommending the use of more objective criteria (such as SIC classifications).'' The agencies periodically review the reporting categories used in Schedule RC–C and have limited the level of detail required from smaller banks, but in recent years the agencies have found that additional loan categories are needed to better monitor the credit risk profiles of individual institutions and the industry as a whole, to assess credit availability, and to conduct the agencies' other activities. When assigning loans to the loan categories in Schedule RC–C, the schedule already assigns priority to loans secured by real estate, regardless of borrower loan purpose. Loans that do not meet the definition of the term ''loan secured by real estate'' are then categorized by borrower or purpose. The agencies believe the remaining loan categories (*e.g.,* loans to depository institutions; commercial and industrial loans; loans to individuals for household, family, and other personal expenditures; and loans to foreign governments and official institutions) are sufficiently distinct from one another. The instructions for Schedule RC–C provide detailed descriptions of the types of loans and borrowers that fall within the scope of each loan category.

C. Reverse Mortgage Data

Reverse mortgages are complex loan products that leverage equity in homes to provide lump sum cash payments or lines of credit to borrowers. These products typically are marketed to senior citizens who own homes with accumulated equity. Access to data regarding loan volumes, dollar amounts outstanding, and the institutions offering reverse mortgages or participating in reverse mortgage activity is severely limited. As a consequence, the agencies currently are unable to effectively identify and monitor institutions that offer these products.

The reverse mortgage market currently consists of two basic types of products: Proprietary products designed and originated by financial institutions and a federally-insured product known as a Home Equity Conversion Mortgage (HECM). Some reverse mortgages provide for a lump sum payment to the borrower at closing, with no ability for the borrower to receive additional funds under the mortgage at a later date. Other reverse mortgages are structured like home equity lines of credit in that they provide the borrower with additional funds after closing, either as fixed monthly payments, under a line of credit, or both. There are also reverse mortgages that provide a combination of a lump sum payment to the borrower at closing and additional payments to the borrower after the closing of the loan.

The volume of reverse mortgage activity is expected to increase dramatically in the coming years as the U.S. population ages. A number of consumer protection related risks and safety and soundness related risks are

associated with these products and the agencies need to collect information from banks to monitor and mitigate those risks. For example, proprietary reverse mortgages structured as lines of credit, which are not insured by the federal government, expose borrowers to the risk that the lender will be unwilling or unable to meet its obligation to make payments due to the borrower. Additionally, in an economic environment in which housing prices are declining, there is the risk that the reverse mortgage loan balance may exceed the value of the underlying collateral value of the home.

The agencies proposed that new items be added to the Call Report to collect reverse mortgage data on an annual basis beginning on December 31, 2010. Collecting this information will provide the agencies with the necessary information for policy development and the management of risk exposures posed by institutions' involvement with reverse mortgages. First, a new Memorandum item would be added to Schedule RC–C, part I, Loans and Leases, for ''Reverse mortgages outstanding that are held for investment.'' In this Memorandum item, banks would report separately the amount of HECM reverse mortgages and the amount of proprietary reverse mortgages that are held for investment and included in Schedule RC–C, part I, item 1.c, Loans ''Secured by 1–4 family residential properties.'' Additionally, new items would be added to Schedule RC–L, Derivatives and Off-Balance Sheet Items, to collect information on the amounts of ''Unused commitments for HECM reverse mortgages outstanding that are held for investment'' and ''Unused commitments for proprietary reverse mortgages outstanding that held for investment.'' Because these reverse mortgages have been structured in whole or in part like home equity lines of credit, the unused commitments associated with these mortgages are also reportable in existing item 1.a, ''Revolving, open-end lines secured by 1–4 family residential properties,'' of Schedule RC–L. The proposed new unused commitment items would be subsets of item 1.a.

In many instances, institutions do not underwrite and fund reverse mortgages, but instead refer borrowers to other reverse mortgage lenders. These referring institutions may receive fees for performing actual services for the reverse mortgage lender in connection with the reverse mortgages of the customers who have been referred to the reverse mortgage lender. This model enables consumers to deal first with their local institutions without the institutions having to build an entirely new lending function. It also provides an economy of scale for a specialized lender by allowing it to build its business by partnering with existing institutions rather than establishing a large physical branch network. The banking agencies proposed to add a new Memorandum item to Schedule RC–C, part I, in which each bank making referrals to reverse mortgage lenders would annually report the estimated number of referrals made during the year for which the bank received a fee. Banks would report separately the estimated number of fee-paid referrals they made for HECM reverse mortgages and proprietary reverse mortgages beginning on December 31, 2010.

Finally, many banks that originate reverse mortgages routinely sell their funded mortgages in the secondary market. As a result, these loans will not remain on the originating banks' balance sheets for long periods of time and, therefore, the proposed items for reverse mortgages outstanding that are held for investment will not capture the extent of banks' reverse mortgage activity when it involves the origination and sale of these loans. Thus, the agencies proposed to add Memorandum items to Schedule RC–C, part I, in which banks would report the principal amount of reverse mortgages originated for sale that have been sold during the year. HECM and proprietary reverse mortgages sold would be reported separately. These items are distinct and separate from the items described above for the estimated number of referrals because the referring bank does not fund the loan, but instead refers the borrower to another lender that ultimately funds the reverse mortgage. The information on loans sold during the year also would be collected annually beginning on December 31, 2010.

The bankers' organization was the only respondent to comment on the proposed collection of reverse mortgage data. The organization stated that it generally has no concerns with the new reporting requirements, except for the items relating to the reporting of the estimated number of fee-paid referrals. The organization asked the agencies to reconsider this reporting requirement because it may require banks to report information that is inconsistent with the legal requirements of the Real Estate Settlement Procedures Act (RESPA). The agencies have reviewed the proposed reporting of data on reverse mortgage referrals and acknowledge that the description of this proposed reporting requirement could be viewed in such a manner. Under RESPA and its implementing regulations, a mortgage lender may pay fees or compensation to another party, such as a bank that has referred a customer to the mortgage lender, only for services actually performed by that party. Accordingly, to avoid possible misinterpretation or misunderstanding, the agencies are revising their proposed annual data items for the reporting of the estimated number of fee-paid referrals during the year. As revised, banks would annually report the estimated number of reverse mortgage loan referrals to other lenders during the year from whom they have received any compensation for services performed in connection with the origination of the reverse mortgages. The revised referral data items would be implemented beginning December 31, 2010. The other proposed reverse mortgage data items would be implemented as proposed beginning on that same date.

D. Time Deposits of $100,000 or More

On October 3, 2008, the Emergency Economic Stabilization Act of 2008 temporarily raised the standard maximum deposit insurance amount (SMDIA) from $100,000 to $250,000 per depositor. Under this legislation, the SMDIA was to return to $100,000 after December 31, 2009. However, on May 20, 2009, the Helping Families Save Their Homes Act extended this temporary increase in the SMDIA to $250,000 per depositor through December 31, 2013, after which the SMDIA is scheduled to return to $100,000.

At present, banks report a two-way breakdown of their time deposits (in domestic offices) in Schedule RC–E, Deposit Liabilities, distinguishing between time deposits of less than $100,000 and time deposits of $100,000 or more. In response to the extension of the temporary increase in the limit on deposit insurance coverage, the agencies understand that time deposits with balances in excess of $100,000, but less than or equal to $250,000, have been growing and can be expected to increase further. However, given the existing Schedule RC–E reporting requirements, the agencies are unable to monitor growth in banks' time deposits with balances within the temporarily increased limit on deposit insurance coverage.

Therefore, the agencies proposed to replace Schedule RC–E, Memorandum item 2.c, ''Total time deposits of $100,000 or more,'' with a revised Memorandum item 2.c, ''Total time deposits of $100,000 through $250,000,'' and a new Memorandum item 2.d, ''Total time deposits of more than $250,000.'' Existing Memorandum item

2.c.(1), ''Individual Retirement Accounts (IRAs) and Keogh Plan accounts included in Memorandum item 2.c, 'Total time deposits of $100,000 or more,' above,'' would be renumbered and recaptioned as Memorandum item 2.e, ''Individual Retirement Accounts (IRAs) and Keogh Plan accounts of $100,000 or more included in Memorandum items 2.c and 2.d above,'' but the scope of this Memorandum item would not change.

The only comment that the agencies received concerning this proposed change came from the bankers' organization, which recommended that the proposed three-way breakout of time deposits (i.e., below $100,000, between $100,000 and $250,000, and above $250,000) ''be replaced with references to the deposit insurance limit in effect at the time of the report, without specified dollar amounts'' in order to ''remove what can be an impediment to a bank using the larger (but fully insured) deposits as a funding source.'' The bankers' organization further noted that deposits from a bank's ''core'' customers that have been increased up to the $250,000 deposit insurance limit are likely to be as stable as deposits below $100,000 because of the certainty of deposit insurance. As a consequence, the organization stated that the proposed collection of data on time deposits between $100,000 and $250,000 ''suggests that there is greater volatility in deposits'' in this size range and reinforces a perception ''that an institution should not rely on'' such deposits, which represent ''stable and comparatively inexpensive funding.''

Although time deposits of $100,000 through $250,000 currently fall within the limit of deposit insurance per depositor (for deposits maintained in the same right and capacity), the recent increase in deposit insurance coverage is temporary. Thus, the extent to which a bank's funding has been derived from time deposits between $100,000 and $250,000 and the bank's ability to retain or replace time deposits that will no longer be fully insured after the expiration date of the temporary increase in the SMDIA are key safety and soundness concerns for the agencies because there is no assurance that the temporary increase will be made permanent. Replacing the existing two-way breakout of time deposits between those of less than $100,000 and those of $100,000 or more with a two-way breakout based on the $250,000 temporarily increased insurance limit, as recommended by the bankers' organization, would not enable the agencies to identify the amount of time deposits in the $100,000 to $250,000 range that are susceptible to the loss of deposit insurance coverage when the temporary increase is scheduled to expire. Therefore, the agencies will implement the change to the reporting of time deposits of $100,000 or more in Schedule RC–E as proposed.

E. Revisions of Brokered Deposit Items

As mentioned in Section II.D. above, the SMDIA has been increased temporarily from $100,000 to $250,000 through year-end 2013. However, the data that banks currently report in the Call Report on fully insured brokered deposits in Schedule RC–E, Memorandum items 1.c.(1) and 1.c.(2), is based on the $100,000 insurance limit (except for brokered retirement deposit accounts for which the deposit insurance limit was already $250,000). Therefore, in response to the temporary increase in the SMDIA, the agencies proposed to revise the reporting of fully insured brokered deposits in Schedule RC–E. Furthermore, given the linkage between the deposit insurance limits and the Memorandum items on fully insured brokered deposits in Schedule RC–E, the scope of these items needs to be changed whenever deposit insurance limits change. To ensure that the scope of these Memorandum items, including the dollar amounts cited in the captions for these items, changes automatically as a function of the deposit insurance limit in effect on the report date, Memorandum item 1.c, ''Fully insured brokered deposits,'' would include a footnote stating that the specific dollar amounts used as the basis for reporting fully insured brokered deposits in Memorandum items 1.c.(1) and 1.c.(2) reflect the deposit insurance limits in effect on the report date. The instructions for Memorandum item 1.c would be similarly clarified.[1]

In addition, consistent with the reporting of time deposits in other items of Schedule RC–E, brokered deposits would be reported based on their balances rather than the denominations in which they were issued.

Accordingly, Memorandum items 1.c.(1) and 1.c.(2) of Schedule RC–E on fully insured brokered deposits and their instructions would be revised as follows:

- Memorandum item 1.c.(1), ''Brokered deposits of less than $100,000'': Report in this item brokered deposits with balances of less than $100,000. Also report in this item time deposits issued to deposit brokers in the form of large ($100,000 or more) certificates of deposit that have been participated out by the broker in shares with balances of less than $100,000. For brokered deposits that represent retirement deposit accounts (as defined in Schedule RC–O, Memorandum item 1) eligible for $250,000 in deposit insurance coverage, report such brokered deposits in this item only if their balances are less than $100,000.
- Memorandum item 1.c.(2), ''Brokered deposits of $100,000 through $250,000 and certain brokered retirement deposit accounts'': Report in this item brokered deposits (including brokered retirement deposit accounts) with balances of $100,000 through $250,000. Also report in this item brokered deposits that represent retirement deposit accounts (as defined in Schedule RC–O, Memorandum item 1) eligible for $250,000 in deposit insurance coverage that have been issued by the bank in denominations of more than $250,000 that have been participated out by the broker in shares of $100,000 through exactly $250,000.

The proposed revisions to Schedule RC–E, Memorandum items 1.c.(1) and 1.c.(2), that relate to the temporary increase in the SMDIA would remain in effect during this increase, after which the dollar amounts used as the basis for reporting fully insured brokered deposits in these items would revert to the amounts in effect prior to the temporary increase.

Comments addressing the proposed changes to the existing Schedule RC–E Memorandum items on brokered deposits were submitted by one bank and the bankers' organization. The bank expressed concern about the ability of institutions to report at the level of detail required by the proposed revised items for fully insured brokered deposits. As the basis for this comment, the bank cited language contained in the existing instructions for Schedule RC–E, Memorandum item 1.c, which states that ''under current deposit insurance rules the deposit broker is not required to provide information routinely on these purchasers [of brokered deposits] and their account ownership capacity to the bank issuing the deposits.'' As a consequence, the existing instructions include a rebuttable presumption that, if such information on purchasers and their account ownership capacity is not readily available to the issuing bank, ''retail brokered deposits'' and certain

[1] The proposed linkage of the scope of the Memorandum items on fully insured brokered deposits in Schedule RC–E to the deposit insurance limits in effect on the report date is consistent with an existing linkage between the deposit insurance limits in effect on the report date and the Memorandum items in Schedule RC–O, Other Data for Deposit Insurance and FICO Assessments, on the amount and number of deposit accounts within the insurance limit and in excess of the insurance limit.

brokered transaction accounts or money market deposit accounts are fully insured brokered deposits and should be reported as brokered deposits of less than $100,000.

The agencies are not aware of instances where this rebuttable presumption has impeded banks' ability to report their fully insured brokered deposits based on the $100,000 insurance limit. This rebuttable presumption would be retained along with the instructions stating that brokered deposits covered by this presumption should be reported as brokered deposits of less than $100,000.[2] Therefore, the agencies believe that these instructions will continue to facilitate banks' ability to report their fully insured brokered deposits based on the temporary increase in the insurance limit of $250,000 in Memorandum items 1.c.(1) and (2) of Schedule RC–E as they have been proposed to be revised.

As with the proposed revision to the reporting of time deposits of more than $100,000 discussed in Section II.D. above, the bankers' organization recommended that fully insured brokered deposits be reported solely based on the deposit insurance limit in effect on the report date rather than by distinguishing between those fully insured brokered deposits of less than $100,000 and those of $100,000 through $250,000. For the reasons cited in Section II.D. above, the agencies believe it is appropriate to distinguish between fully insured brokered deposits in these two size ranges as had been proposed.

Finally, the bankers' organization separately indicated in its comment letter that it regarded as acceptable the proposed reporting of brokered deposits based on their balances rather than on the denominations in which they were issued.

Therefore, after considering the comments from the bank and the bankers' organization about the revisions to the reporting of brokered deposits, the agencies have decided to proceed with the revisions as proposed.

F. Interest Expense on and Quarterly Averages for Brokered Deposits

Under Section 29 of the Federal Deposit Insurance Act (12 U.S.C. 1831f), an insured depository institution that is less than well capitalized generally may not pay a rate of interest that significantly exceeds the prevailing rate in the institution's ''normal market area'' and/or the prevailing rate in the ''market area'' from which the deposit is accepted. In the case of an adequately capitalized institution with a waiver to accept brokered deposits, the institution may not pay a rate of interest on brokered deposits accepted from outside the bank's ''normal market area'' that significantly exceeds the ''national rate'' as defined by the FDIC. On May 29, 2009, the FDIC's Board of Directors adopted a final rule making certain revisions to the interest rate restrictions under Section 337.6 of the FDIC's regulations. Under the final rule, the ''national rate'' is a simple average of rates paid by U.S. depository institutions as calculated by the FDIC.[3] When evaluating compliance with the interest rate restrictions in Section 337.6 by an institution that is less than well capitalized, the FDIC generally will deem the national rate to be the prevailing rate in all market areas. The final rule is effective January 1, 2010.

At present, the agencies are unable to evaluate the level and trend of the cost of brokered time deposits to institutions that have acquired such funds, nor can the agencies compare the cost of such deposits across institutions with brokered time deposits. Access to data on the cost of brokered deposits would also assist the agencies in evaluating the overall cost of institutions' time deposits, for which data have long been collected in the Call Report. Furthermore, many of the banks that have failed since the beginning of 2008 have relied extensively on brokered deposits to support their asset growth. Therefore, to enhance the agencies' ability to evaluate funding costs and the impact of brokered time deposits on these costs, the agencies proposed to add two Memorandum items to both Schedule RC–K, Quarterly Averages, and Schedule RI, Income Statement. In these Memorandum items, banks would report the interest expense and quarterly averages for ''fully insured brokered time deposits'' and ''other brokered time deposits.'' The definition of ''fully insured brokered time deposits'' would be based on the definitions of ''fully insured brokered deposits'' and ''time deposits'' in Schedule RC–E, Deposit Liabilities. ''Other brokered time deposits'' would consist of all brokered time deposits that are not ''fully insured brokered deposits.''

Three banks, the law firm, and the bankers' organization commented upon the proposed reporting of the interest expense and quarterly averages for brokered time deposits with only the bankers' organization stating that the proposal would be acceptable. One bank that opposed the proposal questioned how the reporting of additional detail on interest expense would make it ''a safer institution.'' Another bank, which had also commented upon the proposed revisions to the reporting of brokered deposits discussed in Section II.E. above, again expressed concern about the ability of banks to distinguish between fully insured and other brokered time deposits in order to track interest expense and quarterly averages because deposit brokers are not required to provide information routinely on the purchasers of brokered deposits and their account ownership capacity to the issuing bank. The third bank observed that information on the cost of brokered time deposits, which would be derived from the interest expense and quarterly average, ''means little unless you know both the term of the CD [certificate of deposit] and the origination date.'' This bank expressed concern that if the agencies monitor the cost of brokered time deposits alone, it would ''encourage banks to shorten terms on brokered CDs to lower their rates,'' thereby increasing both liquidity risk and interest rate risk. The bank suggested that bank examinations may be the best way to monitor the risks of brokered time deposits.

Finally, the law firm stated that it did not believe the proposed reporting of interest expense and quarterly averages for brokered time deposits would ''provide meaningful data to the Agencies unless additional changes are made to the Call Report.'' The law firm noted that the Call Report ''does not require reporting of deposits obtained in the national deposit market'' other than brokered deposits and identified ''deposits obtained via the internet or through deposit 'listing services' '' as two examples of ''alternative means for banks to access the national deposit market without using a deposit broker.'' As a result, ''data on the interest expenses related to brokered time deposits will be misleading if additional factors are not taken into account.'' The law firm recommended that the agencies ''reconsider the information that they require concerning the national deposit market and the cost of deposit funding to banks.''

After considering these comments, the agencies continue to believe that meaningful information about the cost of brokered time deposits would assist the agencies in carrying out their supervisory and regulatory responsibilities. However, rather than

[2] See the ''Draft Instructions for the Proposed New and Revised Call Report Items for 2010''on the Web pages for the FFIEC 031 and 041 Call Reports, which can be accessed at *http://www.ffiec.gov/ffiec_report_forms.htm*.

[3] The FDIC publishes a weekly schedule of national rates and national interest-rate caps by maturity, which can be accessed at *http://www.fdic.gov/regulations/resources/rates/*.

focusing solely on brokered time deposits, the agencies agree that it would be beneficial to reevaluate their information needs with respect to deposit funding, including the various sources of such funding and their related costs, particularly in relation to the national deposit market. Therefore, the agencies will not implement the proposed collection of data on the interest expense and quarterly averages for fully insured brokered time deposits and other brokered time deposits in 2010. Instead, as suggested above, the agencies will reconsider how best to meet their need for relevant data on deposit funding and related costs and they will then develop a new set of proposed Call Report revisions that would be issued for public comment in accordance with the requirements of the Paperwork Reduction Act of 1995 and would be implemented no earlier than in 2011.

G. Change in Reporting Frequency for Loans to Small Businesses and Small Farms

Section 122 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) requires the banking agencies to collect from insured institutions annually the information the agencies ''may need to assess the availability of credit to small businesses and small farms.'' To implement these requirements, the banking agencies added Schedule RC–C, Part II—Loans to Small Businesses and Small Farms to the Call Report effective June 30, 1993. This schedule requests information on the number and amount currently outstanding of ''loans to small businesses'' and ''loans to small farms,'' as defined in the Call Report instructions, which all banks must report annually as of June 30.

The United States is now emerging from a recession, although unemployment has continued to rise. In this regard, the current administration stated earlier this year that it ''firmly believes that economic recovery will be driven in large part by America's small businesses,'' but ''small business owners are finding it harder to get the credit necessary to stay in business.'' [4] Because ''[c]redit is essential to economic recovery,'' Treasury Secretary Geithner announced on March 16, 2009, that ''we need our nation's banks to go the extra mile in keeping credit lines in place on reasonable terms for viable businesses.'' [5] Accordingly, Secretary Geithner asked the banking agencies ''to call for quarterly, as opposed to annual reporting of small business loans, so that we can carefully monitor the degree that credit is flowing to our nation's entrepreneurs and small business owners.'' [6]

In response to Secretary Geithner's request and to improve the agencies' own ability to assess the availability of credit to small businesses and small farms, the agencies proposed to change the frequency with which banks must submit Call Report Schedule RC–C, Part II, from annually to quarterly beginning March 31, 2010. The agencies did not propose to make any revisions to the information that banks are required to report on this schedule.

Three banks and the bankers' organization submitted comments objecting to the proposed change in the frequency of reporting small business and small farm loan data in the Call Report. One bank cited the amount of time it takes to obtain these data for the June Call Report and questioned their usefulness. The bank also questioned how the reporting of these data, even on an annual basis, makes it ''a safer institution.'' A second bank stated that the change in reporting frequency ''will be quite burdensome at some banks,'' noting that ''this information is easy to gather for some banks and very difficult to gather for other banks'' because their data ''processors do not readily report this information.'' The bank recommended a more streamlined data request in order to limit the burden on small banks. The third bank stated that the agencies ''have not demonstrated that this additional reporting burden would provide any useful information.'' The bank asserted that because banks gather the small business and small farm data solely to report it to the agencies and do not use the information for any other purpose, the proposed change in reporting frequency ''would only increase our regulatory burden.'' The bank also observed that the small business and small farm loan schedule in the Call Report ''does not collect information on the size of the business only the size of the loan.'' The bankers' organization also expressed concern with the burden related to the proposed change in reporting frequency. To better balance the provision of more frequent information and reporting burden, it recommended that banks with $1 billion or more in total assets report semiannually and banks with less than $1 billion in total assets continue to report annually.

When developing the small business and small farm loan reporting requirement in 1992, which was mandated by Section 122 of FDICIA, the FFIEC originally proposed to have institutions use the annual sales of their business and farm borrowers as the way to distinguish loans to small businesses and small farms from other business and farm loans. However, because commenters on the proposal indicated that such sales data are usually not contained in loan systems, the FFIEC considered other reporting alternatives that would be based on data already maintained in loan systems. Certain commenters on the FFIEC's 1992 proposal suggested reporting ''by loan size since loan sizes are available in loan systems, thereby minimizing reporting burden, and loan size would tend to be indicative of borrower size.'' [7] The FFIEC concluded that this suggestion had merit after noting that data reported in the 1989 National Survey of Small Business Finances showed a strong correlation between size of business and loan size.

Furthermore, the agencies note that Call Report small business and small farm lending data are an invaluable resource for understanding credit conditions facing small businesses. Quarterly rather than annual collection of these data would improve the agencies' and federal policymakers' ability to monitor credit conditions facing small businesses and small farms and would significantly contribute to their development of policies intended to address any problems that arise in credit markets. In recent months, the Department of the Treasury, the Small Business Administration, and the Department of Agriculture have identified a particular need for these data as they have worked to develop policies to ensure that more small businesses and small farms have access to credit. In addition, the Board would find more frequent collection of these data very valuable for monetary policymaking purposes.

The bankers' organization has suggested that the burden associated with quarterly reporting of small business and small farm loans could be minimized by exempting banks with less than $1 billion in total assets from this reporting requirement. However, given the key role played by small banks in lending to small businesses and small farms, such an exemption would significantly reduce the value of the data to policymakers. For example, the small business and small farm loan data reported in the Call Report as of June 30,

[4] *http://www.financialstability.gov/roadtostability/smallbusinesscommunity.html.*

[5] *http://www.financialstability.gov/latest/tg58-remarks.html.*

[6] Ibid.

[7] 57 FR 54237, November 17, 1992.

2009, reveal that commercial banks with less than $1 billion in total assets held 34 percent of all small business loans and more than 75 percent of all small farm loans.

The fact that small business and small farm lending data are currently collected only once per year is especially problematic when stabilization policies are being contemplated or implemented. First, determining whether stabilization policies are needed requires an accurate diagnosis of the current situation in the financial system. An accurate diagnosis depends crucially on the availability of timely data. Second, successful stabilization policies need to be accurately targeted. Again, timely data is required to identify which parts of the financial system are in need of stabilization. While these needs are particularly acute during periods of economic contraction, the same need for timely and targeted information to inform policy making exists throughout the credit cycle.

The bank-level Call Report data provide information that cannot be obtained from other indicators of small business credit conditions. The agencies' other indicators of small business credit conditions—including the Board's Senior Loan Officer Opinion Survey and its Flow of Funds Accounts—do not provide the same level of detail that is available from bank Call Reports, and therefore cannot be used to answer many questions that naturally arise during the policy development process. For example, during a period of credit contraction, these other sources cannot be used to identify which types of banks are contracting loans. This is a significant constraint for agencies, as having detailed information about the characteristics of affected banks is crucial to designing well-targeted and effective policy responses. Moreover, there is evidence that small business lending by small banks does not correlate with lending by larger banks.

Monetary policymaking also would benefit from more timely information on small business credit conditions and flows. To determine how best to adjust the federal funds rates over time, the Board must continuously assess the prospects for real activity and inflation in coming quarters. Credit conditions have an important bearing on the evolution of those prospects over time, and so the Board pays close attention to data from Call Reports and other sources. In trying to understand the implications of aggregate credit data for the macroeconomic outlook, it is helpful to be able to distinguish between conditions facing small firms and those affecting other businesses for several reasons. First, small businesses comprise a substantial portion of the nonfinancial business sector and their hiring and investment decisions have an important influence on overall real activity.[8] Second, because small businesses tend to depend more heavily on banks and other institutions for external financing, they are more likely to experience material swings in their ability to obtain credit relative to larger firms. Third, the relative opacity of small businesses and their consequent need to provide collateral for loans is thought to create a ''credit'' channel for monetary policy to influence real activity. Specifically, changes in monetary policy may alter the value of assets used as collateral for loans, thereby affecting the ability of small businesses to obtain credit, abstracting from the effects of any changes in loan rates.

Finally, the credit conditions facing small businesses and small farms differ substantially from those facing large businesses, making it necessary to collect indicators that are specific to these borrowers. Large businesses may access credit from a number of different channels, including the corporate bond market and the commercial paper market. In contrast, small businesses and small farms rely almost exclusively on credit provided through the bank lending channel. The dependence of small businesses and small farms on bank lending—particularly from smaller banks—magnifies the importance of Call Report data, which provide the most comprehensive data on bank lending, and emphasizes the importance of collecting quarterly data from banks of all sizes.

Therefore, although the agencies have considered the comments received and they recognize that changing the reporting frequency of the existing small business and small farm loan reporting requirement from annually to quarterly will increase reporting burden for all institutions, the FFIEC and the agencies believe that collecting these data more frequently will serve an important public purpose to assist in the economic recovery and, therefore, have decided to proceed with the proposed change from annual to quarterly reporting for Call Report Schedule RC–C, part II, effective March 31, 2010.

[8] Based on statistics tabulated early in the decade, roughly one quarter of all nonfinancial business assets were outside the corporate sector, and such firms tend to be partnerships and proprietorships, which tend to be small businesses.

H. Assets Covered by FDIC Loss-Sharing Agreements

The bankers' organization requested that the agencies revise the Call Report to collect information on loss-sharing agreements with the FDIC even though this had not been proposed by the agencies. The organization noted that there is currently no guidance on how a bank that acquires a failed bank should report any loss-sharing agreement in the Call Report. It also stated that the Call Report does not provide users with a ''readily accessible summary of the bank's net exposures on assets that are subject to loss-share agreements. The organization observed that ''[t]his will become an increasingly important long-term and more common reporting issue as additional failed banks are acquired from the FDIC under a loss-share agreement.''

Under loss sharing, the FDIC agrees to absorb a portion of the loss on a specified pool of a failed institution's assets in order to maximize asset recoveries and minimize the FDIC's losses. In general, the FDIC will reimburse 80 percent of losses incurred by an acquiring institution on covered assets over a specified period of time up to a stated threshold amount, with the acquirer absorbing 20 percent. Any losses above the stated threshold amount will be reimbursed by the FDIC at 95 percent of the losses booked by the acquirer. Over the past year, the FDIC has entered into loss-sharing agreements with acquiring institutions in connection with approximately 80 failed bank and thrift acquisitions. Some acquiring institutions have been involved in multiple failed institution acquisitions. The continued use of loss-sharing agreements is expected in connection with the resolution of failures of insured institutions by the FDIC. Assets covered by loss-sharing agreements include, but are not limited to, loans, other real estate, and debt securities.

As the bankers' organization indicated, the Call Report does not include a ''readily accessible summary'' of assets that reporting banks have acquired from failed institutions that are covered by FDIC loss-sharing agreements. Any covered loans and leases that are past due 30 days or more or are in nonaccrual status are reportable in items 10 and 10.a of Schedule RC–N, Past Due and Nonaccrual Loans, Leases, and Other Assets, as loans and leases that are wholly or partially guaranteed by the U.S. Government. However, these items would also include loans and leases guaranteed by other U.S. Government

agencies (such as the Small Business Administration and the Federal Housing Administration) that are past due 30 days or more or are in nonaccrual status and they would exclude loans and leases covered by FDIC loss-sharing agreements that do not meet these past due or nonaccrual reporting conditions as of the report date. Thus, the amount of covered loans and leases is not readily identifiable from the Call Report and the amount of other covered assets cannot be determined at all from the Call Report.

The agencies agree with the bankers' organization that the reporting of summary data on covered assets would be beneficial to Call Report users and to the banks holding covered assets. Therefore, the agencies will add such a summary to Call Report Schedule RC–M, Memoranda, effective March 31, 2010. In this summary, banks that have entered into loss-sharing agreements with the FDIC would separately report the carrying amounts of (1) Loans and leases, (2) other real estate owned, (3) debt securities, and (4) other assets covered by such agreements. The agencies will also consider whether the collection of additional information concerning covered assets would be warranted and, if so, it would be incorporated into a formal proposal that the agencies would publish with a request for comment in accordance with the requirements of the Paperwork Reduction Act of 1995.

III. Effect of New Accounting Standards on Schedule RC–S, Servicing, Securitization, and Asset Sale Activities

On June 12, 2009, the Financial Accounting Standards Board (FASB) issued Statements of Financial Accounting Standards Nos. 166 and 167, which revise the existing standards governing the accounting for financial asset transfers and the consolidation of variable interest entities.[9] Statement No. 166 eliminates the concept of a ''qualifying special-purpose entity,'' changes the requirements for derecognizing financial assets, and requires additional disclosures. Statement No. 167 changes how a company determines when an entity that is insufficiently capitalized or is not controlled through voting (or similar rights) should be consolidated. This consolidation determination is based on, among other things, an entity's purpose and design and a company's ability to direct the activities of the entity that most significantly impact the entity's economic performance.[10] In general, the revised standards take effect January 1, 2010. The standards are expected to cause a substantial volume of assets in bank-sponsored entities associated with securitization and structured finance activities to be brought onto bank balance sheets.

The agencies currently collect data on banks' securitization and structured finance activities in Schedule RC–S, Servicing, Securitization, and Asset Sale Activities. The agencies will continue to collect Schedule RC–S after the effective date of Statements Nos. 166 and 167 and banks should continue to complete this schedule in accordance with its existing instructions, taking into account the changes in accounting brought about by these two FASB statements. In this regard, items 1 through 8 of Schedule RC–S involve the reporting of information for securitizations that the reporting bank has accounted for as sales. Therefore, after the effective date of Statements Nos. 166 and 167, a bank should report information in items 1 through 8 only for those securitizations for which the transferred assets qualify for sale accounting or are otherwise not carried as assets on the bank's consolidated balance sheet. Thus, if a securitization transaction that qualified for sale accounting prior to the effective date of Statements Nos. 166 and 167 must be brought back onto the reporting bank's consolidated balance sheet upon adoption of these statements, the bank would no longer report information about the securitization in items 1 through 8 of Schedule RC–S.

Items 11 and 12 of Schedule RC–S are applicable to assets that the reporting bank has sold with recourse or other seller-provided credit enhancements, but has not securitized. In Memorandum item 1 of Schedule RC–S, a bank reports certain transfers of small business obligations with recourse that qualify for sale accounting. The scope of these items will continue to be limited to such sold financial assets after the effective date of Statements Nos. 166 and 167. In Memorandum item 2 of Schedule RC–S, a bank currently reports the outstanding principal balance of loans and other financial assets that it services for others when the servicing has been purchased or when the assets have been originated or purchased and subsequently sold with servicing retained. Thus, after the effective date of Statements Nos. 166 and 167, a bank should continue to report retained servicing for those assets or portions of assets reported as sold as well as purchased servicing in Memorandum item 2. Finally, Memorandum item 3 of Schedule RC–S collects data on asset-backed commercial paper conduits regardless of whether the reporting bank must consolidate the conduit in accordance with FASB Interpretation No. 46(R). This will continue to be the case after the effective date of Statement No. 167, which amended this FASB interpretation.

The agencies plan to evaluate the disclosure requirements in Statements Nos. 166 and 167 and the disclosure practices that develop in response to these requirements. This evaluation will assist the agencies in determining the need for revisions to Schedule RC–S that will improve their ability to assess the nature and scope of banks' involvement with securitization and structured finance activities, including those accounted for as sales and those accounted for as secured borrowings. Such revisions, which would not be implemented before March 2011, would be incorporated into a formal proposal that the agencies would publish with a request for comment in accordance with the requirements of the Paperwork Reduction Act of 1995.

The bankers' organization addressed the reporting of information associated with securitization and structured finance activities, recommending that information be required in Schedule RC–S for assets that must be consolidated under Statements Nos. 166 and 167 that are held as securities by third parties as well as any applicable loan loss allowances and related deferred tax assets. The agencies will consider these recommendations as they evaluate their data needs with respect to on-balance sheet securitizations and structured finance transactions. Any resulting potential new reporting requirements would be incorporated into the formal proposal mentioned above.

IV. Request for Comment

Public comment is requested on all aspects of this joint notice. Comments are invited specifically on:

(a) Whether the proposed revisions to the Call Report collections of information are necessary for the proper performance of the agencies' functions,

[9] Statement of Financial Accounting Standards No. 166, *Accounting for Transfers of Financial Assets,* amends Statement No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities.* Statement of Financial Accounting Standards No. 167, Amendments *to FASB Interpretation No. 46(R),* amends FASB Interpretation No. 46(R), *Consolidation of Variable Interest Entities.* In general, under the FASB Accounting Standards Codification™, see Topics 860, Transfers and Servicing, and 810, Consolidation.

[10] FASB News Release, June 12, 2009, *http://www.fasb.org/cs/ContentServer?c=FASBContent_C&pagename=FASB/FASBContent_C/NewsPage&cid=1176156240834&pf=true.*

including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this joint notice will be shared among the agencies and will be summarized or included in the agencies' requests for OMB approval. All comments will become a matter of public record.

Dated: *December 16, 2009.*

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, December 17, 2009.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 16th day of December, 2009.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E9–30489 Filed 12–22–09; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Information Collections; Comment Request

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act of 1995, we invite comments on the proposed or continuing information collections listed below in this notice.

DATES: We must receive your written comments on or before February 22, 2010.

ADDRESSES: You may send comments to Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, at any of these addresses:

- P.O. Box 14412, Washington, DC 20044–4412;
- 202–453–2686 (facsimile); or
- *formcomments@ttb.gov* (e-mail).

Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form or recordkeeping requirement number, and OMB number (if any) in your comment. If you submit your comment via facsimile, send no more than five 8.5 x 11 inch pages in order to ensure electronic access to our equipment.

FOR FURTHER INFORMATION CONTACT: To obtain additional information, copies of the information collection and its instructions, or copies of any comments received, contact Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or telephone 202–453–2265.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau (TTB), as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on the proposed or continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please not do include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether this information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Information Collections Open for Comment

Currently, we are seeking comments on the following forms and recordkeeping requirements:

Title: Usual and Customary Business Records Relating to Tax-Free Alcohol.

OMB Control Number: 1513–0059.

TTB Recordkeeping Number: 5150/3.

Abstract: Tax-free alcohol is used for nonbeverage purposes by educational organizations, hospitals, laboratories, etc. The use of alcohol free of tax is regulated to prevent illegal diversion to taxable beverage use. These records maintain spirits accountability and protect tax revenue and public safety. The record retention requirement for this information collection is 3 years.

Current Actions: We are submitting this information collection for extension purposes only. The estimated number of respondents has changed; however, no material change is being made to the information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions; Federal Government; and State, local, or tribal governments.

Estimated Number of Respondents: 4,751.

Estimated Total Annual Burden Hours: 1.

Title: Letterhead Applications and Notices Relating to Denatured Spirits.

OMB Control Number: 1513–0061.

TTB Recordkeeping Number: 5150/2.

Abstract: Denatured spirits are used for nonbeverage industrial purposes in the manufacture of personal and household products. Permits and applications control the spirits' authorized uses and flow, and protect tax revenue and public safety. Letterhead application and notice requirements are used by TTB officials to ensure that lawful and appropriate actions are taken with regard to denatured spirits. The record retention requirement for this information collection is 3 years.

Current Actions: We are submitting this information collection for extension purposes only. The estimated number of respondents and estimated total annual burden hours has changed; however, no material change is being made to the information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit; Not-for-profit institutions; and State, local, or tribal governments.

Estimated Number of Respondents: 3,778.

Estimated Total Annual Burden Hours: 1,889.

Title: Tobacco Products Importer or Manufacturer—Records of Large Cigar Wholesale Prices.

OMB Control Number: 1513–0071.

TTB Recordkeeping Number: 5230/1.

Abstract: This information collection is used by tobacco products importers or manufacturers who import or make large cigars. Records are needed to verify wholesale prices of those cigars as the tax is based on those prices. This collection also ensures that all tax revenue due to the government is collected. The record retention requirement for this information collection is 3 years.

Current Actions: We are submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated total annual burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 818.

Estimated Total Annual Burden Hours: 1,906.

Title: Recordkeeping for Tobacco Products and Cigarette Papers or Tubes Brought from Puerto Rico to the U.S.

OMB Control Number: 1513–0108.

TTB Form or Recordkeeping Number: None.

Abstract: The prescribed recordkeeping requirements apply to persons who ship tobacco products or cigarette papers or tubes from Puerto Rico to the United States. The records verify the amount of taxes to be paid and that any required bond is sufficient to cover unpaid liabilities. The records must be retained for 3 years.

Current Actions: We are submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated total annual burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 4.

Estimated Total Annual Burden Hours: 1.

Dated: December 17, 2009.

Francis W. Foote,

Director, Regulations and Rulings Division.

[FR Doc. E9–30446 Filed 12–22–09; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request—Thrift Financial Report: Schedules SC, CC, DI, SI, SB, and RM

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), OTS may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. On August 19, 2009, OTS requested public comment for 60 days (74 FR 41981) on a proposal to extend, with revisions, the Thrift Financial Report (TFR), which is currently an approved collection of information. The notice described regulatory reporting revisions proposed for the TFR, Schedule SC—Consolidated Statement of Condition, Schedule CC—Consolidated Commitments and Contingencies, Schedule DI—Consolidated Deposit Information, Schedule SB—Consolidated Small Business Loans, and a proposed new schedule, Schedule RM—Annual Supplemental Consolidated Data on Reverse Mortgages. The changes are proposed to become effective in March 2010 except for the proposed new schedule RM which would become effective in December 2010.

The changes would revise three existing lines in the TFR, revise the reporting frequency for Schedule SB—Consolidated Small Business Loans from annual to quarterly, and add 24 new line items (including the 16 line items in the new Schedule RM). After considering the one comment letter received on the proposed changes, OTS has adopted all of the proposed changes. In addition, OTS is proposing to add four new line items to Schedule SI—Consolidated Supplemental Information, on assets covered by FDIC loss-sharing agreements in response to a recommendation from the bankers' organization commenter. OTS is submitting the proposed changes to OMB for review and approval.

DATES: Submit written comments on or before January 22, 2010. The regulatory reporting revisions described herein take effect on March 31, 2010, and on December 31, 2010.

ADDRESSES: Send comments, referring to the collection by ''1550–0023 (TFR Revisions—2010)'', to OMB and OTS at these addresses: Office of Information and Regulatory Affairs, *Attention:* Desk Officer for OTS, U.S. Office of Management and Budget, 725 17th Street, NW., Room 10235, Washington, DC 20503, or by fax to (202) 395–6974, and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov/?p=LawsRegulations*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., Washington, DC by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of the submission to OMB, please contact Ira L. Mills, OTS Clearance Officer, at *ira.mills@ots.treas.gov*, (202) 906–6531, or facsimile number (202) 906–6518, Litigation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

You can obtain a copy of the 2010 Thrift Financial Report forms from the OTS Web site at *http://www.ots.treas.gov/?p=ThriftFinancialReports* or you may request it by electronic mail from *tfr.instructions@ots.treas.gov*. You can request additional information about this proposed information collection from James Caton, Managing Director, Economics and Industry Analysis Division, (202) 906–5680, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The effect of the proposed revisions to the reporting requirements of these information collections will vary from institution to institution, depending on the institution's involvement with the types of activities or transactions to which the proposed changes apply. OTS estimates that implementation of these reporting changes will result in a small increase in the current reporting burden imposed by the TFR. The following burden estimates include the effect of the proposed revisions.

Title: Thrift Financial Report.

OMB Number: 1550–0023.

Form Number: OTS 1313.

Statutory Requirement: 12 U.S.C. 1464(v) imposes reporting requirements

for savings associations. Except for selected items, these information collections are not given confidential treatment.

Type of Review: Revision of currently approved collections.

Affected Public: Savings Associations.

Estimated Number of Respondents and Recordkeepers: 771.

Estimated Burden Hours per Respondent: 57.4 hours average for quarterly schedules and 2.0 hours average for schedules required only annually plus recordkeeping of an average of one hour per quarter.

Estimated Frequency of Response: Quarterly.

Estimated Total Annual Burden: 185,158 hours.

Abstract: OTS is proposing to revise and extend for three years the TFR, which is currently an approved collection of information. All OTS-regulated savings associations must comply with the information collections described in this notice. OTS collects this information each calendar quarter or less frequently if so stated. OTS uses this information to monitor the condition, performance, and risk profile of individual institutions and systemic risk among groups of institutions and the industry as a whole. Except for selected items, these information collections are not given confidential treatment.

I. Background

OTS last revised the form and content of the TFR in a manner that significantly affected a substantial percentage of institutions in June 2009, and has additional revisions scheduled to become effective in December 2009. Throughout 2009, OTS has evaluated its ongoing information needs. OTS recognizes that the TFR imposes reporting requirements, which are a component of the regulatory burden facing institutions. Another contributor to this regulatory burden is the examination process, particularly on-site examinations during which institution staffs spend time and effort responding to inquiries and requests for information designed to assist examiners in evaluating the condition and risk profile of the institution. The amount of attention that examiners direct to risk areas of the institution under examination is, in large part, determined from TFR data. These data, and analytical reports, including the Uniform Thrift Performance Report, assist examiners in scoping and making their preliminary assessments of risks during the planning phase of the examination.

A risk-focused review of the information from an institution's TFR allows examiners to make preliminary risk assessments prior to onsite work. The degree of perceived risk determines the extent of the examination procedures that examiners initially plan for each risk area. If the outcome of these procedures reveals a different level of risk in a particular area, the examiner adjusts the examination scope and procedures accordingly.

TFR data are also a vital source of information for the monitoring and regulatory activities of OTS. Among their benefits, these activities aid in determining whether the frequency of an institution's examination cycle should remain at maximum allowed time intervals, thereby lessening overall regulatory burden. More risk-focused TFR data enhance the ability of OTS to assess whether an institution is experiencing changes in its risk profile that warrant immediate follow-up, which may include accelerating the timing of an on-site examination.

In developing this proposal, OTS considered a range of potential information needs, particularly in the areas of credit risk, liquidity, and liabilities, and identified those additions to the TFR that are most critical and relevant to OTS in fulfilling its supervisory responsibilities. OTS recognizes that increased reporting burden will result from the addition to the TFR of the new items discussed in this proposal. Nevertheless, when viewing these proposed revisions to the TFR within a larger context, they help to enhance the on- and off-site supervision capabilities of OTS, which assist with controlling the overall regulatory burden on institutions.

II. Current Actions

On August 19, 2009, OTS requested comment on proposed changes to the Thrift Financial Report (74 FR 41981) that would take effect as of March 31, 2010, unless otherwise noted. These revisions would revise the reporting frequency for small business and small farm data reported in Schedule SB from annually to quarterly, revise three existing lines, and add 24 new lines to the TFR, which include the 16 line items proposed for the new Schedule RM–Annual Supplemental Consolidated Data on Reverse Mortgages.

OTS received one comment letter on the proposed revisions from a trade group representing banks of all sizes and charter types. The commenter's major concern was about the additional burden in the proposal to change ''Schedule SB—Consolidated Small Business Loans'' from the current annual filing frequency to the proposed quarterly filing requirement.

III. TFR Revisions Proposed for March 2010

A. Additional Detail on Credit Card Loans and Commitments

OTS received a favorable comment on revisions proposed for credit card loans and commitments. Therefore, these revisions will be implemented in March 2010 as proposed.

The extent to which the supply of credit has declined during the current financial crisis has been of great interest to the federal banking agencies and to Congress. Credit provided by financial institutions plays a central role in any economic recovery. The Federal banking agencies need data to determine when credit conditions have eased. One way to measure the supply of credit is to analyze the change in total lending commitments by financial institutions, considering both the amount of loans outstanding and the volume of unused credit lines. These data are also needed for safety and soundness purposes because draws on commitments during periods when financial institutions face significant funding pressures, such as during the fall of 2008, can place significant and unexpected demands on the liquidity and capital positions of these institutions. Therefore, OTS proposes to collect further detail on credit card lending in TFR Schedules SC and CC. These new data items would improve the OTS's ability to timely and accurately evaluate trends in thrift institutions' supply of credit available to households and businesses. These data would also be useful in determining thrift institutions' impact on the effectiveness of the government's economic stabilization programs.

Unused commitments associated with open-end credit card lines are currently reported in line CC423. This data item is not sufficiently detailed for monitoring the supply of credit because it mixes consumer credit card lines with credit card lines for businesses and other entities. Because of this aggregation, it is not possible to monitor credit available specifically to households. Furthermore, bank supervisors would benefit from the split, because the usage patterns, profitability, and evolution of credit quality through the business cycle are likely to differ for consumer credit cards and business credit cards. Therefore, the OTS proposes to revise line CC423 to collect data on unused credit card lines to consumers, and to add a line, CC424, to collect data on unused credit card lines to other entities. Outstanding

balances from draws on these credit lines that have not been sold are already reported on Schedule SC. Thrifts report draws on credit cards issued to consumers on line SC328. Draws on credit cards issued to businesses are included with unsecured commercial loans on line SC303. OTS proposes to add a line, SC304, to collect data on the amount of business-related credit card loans outstanding that are included in line SC303.

B. Time Deposits of $100,000 or Greater

OTS received a comment on ''Time Deposits of $100,000 or Greater'' recommending replacing the proposed breakout of time deposits and brokered deposits on stated dollar thresholds with a requirement that thrifts report such deposits based upon the then current FDIC coverage limit in effect at the time of the report. The clearest method of receiving consistent data from the thrifts is to clearly state the specific dollar thresholds. Therefore, these revisions will be implemented in March 2010 as proposed.

On October 3, 2008, the Emergency Economic Stabilization Act of 2008 temporarily raised the standard maximum deposit insurance amount (SMDIA) from $100,000 to $250,000 per depositor. Under this legislation, the SMDIA was to return to $100,000 after December 31, 2009. However, on May 20, 2009, the Helping Families Save Their Homes Act extended this temporary increase in the SMDIA to $250,000 per depositor through December 31, 2013, after which the SMDIA is scheduled to return to $100,000.

At present, thrifts report time deposits in TFR Schedule DI, Consolidated Deposit Information, including total time deposits in line DI340, time deposits of $100,000 or greater in line DI350, and time deposits in IRA or Keogh accounts of $100,000 or greater. In response to the extension of the temporary increase in the limit on deposit insurance coverage, the federal banking agencies understand that time deposits with balances in excess of $100,000, but less than or equal to $250,000, have been growing and can be expected to increase further. However, given the existing Schedule DI reporting requirements, OTS is unable to monitor growth in thrifts' time deposits with balances within the temporarily increased limit on deposit insurance coverage.

Therefore, OTS is proposing to revise line DI350 from ''Time Deposits of $100,000 or Greater (Excluding Brokered Time Deposits Participated Out by the Broker in Shares of Less Than $100,000 and Brokered Certificates of Deposit Issued in $1,000 Amounts Under a Master Certificate of Deposit)'' to ''Time Deposits of $100,000 through $250,000 (Excluding Brokered Time Deposits Participated Out by the Broker in Shares of Less Than $100,000 and Brokered Certificates of Deposit Issued in $1,000 Amounts Under a Master Certificate of Deposit)'', and to add a line DI352 for ''Time Deposits Greater than $250,000''. Existing line DI340, Total Time Deposits, and DI360, IRA/Keogh Accounts of $100,000 or Greater Included in Time Deposits, would not change.

C. Revisions of Brokered Deposit Items

As described above in Section III.B., the SMDIA has been increased temporarily from $100,000 to $250,000 through year-end 2013. However, the data that thrifts currently report in the TFR on fully insured brokered deposits in TFR line DI100 is based on the $100,000 insurance limit (except for brokered retirement deposit accounts for which the deposit insurance limit was already $250,000). Therefore, in response to the temporary increase in the SMDIA, OTS is proposing to revise line DI100 from ''Total Broker-Originated Deposits: Fully Insured'' to ''Total Broker-Originated Deposits: Fully Insured: With Balances Less than $100,000'', and to add a line DI102 for ''Total Broker-Originated Deposits: Fully Insured: With Balances of $100,000 through $250,000''.

Furthermore, given the linkage between the deposit insurance limits and the reporting on fully insured brokered deposits in Schedule DI, the scope of these items needs to be changed whenever deposit insurance limits change. To ensure that the scope of these lines, including the dollar amounts cited in the captions for these items, changes automatically as a function of the deposit insurance limit in effect on the report date, the TFR instructions would be revised to state that the specific dollar amounts used as the basis for reporting fully insured brokered deposits in lines DI100 and DI102 reflect the deposit insurance limits in effect on the report date.

In addition, consistent with the reporting of time deposits in other items of Schedule DI, brokered deposits would be reported based on their balances rather than the denominations in which they were issued. Line DI100 would include time deposits issued to deposit brokers in the form of large ($100,000 or more) certificates of deposit that have been participated out by the broker in shares with balances of less than $100,000. For brokered deposits that represent retirement deposit accounts eligible for $250,000 in deposit insurance coverage, report such brokered deposits in this item only if their balances are less than $100,000.

Line DI102 would include brokered deposits (including brokered retirement deposit accounts) with balances of $100,000 through $250,000. Also report in this item brokered deposits that represent retirement deposit accounts eligible for $250,000 in deposit insurance coverage that have been issued in denominations of more than $250,000 that have been participated out by the broker in shares of $100,000 through exactly $250,000.

D. Interest Expense and Quarterly Averages for Brokered Deposits

Under Section 29 of the Federal Deposit Insurance Act (12 U.S.C. 1831f), an insured depository institution that is less than well capitalized generally may not pay a rate of interest that significantly exceeds the prevailing rate in the institution's ''normal market area'' and/or the prevailing rate in the ''market area'' from which the deposit is accepted. In the case of an adequately capitalized institution with a waiver to accept brokered deposits, the institution may not pay a rate of interest on brokered deposits accepted from outside the bank's ''normal market area'' that significantly exceeds the ''national rate'' as defined by the FDIC. On May 29, 2009, the FDIC's Board of Directors adopted a final rule making certain revisions to the interest rate restrictions under Section 337.6 of the FDIC's regulations. Under the final rule, the ''national rate'' is a simple average of rates paid by U.S. depository institutions as calculated by the FDIC.[1] When evaluating compliance with the interest rate restrictions in Section 337.6 by an institution that is less than well capitalized, the FDIC generally will deem the national rate to be the prevailing rate in all market areas. The final rule is effective January 1, 2010.

At present, the federal banking agencies are not able to evaluate the level and trend of the cost of brokered time deposits to institutions that have acquired such funds, nor can the agencies compare the cost of such deposits across institutions with brokered time deposits. Data on the cost of brokered deposits would also assist the agencies in evaluating the overall cost of institutions' time deposits, for which data have long been collected in

[1] The FDIC publishes a weekly schedule of national rates and national interest-rate caps by maturity, which can be accessed at *http://www.fdic.gov/regulations/resources/rates/*.

the Call Report for banks and TFR for thrifts. Furthermore, many of the financial institutions that have failed since the beginning of 2008 have relied extensively on brokered deposits to support their asset growth. Therefore, to enhance OTS's ability to evaluate funding costs and the impact of brokered time deposits on these costs, OTS is proposing to add four new line items to TFR Schedule DI. The other federal banking agencies are proposing to add similar line items to the Call Report with two Memorandum items to Schedule RC–K, Quarterly Averages, and two items to Schedule RI, Income Statement.

In these new line items to TFR Schedule DI, thrifts would report lines DI114 for ''Total Broker-Originated Deposits: Interest Expense for Fully Insured Brokered Deposits'', DI116 for ''Total Broker-Originated Deposits: Interest Expense for Other Brokered Deposits'', DI544 for ''Average Daily Deposit Totals: Fully Insured Brokered Time Deposits'', and DI545 for ''Average Daily Deposit Totals: Other Brokered Time Deposits''.

E. Change in Reporting Frequency for Schedule SB—Consolidated Small Business Loans

OTS received a comment that the reporting frequency be changed to semi-annual instead of the proposed quarterly reporting frequency for thrifts with over $1 billion in total assets and annually for others. Small financial institutions play a key role in lending to small businesses and farms; therefore, following the proposed comment would significantly reduce the value of the data to policymakers. The TFR data provides information that cannot be obtained from other indicators of small business conditions; therefore, Schedule SB will be required quarterly starting in March 2010 as proposed.

Section 122 of the Federal Deposit Insurance Corporation Improvement Act requires the federal banking agencies to collect from insured institutions annually the information the agencies ''may need to assess the availability of credit to small businesses and small farms.'' The OTS meets this requirement through Schedule SB that requests information on the number and amount currently outstanding of ''loans to small businesses'' and ''loans to small farms,'' as defined in the TFR instructions, which all thrift institutions must report annually as of June 30.

With the United States now more than a year into a recession, the current administration ''firmly believes that economic recovery will be driven in large part by America's small businesses,'' but ''small business owners are finding it harder to get the credit necessary to stay in business.'' [2] Because ''[c]redit is essential to economic recovery,'' Treasury Secretary Geithner stated on March 16, 2009, ''we need our nation's banks to go the extra mile in keeping credit lines in place on reasonable terms for viable businesses.'' [3] Accordingly, Secretary Geithner asked the Federal banking agencies ''to call for quarterly, as opposed to annual reporting of small business loans, so that we can carefully monitor the degree that credit is flowing to our nation's entrepreneurs and small business owners.'' [4] In response to Secretary Geithner's request and to improve the agencies' own ability to assess the availability of credit to small businesses and small farms, the OTS proposes to change the frequency with which thrifts must submit TFR Schedule SB from annually to quarterly beginning March 31, 2010. OTS is not proposing to revise the information that thrifts are required to report on this schedule. The other federal banking agencies are proposing a similar change in reporting frequency with which banks must submit Call Report Schedule RC–C, Part II.

F. New Proposed Annual Schedule for December 2010: Reverse Mortgage Data

Reverse mortgages are complex loan products that leverage equity in homes to provide lump sum cash payments or lines of credit to borrowers. These products are typically marketed to senior citizens who own homes. Access to data regarding loan volumes, dollar amounts outstanding, and the institutions offering reverse mortgages or participating in reverse mortgage activity is severely limited. Therefore, OTS is currently unable to effectively identify and monitor institutions that offer these products due to a lack of reverse mortgage data.

The reverse mortgage market currently consists of two basic types of products: A federally-insured product known as a Home Equity Conversion Mortgage (HECM) and proprietary products designed and originated by financial institutions (Non-HECM). Some reverse mortgages provide for a lump sum payment to the borrower at closing, with no ability for the borrower to receive additional funds under the mortgage later. Other reverse mortgages are structured like home equity lines of credit in that they provide the borrower with additional funds after closing, either as fixed monthly payments, under a line of credit, or both. There are also reverse mortgages that provide a combination of a lump sum payment to the borrower at closing and additional payments to the borrower after the closing of the loan.

The volume of reverse mortgage activity is expected to increase dramatically in the coming years as the U.S. population ages. A number of consumer protection related risk and safety and soundness related risks are associated with these products and OTS needs to collect information from thrift institutions involved in reverse mortgage activities to monitor and mitigate these risks. For example, proprietary reverse mortgages structured as lines of credit, which are not insured by the federal government, expose borrowers to the risk that the lender will be unwilling or unable to meet its obligation to make payments due to the borrower. Additionally, in those circumstances in which housing prices are declining, there is the risk that the reverse mortgage loan balance may exceed the value of the underlying collateral value of the home.

OTS proposes that a new schedule designated as ''Schedule RM'' consisting of sixteen line items be added to the Thrift Financial Report to collect reverse mortgage data on an annual basis beginning on December 31, 2010. Collecting this information will provide OTS with the necessary information for policy development and the management of risk exposures posed by thrifts involvement with reverse mortgages. In this new Schedule, thrifts would separately report the amount of their outstanding HECM reverse mortgages and proprietary reverse mortgages as shown below in the sixteen line items:

1. RM110: Amount of Home Equity Conversion Mortgage Loans Outstanding.
2. RM112: Amount of Proprietary (Non-HECM) Reverse Mortgage Loans Outstanding.
3. RM310: Annual Interest Income from Home Equity Conversion Mortgage Loans.
4. RM312: Annual Interest Income from Proprietary (Non-HECM) Reverse Mortgage Loans.
5. RM330: Number of referrals to another lender during the calendar year from whom you received compensation for services performed for the lender in connection with the lender's origination of a Home Equity Conversion Mortgage.
6. RM332: Number of referrals to another lender during the calendar year

[2] *http://www.financialstability.gov/roadtostability/smallbusinesscommunity.html.*

[3] *http://www.financialstability.gov/latest/tg58-remarks.html.*

[4] *Ibid.*

from whom you received compensation for services performed for the lender in connection with the lender's origination of a Proprietary (Non-HECM) Reverse Mortgage.

7. RM420: Annual Origination Fee Income from Home Equity Conversion Mortgage Loans.

8. RM422: Annual Origination Fee Income from Proprietary (Non-HECM) Reverse Mortgage Loans.

9. RM510: Commitments Outstanding to Originate Mortgages Secured by Home Equity Conversion Mortgage Loans.

10. RM512: Commitments Outstanding to Originate Mortgages Secured by Proprietary (Non-HECM) Reverse Mortgage Loans.

11. RM610: Amount of Home Equity Conversion Mortgages originated for the calendar year.

12. RM612: Amount of Proprietary (Non-HECM) Reverse Mortgage Loans originated for the calendar year.

13. RM620: Annual Loans and Participations Purchased Secured By Home Equity Conversion Mortgage Loans.

14. RM622: Annual Loans and Participations Purchased Secured By Proprietary (Non-HECM) Reverse Mortgage Loans.

15. RM630: Annual Loans and Participations Sold Secured By Home Equity Conversion Mortgage Loans.

16. RM632: Annual Loans and Participations Sold Secured By Proprietary (Non-HECM) Reverse Mortgage Loans.

OTS received a comment that, overall, the organization had no concerns with this new schedule, except for the items relating to the reporting of the estimated number of fee-paid referrals. The organization asked OTS to reconsider this reporting requirement because it may require thrifts to report information that is inconsistent with the legal requirements of the Real Estate Settlement Procedures Act (RESPA). OTS has reviewed the proposed reporting of data on reverse mortgage referrals and acknowledges that its description of this proposed reporting requirement could be viewed in this manner. Under RESPA and its implementing regulations, a mortgage lender may pay fees or compensation to another party, such as a financial institution that has referred a customer to the mortgage lender, only for services actually performed by that party. Accordingly, to avoid possible misinterpretation or misunderstanding, OTS is revising its proposed annual data items for the reporting of the number of fee-paid referrals during the year. As revised, thrifts would annually report the number of reverse mortgage loan referrals to other lenders during the year from whom they have received any compensation for services performed in connection with the origination of reverse mortgages. The revised referral data items would be implemented beginning December 31, 2010. The other proposed reverse mortgage data items would be implemented as proposed beginning on the same date.

G. Assets Covered by FDIC Loss-Sharing Agreements

The commenter requested that the OTS and other federal banking agencies revise the TFR and the Call Report to collect information on loss-sharing agreements with the FDIC even though this had not been proposed by the agencies. The organization noted that there is currently no guidance on how a financial institution that acquires a failed financial institution should report any loss-sharing agreement in the TFR or Call Report. It also stated that the TFR and Call Report do not provide users with a ''readily accessible summary of the bank's net exposures on assets that are subject to loss-share agreements. The organization observed that ''[t]his will become an increasingly important long-term and more common reporting issue as additional failed banks are acquired from the FDIC under a loss-share agreement.''

Under loss sharing, the FDIC agrees to absorb a portion of the loss on a specified pool of a failed institution's assets in order to maximize asset recoveries and minimize the FDIC's losses. In general, the FDIC will reimburse 80 percent of losses incurred by an acquiring institution on covered assets over a specified period of time up to a stated threshold amount, with the acquirer absorbing 20 percent. Any losses above the stated threshold amount will be reimbursed by the FDIC at 95 percent of the losses booked by the acquirer. Over the past year, the FDIC has entered into loss-sharing agreements with acquiring institutions in connection with approximately 80 failed bank and thrift acquisitions. Some acquiring institutions have been involved in multiple failed institution acquisitions. Continued use of loss-sharing agreements is expected in connection with the resolution of failures of insured institutions by the FDIC. Assets covered by loss-sharing agreements include, but are not limited to, loans, other real estate, and debt securities.

As the bankers' organization indicated, the TFR and Call Report do not include a ''readily accessible summary'' of assets that reporting banks have acquired from failed institutions that are covered by FDIC loss-sharing agreements. Any covered loans and leases that are past due 30 days or more or are in nonaccrual status are reportable in items PD195, PD295, and PD395 of the TFR and in items 10 and 10.a of Call Report Schedule RC–N, Past Due and Nonaccrual Loans, Leases, and Other Assets, as loans and leases that are wholly or partially guaranteed by the U.S. Government. However, these items would also include loans and leases guaranteed by other U.S. Government agencies (such as the Small Business Administration and the Federal Housing Administration) that are past due 30 days or more or are in nonaccrual status and they would exclude loans and leases covered by FDIC loss-sharing agreements that do not meet these past due or nonaccrual reporting conditions as of the report date. Thus, the amount of covered loans and leases is not readily identifiable from the TFR or Call Report and the amount of other covered assets cannot be determined at all from the TFR or Call Report.

The agencies agree with the bankers' organization that the reporting of summary data on covered assets would be beneficial to TFR and Call Report users and to the institutions holding covered assets. Therefore, OTS proposes to add the following four line items to the TFR as of March 31, 2010:

1. SI770: Carrying amount of loans and leases covered by FDIC loss sharing agreements;

2. SI772: Carrying amount of real estate owned covered by FDIC loss sharing agreements;

3. SI774: Carrying amount of debt securities covered by FDIC loss sharing agreements; and

4. SI776: Carrying amount of other assets covered by FDIC loss sharing agreements.

The other federal banking agencies will add such a summary to Call Report Schedule RC–M, Memoranda, effective March 31, 2010. In this summary, banks that have entered into loss-sharing agreements with the FDIC would separately report the carrying amounts of (1) loans and leases, (2) other real estate owned, (3) debt securities, and (4) other assets covered by such agreements. The federal banking agencies will also consider whether the collection of additional information concerning covered assets would be warranted and, if so, it would be incorporated into a formal proposal that the agencies would publish with a request for comment in accordance with

the requirements of the Paperwork Reduction Act of 1995.

Dated: December 18, 2009.

Ira L. Mills,

OTS Clearance Officer, Office of Thrift Supervision.

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Wednesday,
December 23, 2009

Part II

Securities and Exchange Commission

17 CFR Parts 229, 239, 240, et al.
Proxy Disclosure Enhancements; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 239, 240, 249 and 274

[Release Nos. 33–9089; 34–61175; IC–29092; File No. S7–13–09]

RIN 3235–AK28

Proxy Disclosure Enhancements

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting amendments to our rules that will enhance information provided in connection with proxy solicitations and in other reports filed with the Commission. The amendments will require registrants to make new or revised disclosures about: compensation policies and practices that present material risks to the company; stock and option awards of executives and directors; director and nominee qualifications and legal proceedings; board leadership structure; the board's role in risk oversight; and potential conflicts of interest of compensation consultants that advise companies and their boards of directors. The amendments to our disclosure rules will be applicable to proxy and information statements, annual reports and registration statements under the Securities Exchange Act of 1934, and registration statements under the Securities Act of 1933 as well as the Investment Company Act of 1940. We are also transferring from Forms 10–Q and 10–K to Form 8–K the requirement to disclose shareholder voting results.

DATES: *Effective Date:* February 28, 2010.

FOR FURTHER INFORMATION CONTACT: N. Sean Harrison, Special Counsel, at (202) 551–3430 or Anne Krauskopf, Senior Special Counsel, at (202) 551–3500, in the Division of Corporation Finance; or with respect to questions regarding investment companies, Alberto Zapata, Senior Counsel, Division of Investment Management, at (202) 551–6784, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are adopting amendments to Items 401,[1] 402,[2] and 407[3] of Regulation S–K;[4] Schedule 14A[5] and Forms 8–K,[6] 10–Q,[7] and 10–K[8] under the Securities Exchange Act of 1934 (''Exchange Act'');[9] and Forms N–1A,[10] N–2,[11] and N–3,[12] registration forms used by management investment companies to register under the Investment Company Act of 1940 (''Investment Company Act'')[13] and to offer their securities under the Securities Act of 1933 (''Securities Act'').[14]

Table of Contents

I. Background and Overview of the Amendments
II. Discussion of the Amendments
A. Enhanced Compensation Disclosure
1. Narrative Disclosure of the Company's Compensation Policies and Practices as They Relate to the Company's Risk Management
a. Proposed Amendments
b. Comments on the Proposed Amendments
c. Final Rule
2. Revisions to the Summary Compensation Table
a. Proposed Amendments
b. Comments on the Proposed Amendments
c. Final Rule
d. Transition
e. Comment Responses Regarding Rulemaking Petition and Other Requests for Comment
B. Enhanced Director and Nominee Disclosure
1. Proposed Amendments
2. Comments on the Proposed Amendments
3. Final Rule
C. New Disclosure About Board Leadership Structure and the Board's Role in Risk Oversight
1. Proposed Amendments
2. Comments on the Proposed Amendments
3. Final Rule
D. New Disclosure Regarding Compensation Consultants
1. Proposed Amendments
2. Comments on the Proposed Amendments
3. Final Rule
E. Reporting of Voting Results on Form 8–K
1. Proposed Amendments
2. Comments on the Proposed Amendments
3. Final Rule
III. Paperwork Reduction Act
IV. Cost-Benefit Analysis
V. Consideration of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation
VI. Final Regulatory Flexibility Analysis
VII. Statutory Authority and Text of the Amendments

I. Background and Overview of the Amendments

On July 10, 2009, we proposed a number of revisions to our rules that were designed to improve the disclosure shareholders of public companies receive regarding compensation and corporate governance.[15] As discussed in detail below, we have taken into consideration the comments received on the proposed amendments and are adopting several amendments to our rules. Among other improvements, the new disclosure requirements adopted today enhance the information provided in annual reports, and proxy and information statements to better enable shareholders to evaluate the leadership of public companies.

As discussed more fully in the Proposing Release, during the past few years, investors have increasingly focused on corporate accountability and have expressed the desire for additional information that would enhance their ability to make informed voting and investment decisions. The disclosure enhancements we are adopting respond to this focus, and will significantly improve the information companies provide to shareholders with regard to the following:

- *Risk:* By requiring disclosure about the board's role in risk oversight and, to the extent that risks arising from a company's compensation policies and practices are reasonably likely to have a material adverse effect on the company, disclosure about such policies and practices as they relate to risk management;
- *Governance and Director Qualifications:* By requiring expanded disclosure of the background and qualifications of directors and director nominees and new disclosure about a company's board leadership structure, and accelerating the reporting of information regarding voting results; and
- *Compensation:* By revising the reporting of stock and option awards in the Summary Compensation Table[16] and Director Compensation Table,[17] and requiring disclosure of potential conflicts of interest of compensation consultants in certain circumstances. We believe that providing a more transparent view of these key risk, governance and compensation matters

[1] 17 CFR 229.401.
[2] 17 CFR 229.402.
[3] 17 CFR 229.407.
[4] 17 CFR 229.10 *et al.*
[5] 17 CFR 240.14a–101.
[6] 17 CFR 249.308.
[7] 17 CFR 249.308a.
[8] 17 CFR 249.310.
[9] 15 U.S.C. 78a *et seq.*
[10] 17 CFR 239.15A and 274.11A.
[11] 17 CFR 239.14 and 274.11a–1.
[12] 17 CFR 239.17a and 274.11b.
[13] 15 U.S.C. 80a–1 *et seq.*
[14] 15 U.S.C. 77a *et seq.*
[15] *See* Release No. 33–9052 (July 10, 2009) [74 FR 35076] (''Proposing Release'').
[16] Item 402(c) and 402(n) of Regulation S–K [17 CFR 229.402(c) and 229.402(n)].
[17] Item 402(k) and 402(r) of Regulation S–K [17 CFR 229.402(k) and 229.402(r)].

will help shareholders make more informed voting and investment decisions.

We received over 130 comment letters in response to the proposed amendments.[18] These letters came from corporations, pension funds, professional associations, trade unions, accounting firms, law firms, consultants, academics, individual investors and other interested parties. In general, the commenters supported the objectives of the proposed new requirements. Most investors supported the manner in which we proposed to achieve these objectives and, in some cases, urged us to require additional disclosure from companies. Other commenters, however, opposed some of the proposed revisions and suggested modifications to the proposals.

We have reviewed and considered all of the comments that we received on the proposed amendments. The adopted rules reflect changes made in response to many of these comments. We discuss our revisions with respect to each proposed rule amendment in more detail throughout this release. The amendments that we are adopting will require:

- To the extent that risks arising from a company's compensation policies and practices for employees are reasonably likely to have a material adverse effect on the company, discussion of the company's compensation policies or practices as they relate to risk management and risk-taking incentives that can affect the company's risk and management of that risk;
- Reporting of the aggregate grant date fair value of stock awards and option awards granted in the fiscal year in the Summary Compensation Table and Director Compensation Table to be computed in accordance with Financial Accounting Standards Board Accounting Standards Codification Topic 718, Compensation—Stock Compensation (''FASB ASC Topic 718''),[19] rather than the dollar amount recognized for financial statement purposes for the fiscal year, with a special instruction for awards subject to performance conditions;
- New disclosure of the qualifications of directors and nominees for director, and the reasons why that person should serve as a director of the company at the time at which the relevant filing is made with the Commission; the same information would be required in the proxy materials prepared with respect to nominees for director nominated by others;
- Additional disclosure of any directorships held by each director and nominee at any time during the past five years at any public company or registered investment company;
- New disclosure regarding the consideration of diversity in the process by which candidates for director are considered for nomination by a company's nominating committee;
- Additional disclosure of other legal actions involving a company's executive officers, directors, and nominees for director, and lengthening the time during which such disclosure is required from five to ten years;
- New disclosure about a company's board leadership structure and the board's role in the oversight of risk;
- New disclosure about the fees paid to compensation consultants and their affiliates under certain circumstances; and
- Disclosure of the vote results from a meeting of shareholders on Form 8–K generally within four business days of the meeting.

With respect to management investment companies that are registered under the Investment Company Act (''funds''),[20] the amendments we are adopting will require expanded disclosure regarding director and nominee qualifications; past directorships held by directors and nominees; and legal proceedings involving directors, nominees, and executive officers to funds; and new disclosure about leadership structure and the board's role in the oversight of risk.

The Proposing Release also included several proposed amendments to our rules governing the proxy solicitation process. We have decided to defer consideration of those proposed amendments at this time, pending our consideration of our proposal intended to facilitate shareholder director nominations in companies' proxy materials.[21]

II. Discussion of the Amendments

A. Enhanced Compensation Disclosure

1. Narrative Disclosure of the Company's Compensation Policies and Practices as They Relate to the Company's Risk Management

We proposed amendments to our Compensation Discussion and Analysis (''CD&A'') requirements to broaden their scope to include a new section regarding how the company's overall compensation policies for employees create incentives that can affect the company's risk and management of that risk. We are adopting the disclosure requirements generally as proposed, but we are revising the placement of the new required disclosures and the disclosure threshold, as suggested by commenters.

a. Proposed Amendments

Under the amendments we proposed, companies would be required to discuss and analyze their broader compensation policies and overall actual compensation practices for employees generally, including non-executive officers, if risks arising from those compensation policies or practices may have a material effect on the company. As we stated in the Proposing Release, we believe that disclosure of a company's compensation policies and practices in certain circumstances can help investors identify whether the company has established a system of incentives that can lead to excessive or inappropriate risk taking by employees.

The proposed amendments enumerated a non-exclusive list of situations where compensation programs may raise material risks to companies, and several examples of the types of issues that would be appropriate for a company to discuss and analyze. The illustrative examples, consistent with the principles-based approach of the CD&A, were intended to help identify the types of situations in which the disclosure may be required.

b. Comments on the Proposed Amendments

Comments on the proposal were mixed. Individual investors, trade unions, institutional investors and pension funds supported the proposals.[22] Some of these commenters

[18] The public comments we received are available on our Web site at *http://www.sec.gov/comments/s7-13-09/s71309.shtml.* Comments are also available for Web site viewing 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.

[19] Both our rule proposal and the former disclosure requirement used the nomenclature Financial Accounting Standards Board Statement of Financial Accounting Standards No. 123 (revised 2004) *Share-Based Payment* (FAS 123R). We are updating our references in this release and the final rules to reflect that the FASB Accounting Standards Codification has superseded all references to previous FASB standards for interim or annual periods ending on or after September 15, 2009.

[20] Management investment companies typically issue shares representing an interest in a changing pool of securities, and include open-end and closed-end companies. An open-end company is a management company that is offering for sale or has outstanding any redeemable securities of which it is the issuer. A closed-end company is any management company other than an open-end company. *See* Section 5 of the Investment Company Act [15 U.S.C. 80a–5].

[21] *See* Release No. 33–9046 (June 10, 2009) [74 FR 29024].

[22] *See, e.g.,* letters from American Federation of Labor and Congress of Industrial Organizations

Continued

believed the new CD&A disclosure would improve the ability of investors to make informed investment decisions.[23] Other commenters believed the amendments would significantly improve shareholders' understanding of both the process by which pay is set and the substantive policies that guide companies' risk assessment or incentive considerations in structuring compensation policies or awarding compensation.[24]

Most companies, law firms and bar groups opposed the proposal.[25] Concerns that were expressed included, for example, that the proposed amendments would not lead to meaningful disclosures,[26] and that the CD&A was already long and the proposed amendments would add length without a corresponding benefit to shareholders.[27] Another concern expressed by commenters was that the linkage between risk-taking and executive compensation is not well understood, and that the disclosures provided under the proposed amendments would likely be boilerplate that could give investors a false sense of comfort regarding risk and risk-taking.[28]

Other commenters argued that it was not appropriate to expand the CD&A beyond the named executive officers to include disclosure of the company's broader compensation policies and overall compensation practices for employees generally.[29] Some of these commenters argued that expanding the CD&A would represent a fundamental shift in the approach to the CD&A.[30] Concerns were also expressed that risk management, risk-taking incentives and related business strategy are complex subjects that could not be adequately analyzed in CD&A without adding voluminous text to an already lengthy proxy statement.[31]

Comments also were mixed on the illustrative examples included with the proposed amendments. Some commenters supported the list, noting that the additional disclosures would provide investors with a better understanding of a company's compensation policies and how such policies can create incentives that could affect the company's risk profile and ability to manage that risk.[32] Other commenters asserted that the proposed revisions would lead to boilerplate disclosures and information that would not be meaningful to investors.[33]

Several commenters recommended that we revise the disclosure threshold in the proposed amendments, which we proposed as ''may have a material effect'' on the company.[34] Suggested alternatives included changing the standard to ''likely to have a material effect,'' ''reasonably likely to have a material effect,'' or ''will likely have a material effect.'' [35] Some commenters believed the ''may have a material effect'' standard was too speculative and that basing the disclosure standard on whether the risks are ''reasonably likely to have a material effect'' would give companies more certainty and provide investors with more meaningful disclosure.[36] Commenters also noted that, to avoid voluminous and extraneous disclosure, the requirement should focus on compensation arrangements that are likely to promote risk-taking behavior that could have a significant and damaging impact on the company's operations.[37]

c. Final Rule

After considering the comments, we are adopting the disclosure requirement substantially as proposed with some modifications. We continue to believe that it is important for investors to be informed of the compensation policies and practices that are likely to expose the company to material risk, but we recognize that, consistent with the comments received, we should revise our proposals. We have tailored the final amendments to address many of the concerns expressed by commenters, consistent with the purposes to be advanced by the disclosure.

The final rule requires a company to address its compensation policies and practices for all employees, including non-executive officers, if the compensation policies and practices create risks that are reasonably likely to have a material adverse effect on the company.[38] As noted above, the proposed rules would have required discussion and analysis of compensation policies if risks arising from those compensation policies ''may have a material effect on the company.'' We agree with the suggestions of several commenters that the new requirements should have a ''reasonably likely'' disclosure threshold. Companies are familiar with the ''reasonably likely'' disclosure threshold used in our Management Discussion and Analysis (''MD&A'') rules,[39] and this approach would parallel the MD&A requirement, which requires risk-oriented disclosure of known trends and uncertainties that are material to the business. We believe that the ''reasonably likely'' threshold also addresses concerns of some commenters that the proposed requirements might have caused companies attempting compliance to burden shareholders and investors with voluminous disclosure of potentially insignificant and unnecessarily speculative information about their compensation policies. By focusing on risks that are ''reasonably likely to have a material adverse effect'' on the company, the amendments are intended to elicit disclosure about incentives in the company's compensation policies and practices that would be most relevant to investors.[40] This change from the proposal also addresses concerns some commenters raised that the proposal did not allow companies to consider compensating or offsetting steps or controls designed to limit risks of certain compensation arrangements.[41] If a company has compensation policies and practices for different groups that

(''AFL–CIO''), American Association of Retired Persons (''AARP''), Grahall Partners LLC, Institute of Internal Auditors (''IIA''), Pfizer Inc., Risk and Insurance Management Society, Inc. (''RIMS''), State of Connecticut Treasurer's Office (''CTO''), State of Wisconsin Investment Board (''SWIB''), Ralph S. Saul, Teachers Insurance and Annuity Association of America—College Retirement and Equities Fund (''TIAA–CREF''), and Mark Whitton.

[23] *See, e.g.,* letters from California State Teachers' Retirement System (''CalSTRS''), and RIMS.

[24] *See, e.g.,* letters from Service Employees International Union (''SEIU''), and Walden Asset Management.

[25] *See, e.g.,* letters from the American Bar Association (''ABA''), Robert Ahrenholz, American Electric Power, Business Roundtable, StanCorp Financial Group, and Wisconsin Electric Corporation.

[26] *See, e.g.,* letters from Association Corporate Counsel (''ACC''), BorgWarner Inc., NACCO Industries, Inc. (''NACCO''), and Sullivan & Cromwell (''S&C'').

[27] *See, e.g.,* letters from National Association of Corporate Directors (''NACD'') and S&C.

[28] *See, e.g.,* letters from ABA and DolmatConnell Partners, Inc. (''DolmatConnell'').

[29] *See, e.g.,* letters from BorgWarner, NACCO and the Society of Corporate Secretaries and Corporate Governance Professionals (''SCSGP'').

[30] *See, e.g.,* letters from BorgWarner and NACCO.

[31] *See e.g.,* letter of NACD.

[32] *See, e.g.,* letters from CalSTRS, Council of Institutional Investors (''CII''), Glass Lewis & Co (''Glass Lewis''), and RIMS.

[33] *See e.g.,* letters of Business Roundtable and Cleary Gottlieb Steen & Hamilton LLP (''Cleary Gottlieb'').

[34] *See* letters from ACC, BorgWarner, Davis Polk & Wardwell LLP (''Davis Polk''), Honeywell International Inc. (''Honeywell''), NACCO, and SCSGP.

[35] *See* letters from ABA, ACC, BorgWarner, Davis Polk, Honeywell, NACCO, and SCSGP.

[36] *See* letters from ABA and Davis Polk.

[37] *See* letters from ABA and Pearl Meyer & Partners (''Pearl Meyer'').

[38] *See* new Item 402(s) of Regulation S–K. As we noted in the Proposing Release, to the extent that risk considerations are a material aspect of the company's compensation policies or decisions for named executive officers, the company is required to discuss them as part of its CD&A under the current rules.

[39] *See* Item 303 of Regulation S–K [17 CFR 229.303].

[40] *See* note 36 above and accompanying text.

[41] *See* letters from ABA and Center on Executive Compensation.

mitigate or balance incentives, these could be considered in deciding whether risks arising from the company's compensation policies and practices for employees are reasonably likely to have a material adverse effect on the company as a whole.

In addition, we have modified the proposal to provide that disclosure is only required if the compensation policies and practices are reasonably likely to have a material ''adverse'' effect on the company, as opposed to any ''material effect'' as proposed. As noted in the Proposing Release, well-designed compensation policies can enhance a company's business interests by encouraging innovation and appropriate levels of risk-taking. By focusing the disclosure on material *adverse* effects, the final rule should help avoid voluminous and unnecessary discussion of compensation arrangements that may mitigate inappropriate risk-taking incentives.

We are also moving the new requirements into a separate paragraph in Item 402 of Regulation S–K.[42] As adopted, the new disclosure requirements will not be a part of the CD&A.[43] We were persuaded by commenters who asserted that it would be potentially confusing to expand the CD&A beyond the named executive officers to include disclosure of the company's broader compensation policies and practices for employees. CD&A provides discussion and analysis of the compensation of the named executive officers and the information contained in the Summary Compensation Table and other required tables, and the new disclosure requirements would be inconsistent with that approach because they would cover all employees, not just the named executive officers.[44]

The final rule will contain, as proposed, the non-exclusive list of situations where compensation programs may have the potential to raise material risks to companies, and the examples of the types of issues that would be appropriate for a company to address. Under the amendments, the situations that would require disclosure will vary depending on the particular company and its compensation program. We believe situations that potentially could trigger discussion include, among others, compensation policies and practices:

- At a business unit of the company that carries a significant portion of the company's risk profile;
- At a business unit with compensation structured significantly differently than other units within the company;
- At a business unit that is significantly more profitable than others within the company;
- At a business unit where the compensation expense is a significant percentage of the unit's revenues; and
- That vary significantly from the overall risk and reward structure of the company, such as when bonuses are awarded upon accomplishment of a task, while the income and risk to the company from the task extend over a significantly longer period of time.

This is a non-exclusive list of situations where compensation programs may have the potential to raise material risks to the company. There may be other features of a company's compensation policies and practices that have the potential to incentivize its employees to create risks that are reasonably likely to have a material adverse effect on the company. However, disclosure under the amendments is only required if the compensation policies and practices create risks that are reasonably likely to have a material adverse effect on the company. We note that in the situations listed above, a company may under appropriate circumstances conclude that its compensation policies and practices are not reasonably likely to have a material adverse effect on the company.

We are adopting, as proposed, the illustrative examples of the issues that would potentially be appropriate for a company to address. As we stated in the Proposing Release, the examples are non-exclusive and that the application of an example should be tailored to the facts and circumstances of the company. We believe that a principles-based approach, similar to our CD&A requirements, utilizing illustrative examples strikes an appropriate balance that will effectively elicit meaningful disclosure. If a company determines that disclosure is required, we believe examples of the issues that companies may need to address regarding their compensation policies or practices include the following:

- The general design philosophy of the company's compensation policies and practices for employees whose behavior would be most affected by the incentives established by the policies and practices, as such policies and practices relate to or affect risk taking by those employees on behalf of the company, and the manner of their implementation;
- The company's risk assessment or incentive considerations, if any, in structuring its compensation policies and practices or in awarding and paying compensation;
- How the company's compensation policies and practices relate to the realization of risks resulting from the actions of employees in both the short term and the long term, such as through policies requiring claw backs or imposing holding periods;
- The company's policies regarding adjustments to its compensation policies and practices to address changes in its risk profile;
- Material adjustments the company has made to its compensation policies and practices as a result of changes in its risk profile; and
- The extent to which the company monitors its compensation policies and practices to determine whether its risk management objectives are being met with respect to incentivizing its employees.

We believe using illustrative examples helps to identify the types of disclosure that may be applicable. However, companies must assess the information that is identified by the example in light of the company's particular situation. Thus, for example, we would not expect to see generic or boilerplate disclosure that the incentives are designed to have a positive effect, or that compensation levels may not be sufficient to attract or retain employees with appropriate skills in order to enable the company to maintain or expand operations.

Consistent with the approach taken in the proposals, smaller reporting companies will not be required to provide the new disclosure, even though the new rule will not be part of CD&A.[45] At this time, we believe that such companies are less likely to have the types of compensation policies and practices that are intended to be addressed in this rulemaking.[46]

[42] *See* new Item 402(s) of Regulation S–K.

[43] In making this change, we also revised the final rule from what was proposed by eliminating the term ''generally.'' Previously, we believed this term was helpful to distinguish the proposed amendments from the CD&A for the named executive officers by emphasizing that it also applied to non-executive officers. Because we are moving the new requirements into a separate paragraph, we do not believe the term is needed. Moreover, one commenter noted that the term could be confusing in light of the examples listed in the rule. *See* letter from ABA.

[44] *See* letters from BorgWarner, NACCO and SCSGP.

[45] Because smaller reporting companies are not required to provide CD&A disclosure, we did not propose to require that they provide the new disclosure.

[46] *See, e.g.,* letter of Committee on Securities Law of the Business Law Section of the Maryland State Bar Association (''In our view smaller reporting

Continued

In the Proposing Release, we requested comment on whether we should require a company to affirmatively state that it has determined that the risks arising from its compensation policies are not reasonably expected to have a material effect on the company if it has concluded that disclosure was not required. Commenters were mixed in their response to this request. Several commenters believed that companies should be required to affirmatively state that they have determined that the risks arising from their broader compensation policies are not reasonably expected to have a material effect.[47] Others believed that the proposed amendments should not require an affirmative statement because it would not provide investors with useful information and would create potential liability for companies.[48] Another commenter noted that our disclosure rules have not traditionally required companies to address affirmatively matters that the company has determined are not applicable to it.[49] We believe an approach consistent with our prior practice is appropriate and the final rule does not require a company to make an affirmative statement that it has determined that the risks arising from its compensation policies and practices are not reasonably likely to have a material adverse effect on the company.

2. Revisions to the Summary Compensation Table

We proposed to amend Item 402 of Regulation S–K to revise Summary Compensation Table and Director Compensation Table disclosure of stock awards and option awards to require disclosure of the aggregate grant date fair value of awards computed in accordance with FASB ASC Topic 718. The revised disclosure[50] would replace previously mandated disclosure of the dollar amount recognized for financial statement reporting purposes for the fiscal year in accordance with FASB ASC Topic 718, and would affect the calculation of total compensation, including for purposes of determining who is a named executive officer.[51] We are adopting the revisions substantially as proposed with some changes in response to comments.

a. Proposed Amendments

As we stated in the Proposing Release, we proposed these amendments because of comments we previously received from a variety of sources that the information that investors would find most useful and informative in the Summary Compensation Table and Director Compensation Table is the full grant date fair value of equity awards made during the covered fiscal year. Investors may consider compensation decisions made during the fiscal year, which usually are reflected in the full grant date fair value measure but not in the financial statement recognition measure, to be material to voting and investment decisions.

We also proposed to rescind the requirement to report the full grant date fair value of each individual equity award in the Grants of Plan-Based Awards Table[52] and the corresponding footnote disclosure to the Director Compensation Table[53] because these disclosures may be considered duplicative of the aggregate grant date fair value to be provided in the amended Summary Compensation Table. In addition, we proposed to amend Instruction 2 to the salary and bonus columns of the Summary Compensation Table so that companies would not be required to report in those columns the amount of salary or bonus forgone at a named executive officer's election, and the non-cash awards received instead of salary or bonus would be reported in the column applicable to the form of award elected. As proposed, the Summary Compensation Table disclosure would reflect the form of compensation ultimately received by the named executive officer.

b. Comments on the Proposed Amendments

A broad spectrum of commenters supported the proposal to revise the Summary Compensation Table and Director Compensation Table disclosure of stock awards and option awards to require disclosure of the aggregate grant date fair value of awards.[54] Most commenters agreed that because aggregate grant date fair value disclosure better reflects compensation committee decisions with respect to stock and option awards,[55] it is more informative to voting and investment decisions[56] and a better measure for purposes of identifying named executive officers.[57] However, some commenters objected that use of grant date fair value to identify named executive officers may result in relatively frequent changes in the named executive officer group based on grants of ''one time'' multi-year awards to newly hired executives or special awards to enhance retention.[58]

As discussed in detail below, many commenters expressed concern that the amount to be reported in the table for performance awards would be calculated without regard to the likelihood of achieving the relevant performance objectives, which could discourage companies from granting these awards.[59] Others, however, suggested that the design of equity awards is driven by numerous considerations, and companies would continue to make equity awards subject to performance conditions.[60]

companies and their compensation structures generally are not geared towards the kind of disclosure that would be required by the proposal''). The amendments will not alter the reporting requirements for smaller reporting companies under Item 402. Specifically, smaller reporting companies are permitted to provide the scaled disclosures specified in Items 402(l) through (r) of Regulation S–K, rather than the disclosure specified in Items 402(a) through (k) of Regulation S–K.

[47] *See, e.g.,* letters from Calvert Group, Ltd. (''Calvert''), Grahall Partners and Integrated Governance Solutions.

[48] *See, e.g.,* letters from the Business Roundtable, Honeywell, Pfizer and S&C.

[49] *See* letter from ABA.

[50] Items 402(c)(2)(v) and (vi), 402(k)(2)(iii) and (iv), 402(n)(2)(v) and (vi), and 402(r)(2)(iii) and (iv) of Regulation S–K.

[51] Items 402(a)(3)(iii) and (iv) and 402(m)(2)(ii) and (iii) of Regulation S–K.

[52] Item 402(d)(2)(viii) of Regulation S–K and Instruction 7 to Item 402(d).

[53] Instruction to Item 402(k)(2)(iii) and (iv) of Regulation S–K.

[54] *See, e.g.,* letters from AARP, Business Roundtable, State of Wisconsin Investment Board (''SWIB''), Pfizer, SCSGP, S&C, United Brotherhood of Carpenters and Joiners of America (''United Brotherhood of Carpenters''), United States Proxy Exchange (''USPX'').

[55] *See, e.g.,* letters from Business Roundtable (''Generally, we support the Proposed Rules, as they likely will produce disclosure that, in most situations, is more in line with how compensation committees view annual equity compensation—that is, disclosure of the equity compensation that a company grants in a particular year.''); and SCSGP (''We support this change. The aggregate grant date fair value is generally used by compensation committees in determining the amount of stock and options to award, whereas the current disclosure requirement confusingly focuses on accounting considerations that may have no bearing on compensation decisions.'').

[56] *See, e.g.,* letter of United Brotherhood of Carpenters (''The proposed SCT reporting of equity awards will help inform investment decisions, as well as important investor voting decisions regarding executive compensation and director performance.'').

[57] *See, e.g.,* letter of Mercer (''Because the value included in the SCT determines the identification of at least three of the named executive officers (other than the principal executive officer and the principal financial officer), disclosure of the full grant-date fair value would also better align the identification of these officers with company compensation decisions.'').

[58] *See, e.g.,* letter of Protective Life Corporation.

[59] *See, e.g.,* letters from ABA, Business Roundtable, Center on Executive Compensation, Cleary Gottlieb, Compensia, Honeywell, Frederic W. Cook & Co., Inc., Pearl Meyer, Protective Life Corporation, Securities Industry and Financial Markets Association (SIFMA), SCSGP, and Towers Perrin.

[60] *See, e.g.,* letter from Hewitt Associates LLC (''Hewitt'').

With respect to the proposal to rescind the requirement to report the full grant date fair value of each individual equity award in the Grants of Plan-Based Awards Table, the comments were mixed. While some commenters supported this proposal,[61] others stated that retaining disclosure of the grant date fair value of individual awards would continue to provide investors valuable information. Because different companies may vary in the assumptions they apply to compute grant date fair value, some commenters noted that retaining this disclosure makes it easier for investors to assess how companies determined fair value for individual grants.[62] Further, different types of equity awards can have different incentive effects, making it important that shareholders understand the value associated with each type of award granted and the mix of values among various award types.[63] Commenters pointed out that reporting the separate value of multiple individual awards provides investors more information regarding the specific decisions of the compensation committee, so that investors can better evaluate those decisions and understand pay for performance.[64]

We also received a wide range of comments on our proposal to amend Instruction 2 to the salary and bonus columns of the Summary Compensation Table. Some commenters favored this amendment because, as stated in the Proposing Release, it would report compensation in the form actually received.[65] Other commenters, however, said it is important to report the form of compensation that the compensation committee originally awarded, so that investors can understand the overall compensation strategy and the intended distribution of risk among different types of compensation.[66]

c. Final Rule

After considering the comments received, we are adopting the proposed amendments to revise Summary Compensation Table and Director Compensation Table disclosure of stock awards and option awards to require disclosure of the aggregate grant date fair value of awards computed in accordance with FASB ASC Topic 718, with a special instruction for awards subject to performance conditions as described below. We agree with commenters that aggregate grant date fair value disclosure better reflects the compensation committee's decision with regard to stock and option awards. We remain of the view that it is more meaningful to shareholders if company compensation decisions—including decisions to grant large ''one time'' multi-year awards—cause the named executive officers to change. In circumstances where such a large ''new hire'' or ''retention'' grant results in the omission from the Summary Compensation Table of another executive officer whose compensation otherwise would have been subject to reporting, the company can consider including compensation disclosure for that executive officer to supplement the required disclosures.

Based on comments received, we are clarifying how performance awards[67] are disclosed. Most commenters stated that reporting the aggregate grant date fair value of performance awards based on maximum performance could discourage companies from granting these awards.[68] Noting that compensation committees take performance-contingent conditions into account when granting such awards, commenters said that the grant date fair value reported for awards with a performance condition should instead be based on the probable outcome of the performance conditions, consistent with the recognition criteria in the accounting literature.[69] As commenters stated, because performance awards generally are designed to incentivize attainment of target performance and set a higher maximum performance level as a ''cap'' on attainable compensation, requiring disclosure of an award's value to always be based on maximum performance would overstate the intended level of compensation and result in investor misinterpretation of compensation decisions. This could also discourage the grant of awards with difficult—or any—performance conditions, and lead to inflated benchmarking values used to set equity award or total compensation levels at other companies.

We are persuaded that the value of performance awards reported in the Summary Compensation Table, Grants of Plan-Based Awards Table and Director Compensation Table should be computed based upon the probable outcome of the performance condition(s) as of the grant date because that value better reflects how compensation committees take performance-contingent vesting conditions into account in granting such awards. We are adopting new Instructions to these tables to clarify that this amount will be consistent with the grant date estimate of compensation cost to be recognized over the service period, excluding the effect of forfeitures.[70] To provide investors additional information about an award's potential maximum value subject to changes in performance outcome, we will also require in the Summary Compensation Table and Director Compensation Table footnote disclosure of the maximum value assuming the highest level of performance conditions is probable.[71] Such footnote disclosure will permit investors to understand an award's maximum value without raising the concerns associated with requiring its tabular disclosure.[72]

We are requiring disclosure of awards granted during the year, as proposed. A number of commenters responded to our request for comment by indicating that they would prefer disclosure of the aggregate grant date fair value of equity awards granted *for* services in the relevant fiscal year, even if granted after fiscal year end, rather than awards granted *during* the relevant fiscal year, as proposed.[73] Other commenters expressed concern that revising the proposal in this way would result in a lack of uniformity that would confuse investors, would be inconsistent with the FASB ASC Topic 718 grant date, and could invite manipulated

[61] *See* letters from Buck Consultants, Chadbourne Park, Mercer, Pfizer, Protective Life Corporation, and S&C.

[62] *See* letters from AFL–CIO, Compensia and Graef Crystal.

[63] *See* letters from Compensia, Frederic W. Cook & Co., Inc., and Risk Metrics.

[64] *See* letters from Center on Executive Compensation, Hewitt, Pearl Meyer, Towers Perrin, and Universities Superannuation Scheme, *et al.*

[65] *See, e.g.,* letters from Pfizer and RiskMetrics.

[66] *See* letters from Center on Executive Compensation, and Pearl Meyer.

[67] Performance awards include only those awards that are subject to performance conditions as defined in the Glossary to FASB ASC Topic 718.

[68] *See, e.g.,* letters from ABA, Business Roundtable, Center on Executive Compensation, Cleary Gottlieb, Compensia, Honeywell, Frederic W. Cook & Co., Inc., Pearl Meyer, Protective Life Corporation, SIFMA, SCSGP, and Towers Perrin.

[69] FASB ASC Topic 718.

[70] *See* Instruction 3 to Item 402(c)(2)(v) and (vi), Instruction 8 to Item 402(d), and Instruction 3 to Item 402(n)(2)(v) and (vi).

[71] *See* Instruction 3 to Item 402(c)(2)(v) and (vi), and Instruction 3 to Item 402(n)(2)(v) and (vi).

[72] *See, e.g.,* letter from ABA.

[73] *See, e.g.,* letters from ACC, Ameriprise Financial, Inc., BorgWarner, Business Roundtable, Cleary Gottlieb, Committee on Securities Law of the Business Law Section of the Maryland State Bar Association, Frederic W. Cook & Co., Inc., Graef Crystal, Davis Polk, General Mills, Inc., Glass Lewis, Grahall Partners, LLC., Honeywell, JP Morgan Chase & Co., RiskMetrics, SCSGP, SIFMA, and S&C. These commenters suggested this approach would better align the amounts reported in the Summary Compensation Table with the compensation decisions discussed in CD&A, and clarify the relationship between pay and performance.

reporting.[74] We recognize that a ''performance year'' standard for reporting equity awards in securities in the relevant fiscal year may sometimes better align compensation disclosure with compensation decision making, and may be more consistent with Summary Compensation Table salary and bonus disclosure.[75] However, because it appears that multiple subjective factors, which could vary significantly from company to company, influence equity awards granted after fiscal year end, we are concerned that changing the approach to reporting could result in inconsistencies that would erode comparability. One commenter noted that many companies make equity awards after the end of the fiscal year based on executive performance during the last completed fiscal year, but determining whether an equity award was granted primarily for services performed during the last completed fiscal year can be a highly subjective determination and the factors that influence the decision of when to report an equity award may vary significantly from company to company.[76] Companies should continue to analyze in CD&A their decisions to grant post-fiscal year end equity awards where those decisions could affect a fair understanding of named executive officers' compensation for the last fiscal year,[77] and consider including supplemental tabular disclosure where it facilitates understanding the CD&A.

Although we proposed to revise Instruction 2 to the salary and bonus column of the Summary Compensation Table so that companies would not be required to report in those columns the amount of salary or bonus forgone at a named executive officer's election and the non-cash awards received instead of salary or bonus would be reported in the column applicable to the form of award elected, we have decided not to adopt this amendment. We agree with commenters that disclosing the amounts of salary and bonus that the compensation committee awarded better enables investors to understand the relative weights the company applied to annual incentives and salary.[78] This information provides investors more insight into the extent to which a company's compensation strategy pays for performance, may be heavily weighted in salary, or may be heavily weighted in annual incentives. Consistent with our decision to amend our rules to require disclosure enabling investors to better understand the risks involved in compensation programs, we are retaining the current version of this instruction, so that investors can understand overall compensation strategy and the intended distribution of risk among different types of compensation. Companies will continue to report the forgone amounts in the salary or bonus column, with footnote disclosure of the receipt of non-cash compensation that refers to the Grants of Plan-Based Awards Table where the stock, option or non-equity incentive plan awarded the named executive officer elected is reported.[79]

Finally, based on the comments received, we have decided not to rescind, as was proposed, the requirement to report the full grant date fair value of each equity award in the Grants of Plan-Based Awards Table and the Director Compensation Table. We agree with commenters that, because this disclosure reveals the value associated with each type of equity award granted and the mix of values among various awards with different incentive effects, retaining it will help investors better evaluate the decisions of the compensation committee.[80]

d. Transition

To facilitate year-to-year comparisons, consistent with our proposal, we will implement the Summary Compensation Table amendments by requiring companies providing Item 402 disclosure for a fiscal year ending on or after December 20, 2009 to present recomputed disclosure for each preceding fiscal year required to be included in the table, so that the stock awards and option awards columns present the applicable full grant date fair values, and the total compensation column is correspondingly recomputed.[81] The stock awards and option awards columns amounts should be computed based on the individual award grant date fair values reported in the applicable year's Grants of Plan-Based Awards Table, except that awards with performance conditions should be recomputed to report grant date fair value based on the probable outcome as of the grant date, consistent with FASB ASC Topic 718. In addition, if a person who would be a named executive officer for the most recent fiscal year (2009) also was disclosed as a named executive officer for 2007, but not for 2008, the named executive officer's compensation for each of those three fiscal years must be reported pursuant to the amendments.[82] However, companies are not required to include different named executive officers for any preceding fiscal year based on recomputing total compensation for those years pursuant to the amendments, or to amend prior years' Item 402 disclosure in previously filed Forms 10–K or other filings.

e. Comment Responses Regarding Rulemaking Petition and Other Requests for Comment

We requested comment regarding a rulemaking petition recommending Summary Compensation Table disclosure of stock and option awards based on the annual change in value of awards.[83] We also requested comment on whether any potential amendments to the Grants of Plan-Based Awards Table or the Outstanding Equity Awards at Fiscal Year-End Table should be considered to better illustrate the relationship between pay and company performance. Most commenters did not support the petition's recommendation because they believed it would not report the board's compensation decisions, on which investors focus in making voting and investment decisions, and could result in disclosure of negative numbers.[84] However, several commenters recommended other tabular revisions to highlight how compensation may be related to the company's performance.[85] Most of these suggestions were in anticipation that legislation establishing an annual ''say-on-pay'' shareholder advisory vote may be enacted.[86] Commenters most

[74] *See* letters from Buck Consultants, Compensia, Pearl Meyer, Protective Life Corporation, and United Brotherhood of Carpenters.

[75] Instruction 1 to Item 402(c)(2)(iii) and (iv) provides that if the amount of salary or bonus earned for the fiscal year cannot be calculated as of the most recent practicable date, footnote disclosure of this fact and the date the amount is expected to be determined is required. When determined, the omitted amount and a recalculated total compensation figure must be reported in a filing under Item 5.02(f) of Form 8–K [17 CFR 249.308].

[76] *See* letter from Compensia.

[77] Instruction 2 to Item 402(b).

[78] *See, e.g.,* letters from Center on Executive Compensation and Pearl Meyer.

[79] Instruction 2 to Item 402(c)(2)(iii) and (iv).

[80] *See* letters from Center on Executive Compensation and Pearl Meyer.

[81] Commenters generally favored this approach as a means of ensuring year-to-year comparability, and said it would not be difficult to comply. *See, e.g.,* letters from Glass Lewis, Mercer, and Pfizer.

[82] However, a smaller reporting company, which is required to provide disclosure only for the two most recent fiscal years, could provide Summary Compensation Table disclosure only for 2009 if the person was a named executive officer for 2009 but not for 2008.

[83] *See* May 26, 2009, rulemaking petition submitted by Ira T. Kay and Steven Seelig, Watson Wyatt Worldwide, File No. 4–585, *at http://www.sec.gov/rules/petitions/2009/petn4–585.pdf.*

[84] *See, e.g.,* letters from Protective Life Corporation, RiskMetrics.

[85] *See, e.g.,* letters from Center on Executive Compensation, Graef Crystal, Paul Hodgson, Don Meiers and Dan Gode.

[86] The United States House of Representatives has passed H.R. 3269, the Corporate and Financial

frequently recommended adding a column to the Outstanding Equity Awards at Fiscal Year-End Table to report the fiscal year end intrinsic value of outstanding options and stock appreciation rights (''SARs'').[87]

In addition, we solicited comment on whether there are other initiatives we should consider proposing to improve executive compensation disclosure, such as including disclosure of each executive officer's compensation, not just the named executive officers; eliminating the instruction providing that performance targets can be excluded based on the potential adverse competitive effect on the company of their disclosure; making the CD&A part of the Compensation Committee Report, and requiring the report to be ''filed;'' additional disclosure regarding ''hold to retirement'' and/or claw back provisions; and internal pay ratios.[88] Commenters who addressed these topics expressed mixed views.[89]

Our goal at this stage is to adopt discrete amendments to improve compensation disclosure in proxy statements, such as the changes to option reporting in the Summary Compensation Table and Director Compensation Table, that can be implemented for the 2010 proxy season. Therefore, we are not adopting any other changes to executive compensation disclosure at this time. However, we will consider the comments received in connection with future rulemaking initiatives on compensation disclosure.

B. Enhanced Director and Nominee Disclosure

We proposed to amend Item 401 of Regulation S–K to expand the disclosure requirements regarding the qualifications of directors and nominees, past directorships held by directors and nominees, and the time period for disclosure of legal proceedings involving directors, nominees and executive officers. We are adopting the changes generally as proposed, but have made revisions in response to comments.

1. Proposed Amendments

Under the proposed amendments, a company would be required to disclose for each director and any nominee for director the particular experience, qualifications, attributes or skills that qualified that person to serve as a director of the company, and as a member of any committee that the person serves on or is chosen to serve on, in light of the company's business. In addition to the expanded narrative disclosure regarding director and nominee qualifications, the proposed amendments would require disclosure of any directorships held by each director and nominee at any time during the past five years at public companies and registered investment companies, and would lengthen the time during which disclosure of legal proceedings involving directors, director nominees and executive officers is required from five to ten years. As proposed, this expanded disclosure would apply to incumbent directors, to nominees for director who are selected by a company's nominating committee, and to any nominees put forward by another proponent in its proxy materials.

We proposed that the disclosures under the Item 401 amendments would appear in proxy and information statements on Schedules 14A and 14C, annual reports on Form 10–K and registration statements on Form 10 under the Exchange Act, as well as in registration statements under the Securities Act.

We also proposed to apply the expanded disclosure requirements regarding director and nominee qualifications, past directorships held by directors and nominees, and the time frame for disclosure of legal proceedings involving directors, nominees, and executive officers to funds. Specifically, we proposed to amend Schedules 14A and 14C to apply these expanded requirements to fund proxy and information statements, where action is to be taken with respect to the election of directors, and to amend Forms N–1A, N–2, and N–3 to require that funds include the expanded disclosures regarding director qualifications and past directorships in their statements of additional information.[90]

2. Comments on the Proposed Amendments

Comments on the proposal were mixed. Individual investors, trade unions, institutional investors and pension funds supported the proposals. Several of these commenters noted that the amendments would be a helpful step forward in providing investors and shareholders with additional information they need to make more informed investment and voting decisions relating to corporate governance and the election of directors.[91] Most companies, law firms and bar groups opposed the proposal. Many of the commenters opposed to the proposed amendments expressed concern about requiring companies to disclose the qualifications, attributes and skills of directors and nominees on a person-by-person basis.[92] Some of

Institution Compensation Fairness Act of 2009, which would provide shareholders an advisory vote to approve the compensation of executives in any proxy, consent, or authorization for an annual meeting.

[87] *See, e.g.,* letters from Cleary Gottlieb, Compensia, Grant Thornton, Hewitt, Pearl Meyer, and Towers Perrin. We would not object if companies voluntarily add a column captioned ''Value of unexercised in-the-money options/SARs at fiscal year end ($)'' to the Outstanding Awards at Fiscal Year-End Table to report these fiscal year end intrinsic values.

[88] *See* Proposing Release at Section II.H.

[89] Commenters who addressed these topics generally opposed expanding executive compensation disclosure beyond the named executive officers, stating that it would not add meaningful information. *See, e.g.,* letters from BorgWarner, Business Roundtable, Hewitt, Pearl Meyer, SCSGP and SIFMA. Some commenters opposed eliminating the ability to omit disclosure of performance targets based on competitive harm to the company, stating that disclosure would discourage use of performance targets or that adverse consequences to the company would outweigh the targets' informative value to investors. *See, e.g.,* letters from BorgWarner, Business Roundtable, SCSGP, and Pearl Meyer (supporting disclosure of the percentage of target awards actually earned). Other commenters supported requiring retrospective disclosure of performance targets for awards in completed periods. *See* letters from RiskMetrics, SEIU, State Board of Administration of Florida, and Towers Perrin (supporting the competitive harm exclusion for performance cycles in effect when the proxy statement is distributed). Some commenters supported making CD&A part of the Compensation Committee Report as a means to improve CD&A disclosure quality, often recommending that the combined document be ''filed.'' *See* letters from AFL–CIO, Jesse M. Brill, United Brotherhood of Carpenters, Hodak Value Advisors, RiskMetrics, and SEIU. Others supported retaining the current disclosure roles and status of the CD&A and Compensation Committee Report, finding no compelling reasons to change them. *See, e.g.,* letters from Ameriprise Financial, Pearl Meyer, and SIFMA. Some commenters favored requiring enhanced disclosure of hold-to-retirement and clawback policies to demonstrate whether compensation practices foster a long-term value approach. *See* letters from Jesse M. Brill, SEIU, and State Board of Administration of Florida. Others opposed adding specific requirements, often noting that if such policies are material to compensation decisions, principles-based CD&A currently subjects them to disclosure. *See, e.g.,* letters from Buck Consultants, Business Roundtable, Pearl Meyer, and Towers Perrin. Commenters similarly divided about requiring disclosure of internal pay ratios. *See* letters from Jesse M. Brill, Pearl Meyer, SCSGP and SIFMA. One commenter opposed all of the potential initiatives on which we solicited comment, stating that they ''would generate extensive disclosures of questionable relevance.'' *See* letter from Pfizer.

[90] Form N–1A is used by open-end management investment companies. Form N–2 is used by closed-end management investment companies. Form N–3 is used by separate accounts, organized as management investment companies, which offer variable annuity contracts.

[91] *See, e.g.,* letters from Board of Directors Network, Forum of Executive Women, Integrated Governance Solutions, Norges Bank Investment Management (''Norges Bank''), and Ralph Saul.

[92] *See, e.g.,* letters from ABA, Ameriprise, Business Roundtable, BorgWarner, Davis Polk, Honeywell, JPMorgan, Southern Company (''Southern''), and Wisconsin Energy.

these commenters believed that requiring disclosure of the qualifications, attributes and skills of directors and nominees on a person-by-person basis would not elicit meaningful disclosure. They asserted that well-assembled boards usually consist of a diverse collection of individuals who bring a variety of complementary skills that nominating committees and boards generally consider in the broader context of the board's overall composition, with a view toward constituting a board that, as a body, possesses the appropriate skills and experience to oversee the company's business. Another concern expressed by commenters opposed to the proposed amendments was that the disclosure of specialized knowledge or background of particular directors could lead to heightened liability.[93]

Commenters also objected to the use of term ''qualify'' in the proposed amendment. They noted that the term ''qualify'' would only be relevant to the extent that a company's governing instruments create minimum qualifications for directors, such as a requirement to own a certain amount of shares in the company.[94] Other commenters believed that ''risk assessment skills'' should not be singled out for specific discussion, but rather should be considered as part of the discussion of the board's aggregate skills and attributes.[95] These commenters stated that a better alternative may be to address risk as separate disclosure topic to elicit more detailed disclosure about risk.

Several commenters believed that it would be inappropriate to require disclosure of the specific experience, qualifications or skills that qualify a person to serve as a member of a particular board committee.[96] According to these commenters, other than having at least one member of the board with ''financial expertise'' satisfying the requirements for the audit committee, companies generally do not select individuals to serve on the board based on what committee they will serve on. These commenters noted that in many instances, companies will rotate directors among several committee positions during their tenure on the board.[97]

On the question of how frequently the disclosure should be required, many commenters supported having the disclosure provided on an annual basis for all continuing directors and new nominees.[98] These commenters noted that the overall composition of the board changes when new nominees are introduced and annual disclosure would facilitate shareholders' assessments of the quality of the board as a whole, which must be analyzed in relation to any changes in the company's strategy, relevant risks, operations and organization. However, several other commenters stated that if the requirements are adopted, they should only be required when a director is first nominated.[99]

A broad spectrum of commenters supported the proposed amendments to require disclosure of any directorships at public companies held by each director and nominee at any time during the past five years instead of only currently held directorships, and to lengthen the time during which disclosure of legal proceedings is required from five to ten years.[100] However, other commenters asserted that additional disclosure of past directorships would become voluminous and tend to obfuscate a nominee's most relevant credentials.[101]

We requested comment on whether we should retain Item 407(c)(2)(v) of Regulation S–K in light of the proposed amendments to Item 401 of Regulation S–K. This item, among other things, requires disclosure of any minimum qualifications that a nominating committee believes must be met by someone nominated by a committee for a position on the board. Several commenters believed we should retain the disclosure currently required by Item 407(c)(2)(v) because this information allows shareholders to gain an understanding of the overall quality of the board and the board's priorities, and would improve the ability of shareholders to compare a nominee's background to the standards set by the board itself and to further evaluate board and committee composition.[102]

We also requested comment on whether there were additional legal proceeding disclosures that reflect on a director's, executive officer's, or nominee's character and fitness to serve as a public company official that should be required to be disclosed, and we listed several possible additions to the current list. Several commenters agreed that the disclosure about the additional legal proceedings noted was important information that reflected on an individual's competence and integrity and as such, should be disclosed.[103] Other commenters believed the current disclosure requirements were adequate.[104]

3. Final Rule

After considering the comments, we are adopting the amendments to Item 401, but with several revisions. We believe the amendments will provide investors with more meaningful disclosure that will help them in their voting decisions by better enabling them to determine whether and why a director or nominee is an appropriate choice for a particular company.

The final rules require companies to disclose for each director and any nominee for director the particular experience, qualifications, attributes or skills that led the board to conclude that the person should serve as a director for the company as of the time that a filing containing this disclosure is made with the Commission.[105] The same disclosure, with respect to any nominee for director put forward by another proponent, would be required in the proxy soliciting materials of that proponent. This new disclosure will be required for all nominees and for all directors, including those not up for reelection in a particular year. The final rule requires this disclosure to be made annually because the composition of the entire board is important information for voting decisions. Although we are adopting the amendments to Item 401, we are not eliminating the disclosure requirements in Item 407(c)(2)(v) of Regulation S–K regarding the specific minimum qualifications and specific qualities or skills used by the nominating committee. We agree with commenters that this requirement should be retained because it will allow investors to compare and evaluate the skills and qualifications of each director

[93] *See, e.g.,* letters from ABA, Ameriprise and Business Roundtable.

[94] *See* letter from ABA.

[95] *See, e.g.,* letters from Honeywell and Protective Life Corporation.

[96] *See* letters from SCSGP, S&C and Southern.

[97] *See, e.g.,* letters from SCSGP and S&C.

[98] *See, e.g.,* letters from IIA, Norges Bank, Pax World Management Corporation, and RiskMetrics.

[99] *See* letters from BorgWarner, Business Roundtable, Cleary Gottlieb, SCSGP and S&C.

[100] *See, e.g.,* letters from AARP, AFL–CIO, CII, Evolution Petroleum, Pfizer, RILA, SCSGP, TIAA–CREF, United Brotherhood of Carpenters, and Universities Superannuation Scheme, *et al. Cf.* letters from AFSCME and Florida State Board of Administration (supporting the proposed amendment and also suggesting that the disclosure of legal proceedings involving fraud should not be subject to a time limit).

[101] *See, e.g.,* letter from S&C.

[102] *See, e.g.,* letters from ABA and CII.

[103] *See, e.g.,* letters from AARP, Colorado Public Employees' Retirement Association (''COPERA''), and Interfaith Center on Corporate Responsibility.

[104] *See, e.g.,* letters from American Electric Power and S&C.

[105] Consistent with the comments, we are revising the requirement to delete the term ''qualify,'' and instead we are focusing on the reasons for the decision that the person should serve as a director.

and nominee against the standards established by the board.[106]

The final rules do not require disclosure of the specific experience, qualifications or skills that qualify a person to serve as a committee member. In making this change from the proposal, we were persuaded by commenters who noted that many companies rotate directors among different committee positions to allow directors to gain different perspectives of the company.[107] However, if an individual is chosen to be a director or a nominee to the board because of a particular qualification, attribute or experience related to service on a specific committee, such as the audit committee, then this should be disclosed under the new requirements as part of the individual's qualifications to serve on the board.

The final amendments do not specify the particular information that should be disclosed. We believe companies and other proponents should be afforded flexibility in determining the information about a director's or nominee's skills, qualifications or particular area of expertise that would benefit the company and should be disclosed to shareholders. Accordingly, we have deleted the reference to ''risk assessment skills'' that was included in the proposed amendments.[108] However, we note that if particular skills, such as risk assessment or financial reporting expertise, were part of the specific experience, qualifications, attributes or skills that led the board or proponent to conclude that the person should serve as a director, this should be disclosed.

We are adopting substantially as proposed the amendments to require disclosure of any directorships at public companies and registered investment companies held by each director and nominee at any time during the past five years. Item 401 presently requires disclosure of any current director positions held by each director and nominee in any company with a class of securities registered pursuant to Section 12 of the Exchange Act,[109] or subject to the requirements of Section 15(d) of that Act,[110] or any company registered as an investment company under the Investment Company Act. We believe that expanding this disclosure to include service on boards of those companies for the past five years (even if the director or nominee no longer serves on that board) will allow investors to better evaluate the relevance of a director's or nominee's past board experience, as well as professional or financial relationships that might pose potential conflicts of interest (such as past membership on boards of major suppliers, customers, or competitors).

In addition to these amendments, we are adopting amendments as proposed to lengthen the time during which disclosure of legal proceedings involving directors, director nominees and executive officers is required from five to ten years. We believe it is appropriate to extend the required reporting period from five to ten years as a means of providing investors with more extensive information regarding an individual's competence and character. We were persuaded by commenters who believed that disclosures of legal proceedings during the ten-year period would provide investors with additional important information.[111] We are also adopting amendments to expand the list of legal proceedings involving directors, executive officers, and nominees covered under Item 401(f) of Regulation S–K. Some commenters agreed that certain legal proceedings can reflect on an individual's competence and integrity to serve as a director, and that the additional disclosure noted in the proposing release would provide investors with valuable information for assessing the competence, character and overall suitability of a director, nominee or executive officer.[112]

In addition, consistent with our request for comment and comments received,[113] we are amending Item 401(f) to require disclosure of additional legal proceedings. These new legal proceedings include:

- Any judicial or administrative proceedings resulting from involvement in mail or wire fraud or fraud in connection with any business entity;
- Any judicial or administrative proceedings based on violations of Federal or State securities, commodities, banking or insurance laws and regulations, or any settlement[114] to such actions; and
- Any disciplinary sanctions or orders imposed by a stock, commodities or derivatives exchange or other self-regulatory organization.

We believe this amendment will provide investors with information that is important to an evaluation of an individual's competence and character to serve as a public company official.[115]

In the Proposing Release, we also requested comment on whether we should amend our rules to require disclosure of additional factors considered by a nominating committee when selecting someone for a board position, such as board diversity. A significant number of commenters responded that disclosure about board diversity was important information to investors.[116] Many of these commenters believed that requiring this disclosure would provide investors with information on corporate culture and governance practices that would enable investors to make more informed voting and investment decisions.[117] Commenters also noted that there appears to be a meaningful relationship between diverse boards and improved corporate financial performance, and that diverse boards can help companies more effectively recruit talent and retain staff.[118] We agree that it is useful for investors to understand how the board considers and addresses diversity, as well as the board's assessment of the implementation of its diversity policy, if any. Consequently, we are adopting amendments to Item 407(c) of Regulation S–K to require disclosure of whether, and if so how, a nominating committee considers diversity in identifying nominees for director.[119] In addition, if the nominating committee (or the board) has a policy with regard to the consideration of diversity in

[106] *See, e.g.,* letter from CII.

[107] *See, e.g.,* letters from Davis Polk and Pfizer.

[108] *See, e.g.,* letters from Honeywell and Protective Life Corporation.

[109] 15 U.S.C. 78*l.*

[110] 15 U.S.C. 78*o*(d).

[111] *See, e.g.,* letters from ABA, AARP and COPERA.

[112] *See, e.g.,* letters from AARP, CII, COPERA, SEIU, and USPX.

[113] *See* note 103 above and accompanying text.

[114] This does not include disclosure of a settlement of a civil proceeding among private parties. We are including an instruction as part of the amendments to clarify this.

[115] Consistent with the current disclosure requirement regarding legal proceedings, the additional legal proceedings included in the new requirements will not need to be disclosed if they are not material to an evaluation of the ability or integrity of the director or director nominee. *See* 17 CFR 229.401(f).

[116] *See, e.g.,* letters from Board of Directors Network, Boston Common Asset Management, CalPERS, CalSTRS, Calvert, Council of Urban Professionals, Ernst & Young LLP (''E&Y''), Greenlining Institute, Hispanic Association on Corporate Responsibility, Interfaith Center on Corporate Responsibility, InterOrganization Network, Latino Business Chamber of Greater Los Angeles, Pax World Management Corporation, Prout Group, Inc., RiskMetrics, Sisters of Charity BVM, Sisters of St. Joseph Carondelet, and Trillium Asset Management Corporation.

[117] *See, e.g.,* letters from the Boston Club, Boston Common Asset Management, CalPERS, Pax World Management Corporation, Trillium Asset Management Corporation, and Social Investment Forum.

[118] *See, e.g.,* letters from Catalyst and the Social Investment Forum.

[119] *See* Item 407(c)(2)(vi) of Regulation S–K. Funds will be subject to the diversity disclosure requirement of Item 407(c)(2)(vi) of Regulation S–K under Item 22(b)(15)(ii)(A) of Schedule 14A. *See* 17 CFR 240.14a–101, Item 22(b)(15)(ii)(A).

identifying director nominees, disclosure would be required of how this policy is implemented, as well as how the nominating committee (or the board) assesses the effectiveness of its policy. We recognize that companies may define diversity in various ways, reflecting different perspectives. For instance, some companies may conceptualize diversity expansively to include differences of viewpoint, professional experience, education, skill and other individual qualities and attributes that contribute to board heterogeneity, while others may focus on diversity concepts such as race, gender and national origin. We believe that for purposes of this disclosure requirement, companies should be allowed to define diversity in ways that they consider appropriate. As a result we have not defined diversity in the amendments.

C. New Disclosure About Board Leadership Structure and the Board's Role in Risk Oversight

We proposed a new disclosure requirement to Item 407 of Regulation S–K and a corresponding amendment to Item 7 of Schedule 14A to require disclosure of the company's leadership structure and why the company believes it is the most appropriate structure for it at the time of the filing. The proposal also required disclosure about the board's role in the company's risk management process. We are adopting the proposals with some changes.

1. Proposed Amendments

Under the proposed amendments, companies would be required to disclose their leadership structure and the reasons why they believe that it is an appropriate structure for the company. As part of this proposed disclosure, companies would be required to disclose whether and why they have chosen to combine or separate the principal executive officer and board chair positions. In addition, in some companies the role of principal executive officer and board chairman are combined, and a lead independent director is designated to chair meetings of the independent directors. For these companies, the proposed amendments would require disclosure of whether and why the company has a lead independent director, as well as the specific role the lead independent director plays in the leadership of the company. In proposing this requirement, we noted that different leadership structures may be suitable for different companies depending on factors such as the size of a company, the nature of a company's business, or internal control considerations, among other things. Irrespective of the type of leadership structure selected by a company, the proposed requirements were intended to provide investors with insights about why the company has chosen that particular leadership structure.

We also proposed to require additional disclosure in proxy and information statements about the board's role in the company's risk management process. Disclosure about the board's approach to risk oversight might address questions such as whether the persons who oversee risk management report directly to the board as whole, to a committee, such as the audit committee, or to one of the other standing committees of the board; and whether and how the board, or board committee, monitors risk.

We also proposed that funds provide the new Item 407 disclosure about leadership structure and the board's role in the risk management process in proxy and information statements and similar disclosure as part of registration statements on Forms N–1A, N–2 and N–3. The proposed amendments were tailored to require that a fund disclose whether the board chair is an ''interested person'' of the fund, as defined in Section 2(a)(19) of the Investment Company Act. We proposed that if the board chair is an interested person, a fund would be required to disclose whether it has a lead independent director and what specific role the lead independent director plays in the leadership of the fund.

2. Comments on the Proposed Amendments

Comments were mostly supportive of the proposals.[120] Commenters believed the disclosure regarding a company's leadership structure and the board's role in risk management process would provide useful information to investors and improve investor understanding of the role of the board in a company's risk management practices.[121] Some commenters opposed the disclosures. Many of these commenters believed that the proposed amendments were too vague and would likely elicit boilerplate descriptions of a company's management hierarchy and risk management that would not provide significant insight or meaning to investors.[122]

Many commenters suggested revisions to the proposed disclosure requirements. For instance, several commenters recommended that we use the phrase ''board leadership structure'' rather than ''company leadership structure'' and noted that the discussion of the board leadership structure and the board's role in risk management are two separate disclosure items.[123] These commenters believed that the use of the phrase ''company leadership structure'' could be misinterpreted to require a discussion of a company's management leadership structures. Other commenters suggested that we replace the phrase ''risk management'' with ''risk oversight'' because the board's role is to oversee management, which is responsible for the day-to-day issues of risk management.[124]

Several commenters believed disclosure of the board's role in risk management would be more effective as part of a comprehensive discussion of a company's risk management processes, rather than as stand-alone disclosure.[125] They suggested that companies be allowed to provide the required disclosure in the MD&A discussion included in the Form l0–K, and to incorporate by reference this information in the proxy statement rather than repeat the information.

With respect to funds, commenters addressing the issue generally supported the proposal that funds disclose whether the board chair is an ''interested person'' as defined under the Investment Company Act.[126] In addition, commenters noted the importance of fund board oversight of risk management,[127] but commenters were split regarding whether we should require disclosure about fund board oversight of risk management.[128]

3. Final Rule

After consideration of the comments, we are adopting the proposals substantially as proposed with a few technical revisions in response to comments. We believe that, in making voting and investment decisions,

[120] *See, e.g.,* letters from AFL–CIO, Chairmen's Forum, Calvert, CII, CalSTRS, the General Board of Pension and Health Benefits of the United Methodist Church, Hermes, Norges Bank, Pfizer, RiskMetrics, and SEIU.

[121] *See, e.g.,* letters from CII, the General Board of Pension and Health Benefits of the United Methodist Church, IGS, and RIMS.

[122] *See, e.g.,* letters from Cleary Gottlieb, S&C and Theragenics.

[123] *See, e.g.,* letters from Business Roundtable and Honeywell.

[124] *See, e.g.,* letters from GovernanceMetrics and PLC.

[125] *See, e.g.,* letters from ABA and JPMorgan.

[126] *See, e.g.,* letters from Independent Directors Council (''IDC'') and Mutual Fund Directors Forum (''MFDF'').

[127] *See, e.g.,* letters from IDC and MFDF.

[128] *See* letters from Calvert and MFDF (supporting disclosure). *But see* letters from the Investment Company Institute and IDC (opposing disclosure).

investors should be provided with meaningful information about the corporate governance practices of companies.[129] As we noted in the Proposing Release, one important aspect of a company's corporate governance practices is its board's leadership structure. Disclosure of a company's board leadership structure and the reasons the company believes that its board leadership structure is appropriate will increase the transparency for investors as to how the board functions.

As stated above, the amendments were designed to provide shareholders with disclosure of, and the reasons for, the leadership structure of a company's board concerning the principal executive officer, the board chairman position and, where applicable, the lead independent director position. We agree with commenters that the phrase ''board leadership structure'' instead of ''company leadership structure'' would avoid potential misunderstanding that the amendments require a discussion of the structure of a company's management leadership.[130] We also agree with commenters that the phrase ''risk oversight'' instead of ''risk management'' would be more appropriate in describing the board's responsibilities in this area.[131]

Under the amendments, a company is required to disclose whether and why it has chosen to combine or separate the principal executive officer and board chairman positions, and the reasons why the company believes that this board leadership structure is the most appropriate structure for the company at the time of the filing. In addition, in some companies the role of principal executive officer and board chairman are combined, and a lead independent director is designated to chair meetings of the independent directors. In these circumstances, the amendments will require disclosure of whether and why the company has a lead independent director, as well as the specific role the lead independent director plays in the leadership of the company. As we previously stated in the Proposing Release, these amendments are intended to provide investors with more transparency about the company's corporate governance, but are not intended to influence a company's decision regarding its board leadership structure.

The final rules also require companies to describe the board's role in the oversight of risk. We were persuaded by commenters who noted that risk oversight is a key competence of the board, and that additional disclosures would improve investor and shareholder understanding of the role of the board in the organization's risk management practices.[132] Companies face a variety of risks, including credit risk, liquidity risk, and operational risk. As we noted in the Proposing Release, similar to disclosure about the leadership structure of a board, disclosure about the board's involvement in the oversight of the risk management process should provide important information to investors about how a company perceives the role of its board and the relationship between the board and senior management in managing the material risks facing the company. This disclosure requirement gives companies the flexibility to describe how the board administers its risk oversight function, such as through the whole board, or through a separate risk committee or the audit committee, for example. Where relevant, companies may want to address whether the individuals who supervise the day-to-day risk management responsibilities report directly to the board as a whole or to a board committee or how the board or committee otherwise receives information from such individuals.

The final rules also require funds to provide disclosure about the board's role in risk oversight. Funds face a number of risks, including investment risk, compliance, and valuation; and we agree with commenters who favored disclosure of board risk oversight by funds.[133] As with corporate issuers, we believe that additional disclosures would improve investor understanding of the role of the board in the fund's risk management practices. Furthermore, the disclosure should provide important information to investors about how a fund perceives the role of its board and the relationship between the board and its advisor in managing material risks facing the fund.

D. New Disclosure Regarding Compensation Consultants

We proposed amendments to Item 407 of Regulation S–K to require, for the first time, disclosure about the fees paid to compensation consultants and their affiliates when they played a role in determining or recommending the amount or form of executive and director compensation, and they also provided additional services to the company. The proposed amendments also would have required a description of the additional services provided to the company by the compensation consultants and any affiliates of the consultants. We are adopting the amendments with changes in response to comments.

1. Proposed Amendments

Under the proposed amendments to Item 407, if a compensation consultant or its affiliates played a role in determining or recommending the amount or form of executive and director compensation, and also provided additional services, then the company would be required to disclose the following:

- The nature and extent of all additional services provided to the company or its affiliates during the last fiscal year by the compensation consultant and any affiliates of the consultant;
- The aggregate fees paid for all additional services, and the aggregate fees paid for work related to determining or recommending the amount or form of executive and director compensation;
- Whether the decision to engage the compensation consultant or its affiliates for non-executive compensation services was made, recommended, subject to screening or reviewed by management; and
- Whether the board of directors or the compensation committee has approved the other services provided by the compensation consultant in addition to executive compensation services.

The proposed disclosure requirements would have applied to all services provided by a compensation consultant and its affiliates if the compensation consultant played any role in determining or recommending the amount or form of executive and director compensation. The proposed amendments did not distinguish between consultants engaged by the board and consultants engaged by management. We provided an exception from the proposed disclosure requirements for those situations in which the compensation consultant's role in recommending the amount or form of executive and director compensation was limited to consulting on broad-based plans that did not discriminate in favor of executive officers or directors of the company, such as 401(k) plans or health insurance

[129] *See, e.g.,* National Association of Corporate Directors, *Key Agreed Principles to Strengthen Corporate Governance for U.S. Publicly Traded Companies,* (Mar. 2009) (''Every board should explain, in proxy materials and other communications with shareholders, why the governance structures and practices it has developed are best suited to the company.'').

[130] *See* letter from Honeywell.

[131] *See, e.g.,* letters from Ameriprise Financial and Protective Life Corporation.

[132] *See, e.g.,* letters from Norges Bank and RIMS.

[133] *See* letters from Calvert and MFDF.

plans. We believed that when a compensation consultant's services were limited to consulting on broad-based, non-discriminatory plans, these services did not give rise to the type of potential conflict of interest intended to be addressed by our proposed amendments.[134]

2. Comments on the Proposed Amendments

A significant number of commenters generally supported the proposed amendments to Item 407 of Regulation S–K to require disclosure of the fees paid to compensation consultants as well as a description of other services provided by compensation consultants.[135] Many of these commenters believed investors would benefit from disclosure regarding the potential conflicts of interests of compensation consultants when they advise on the amount or form of executive and director compensation and also provide additional services to the company.[136] These commenters believed that disclosure of the fees paid to compensation consultants would go a long way towards minimizing potential conflicts of interests and would allow shareholders to assess the potential conflicts of interest in regard to the compensation advice given to companies.

However, several commenters, primarily multi-service compensation consulting firms, opposed the proposed amendments.[137] These commenters believed the proposed amendments were too narrowly focused on fees paid to multi-service consulting firms and ignored important considerations relating to the consultant's qualifications, selection, and role.[138] They also asserted that the proposed disclosure could give investors a distorted view of how companies use and select compensation consultants. Because the role of consultants is not uniform and varies considerably from company to company, these commenters asserted that investors should be given an understanding not only of the role consultants serve for each company, but also of the board's or compensation committee's selection process. This would include how it assessed the consultant's qualifications and how any potential conflicts of interest that may have been identified are mitigated by formal processes, or by the internal controls and processes maintained by the consulting firm.[139]

Several commenters opposed to the proposed amendments asserted that the amendments would decrease the compensation consulting resources available to companies.[140] Other commenters asserted that the proposed amendments would cause competitive harm to multi-service consulting firms who provide services other than executive compensation consulting, as companies would be discouraged from using multi-service compensation consulting firms in more than one capacity.[141] These commenters also claimed that the proposed amendments would cause competitive harm because disclosure of the nature and extent of all additional services provided by the consultant would reveal confidential and competitively sensitive pricing information that could allow competitors to determine the fee structure for these additional services.[142]

These commenters also expressed concern that the proposed amendments did not address potential conflicts of interest that may occur when a compensation consultant that only provides executive-compensation related services to the board is overly reliant on the fees it receives from a particular client. They suggested an alternative rule that would require disclosure of fees paid to a compensation consultant when a significant portion of the annual revenues of the compensation consultant were generated from any one client.[143]

Several commenters expressed concern that the scope of the proposed amendments was too broad. These commenters believed that when a compensation committee engages its own compensation consultant, it mitigates any concerns about potential conflicts of interest involving consultants engaged by management.[144] According to these commenters, from that perspective, a compensation consulting firm that provides executive compensation consulting services to the company, and also provides other services to the company, would not present a conflict of interest issue when the compensation committee retains a different consultant.[145] Noting that management should have broad access to compensation experts and other third parties when developing executive pay proposals for board consideration, and that it is the board's responsibility to evaluate management's compensation proposals when determining whether or not to approve them, some commenters expressed concerns about the potential effect of the proposed disclosure on the board's discharge of its oversight responsibility.[146]

In the Proposing Release, we requested comment on whether there were other consulting services that do not give rise to potential conflicts of interest that should be excluded from the proposed disclosure requirements similar to the proposed exemption for consulting services that are limited to broad-based, non-discriminatory plans. Several commenters responded by suggesting that we exclude consulting services where the compensation consultant only provides the board with peer surveys that provide general information regarding the forms and amounts of compensation typically paid to executive officers and directors within a particular industry.[147] Another commenter suggested that surveys that are either not customized for a particular company, or that are customized based on parameters that are not developed by the compensation consultant, should be excluded from the amendments.[148] These commenters believed that in situations where the compensation consultant's services provided to a company were limited to providing those types of surveys, such services did not raise the potential conflicts of interest that the proposed amendments were intended to address.[149]

We also requested comment on whether we should establish a disclosure threshold based on the

[134] We also proposed to amend Item 407 along the same lines to clarify that the current disclosure requirements under the item were not triggered for a compensation consultant whose only services with regard to executive or director compensation were limited to these types of broad-based, non-discriminatory plans. Many commenters supported this amendment and we are adopting it as proposed.

[135] *See, e.g.,* letters from AFL–CIO, AFSCME, Business Roundtable, CalSTRS, CII, COPERA, Evolution Petroleum, Glass Lewis, Grahall, Hermes Equity Ownership Services, NACD, Oppenheimer Funds, Pax World Management Corporation, State of Connecticut Treasurer's Office, TIAA–CREF, Trillium Asset Management Corporation, and Walden Asset Management.

[136] *See, e.g.,* letters from AFL–CIO, Frank Inman, Hermes Equity Ownership Services Ltd., TIAA–CREF, and Trillium Asset Management.

[137] *See* letters from ABA, Hewitt, Mercer, Pfizer, Protective Life Corporation, Radford, Towers Perrin, Value Alliance, and Watson Wyatt.

[138] *See, e.g.,* letters from Hewitt, Mercer and Towers Perrin.

[139] *See, e.g.,* letter from Hewitt.

[140] *See, e.g.,* letters from Hewitt and Mercer.

[141] *See, e.g.,* letters from Mercer, Towers Perrin and Watson Wyatt.

[142] *See, e.g.,* letter from Mercer.

[143] *See, e.g.,* letters from Hewitt, Mercer, Towers Perrin and Watson Wyatt.

[144] *See, e.g.,* letters from E&Y and Deloitte.

[145] *Id.*

[146] *See* letters from Hewitt and E&Y.

[147] *See, e.g.,* letters from BorgWarner, Davis Polk, Honeywell, JPMorgan and Wisconsin Energy.

[148] *See* letter from ABA.

[149] *See, e.g.,* letters from BorgWarner, Davis Polk and Honeywell.

amount of the fees for the non-executive compensation related services, such as above a certain dollar amount or a percentage of income or revenues. Several commenters recommended that the proposed amendments should include a disclosure threshold, including many who suggested that we should require disclosure only if the aggregate fees for all additional services provided by the consultant and its affiliates exceeded $120,000.[150]

3. Final Rule

After considering the comments received, we are adopting a modified version of the proposed amendments. We believe the new disclosure requirements will provide investors with information that will enable them to better assess the potential conflicts a compensation consultant may have in recommending executive compensation, and the compensation decisions made by the board. As we noted in the Proposing Release, many companies engage compensation consultants to make recommendations on appropriate executive and director compensation levels, to design and implement incentive plans, and to provide information on industry and peer group pay practices. The services offered by compensation consultants, however, are often not limited to recommending executive and director compensation plans or policies. Many compensation consultants, or their affiliates, are retained by management to provide a broad range of additional services, such as benefits administration, human resources consulting and actuarial services. The fees generated by these additional services may be more significant than the fees earned by the consultants for their executive and director compensation services. The extent of the fees and provision of additional services by a compensation consultant or its affiliate may create the risk of a conflict of interest that may call into question the objectivity of the consultant's advice and recommendations on executive compensation.

At the same time, we are persuaded that there are circumstances where this disclosure should not be required either because of the limited nature of the additional services or because of other factors that mitigate the concern that the board may be receiving advice potentially influenced by a conflict of interest.

a. Summary of the Final Rule

As more fully described below, under our final rule, in addition to the requirement under the current rule to describe the role of the compensation consultant in determining or recommending the amount or form of executive and director compensation, fee disclosure related to the retention of a compensation consultant will be required in certain circumstances. The final rules can be summarized generally as follows:

- If the board, compensation committee or other persons performing the equivalent functions (collectively, ''board'') has engaged its own consultant to provide advice or recommendations on the amount or form of executive and director compensation and the board's consultant or its affiliates provide other non-executive compensation consulting services to the company, fee and related disclosure is required, provided the fees for the non-executive compensation consulting services exceed $120,000 during the company's fiscal year. Disclosure is also required of whether the decision to engage the compensation consultant or its affiliates for non-executive compensation consulting services was made or recommended by management, and whether the board has approved these non-executive compensation consulting services provided by the compensation consultant or its affiliate;
- If the board has not engaged its own consultant, fee disclosures are required if there is a consultant (including its affiliates) providing executive compensation consulting services and non-executive compensation consulting services to the company, provided the fees for the non-executive compensation consulting services exceed $120,000 during the company's fiscal year;
- Fee and related disclosure for consultants that work with management (whether for only executive compensation consulting services, or for both executive compensation consulting and other non-executive compensation consulting services) is not required if the board has its own consultant; and
- Services involving only broad-based non-discriminatory plans or the provision of information, such as surveys, that are not customized for the company, or are customized based on parameters that are not developed by the consultant, are not treated as executive compensation consulting services for purposes of the compensation consultant disclosure rules.

b. Disclosure Required if the Board's Compensation Consultant Provides Additional Services to the Company

If the board has engaged a compensation consultant to advise the board as to executive and director compensation, and such consultant or its affiliates provides other non-executive compensation consulting services to the company, the disclosures specified by the new rules are required. We believe that in that situation, the receipt of fees for non-executive compensation consulting services by the board's consultant presents the potential conflict of interest intended to be highlighted for investors by our new rules. Subject to the disclosure threshold discussed below, the final rule requires disclosure of the aggregate fees paid for services provided to either the board or the company with regard to determining or recommending the amount or form of executive and director compensation, and the aggregate fees paid for any non-executive compensation consulting services provided by the compensation consultant or its affiliates.

In addition, the new rules require disclosure of whether the decision to engage the compensation consultant or its affiliates for the non-executive compensation consulting services was made, or recommended by, management, and whether the board approved such other services.[151]

c. Disclosure Required if the Board Does Not Have a Compensation Consultant, but the Company Receives Executive Compensation and Non-Executive Compensation Services From Its Consultant

The new rule also requires disclosure of fees in situations where the board has not engaged a compensation consultant, but management or the company received executive compensation consulting services and other non-executive compensation consulting services from a consultant or its affiliates, and the fees from the non-executive compensation consulting services provided by that consultant or its affiliates exceed $120,000 for the company's fiscal year.[152] We recognize that in that situation the board, which generally is primarily responsible for determining the compensation paid to

[150] *See, e.g.,* letters from ACC, Business Roundtable, Davis Polk, and SCSGP. Some commenters also suggested a disclosure threshold based on tests in effect under rules with a similar focus in self-regulatory organizations, such as the 2% (for New York Stock Exchange-listed companies) or 5% (for NASDAQ-listed companies) of gross revenues test for disclosure of business relationships between a company and a director-affiliated entity. *See, e.g.,* letter from Cleary Gottlieb. *See also,* letter from ABA (suggesting a percentage threshold set at a level where the effect of such fees diminishes the possible appearance of a conflict of interest).

[151] Item 407(e)(3)(iii)(A) of Regulation S–K.

[152] Item 407(e)(3)(iii)(B).

senior executives, may not be relying on the consultant used by management, and, therefore, conflicts of interest may be less of a concern. However, we believe that when management has a compensation consultant and the board does not have its own compensation consultant to help filter any advice provided by management's compensation consultant, the concerns about board reliance on consultants that may have a conflict are sufficiently present to require this approach. Consequently, the final rule provides that in this fact pattern, fee disclosure is required if the fees from the non-executive compensation consulting services provided by the compensation consultant exceed the disclosure threshold described below.

d. Disclosure Not Required if the Board and Management Have Different Compensation Consultants, Even if Management's Consultant Provides Additional Services to the Company

In some instances, the board may engage a compensation consultant to advise it on executive or director compensation, and management may engage a separate consultant to provide executive compensation consulting services and one or more additional non-executive compensation consulting services. We believe there is less potential for a conflict of interest to arise when the board has retained its own compensation consultant, and the company or management has a different consultant to provide executive compensation consulting and other non-executive compensation consulting services.[153] When the board engages its own compensation consultant, it mitigates concerns about potential conflicts of interest involving compensation consultants engaged by management.[154] Accordingly, the final rules provide a limited exception to the disclosure requirements for fees paid to other compensation consultants retained by the company if the board has retained its own consultant that reports to the board. In addition to limiting disclosure to circumstances that are more likely to present potential conflicts of interests, we believe this approach should address some concerns about competitive harm that were raised by commenters. The exception would be available without regard to whether management's consultant participates in board meetings. Where the board's compensation consultant provides additional non-executive compensation consulting services to the company, the rule would, as described above, require fee and other related disclosures, which should address concerns about conflicts of interest by that consultant. Fee disclosure for services provided by management's compensation consultant would be less relevant in this situation because the board is able to rely on its own compensation consultant's advice, rather than the advice provided by management's compensation consultant, when making its executive compensation decisions.

e. Disclosure Required Only if Fees for Additional Services Exceed $120,000 During the Company's Last Completed Fiscal Year

As noted previously, we agree with commenters that the final rule should have a disclosure threshold.[155] We believe that when aggregate fees paid for the non-executive compensation consulting services are limited, the potential conflict of interest is likely to be commensurately reduced. A disclosure threshold would also reduce the compliance burdens on companies when the potential conflict of interest is minimal. Under the rule as adopted, if the board has engaged a compensation consultant to provide executive and director compensation consulting services to the board or if the board has not retained a consultant but there is a firm providing executive compensation consulting services, fee disclosure is required if the consultant or its affiliates also provides other non-executive compensation consulting services to the company, and the fees paid for the other services exceed $120,000 for the company's fiscal year. We believe fees for other non-executive compensation consulting services below that threshold are less likely to raise potential conflicts of interest concerns, and note this disclosure threshold should reduce the recordkeeping burden on companies. This threshold is similar to the disclosure threshold for transactions with related persons in Item 404 of Regulation S–K, which also deals with potential conflicts of interest on the part of related persons who have financial transactions or arrangements with the company, and therefore provides some regulatory consistency.[156]

f. Disclosure of Nature and Extent of Additional Services Not Required

The rule, as adopted, does not require disclosure of the nature and extent of additional services provided by the compensation consultant and its affiliates to the company, as we proposed. We made this change from the proposal because we are persuaded by commenters who noted that requiring this disclosure could cause competitive harm by revealing confidential and sensitive pricing information, and we believe that the critical information about the potential conflict is adequately conveyed through the fee disclosure requirement. Although we are not adopting this requirement, companies may at their discretion include a description of any additional non-executive compensation consulting services provided by the compensation consultant and its affiliates where such information would facilitate investor understanding of the existence or nature of any potential conflict of interest.

g. Exceptions to the Disclosure Requirement for Consulting on Broad-Based Plans and Provision of Survey Information

We are adopting substantially as proposed the exception from the disclosure requirements for situations in which the compensation consultant's only role in recommending the amount or form of executive or director compensation is in connection with consulting on broad-based plans that do not discriminate in favor of executive officers or directors of the company. In addition, in response to comments received, we are expanding the exception to include situations where the compensation consultant's services are limited to providing information, such as surveys, that either is not customized for a particular company, or that is customized based on parameters that are not developed by the compensation consultant.[157] We are persuaded by commenters who noted that surveys that provide general information regarding the form and amount of compensation typically paid to executive officers and directors within a particular industry generally do not raise the potential conflicts of interest that the amendments are intended to address.[158] However, the exception would not be available if the compensation consultant provides advice or recommendations in connection with the information provided in the survey.

[153] *See, e.g.,* letters from Hewitt and E&Y.

[154] *See* letter from E&Y.

[155] *See, e.g.,* letters from ACC, Davis Polk and SCSGP. This threshold requirement should also help address some of the competitive concerns expressed by some commenters. *See, e.g.,* note 150 above and accompanying text.

[156] *See* 17 CFR 229.404.

[157] *See, e.g.,* letters from ABA, Mercer and Towers Perrin.

[158] *See* letters from Davis Polk and Mercer.

h. Other Concerns

We did not propose, and do not at this time adopt, disclosure of consulting fees based on a percentage of revenues received from a company. We have considered the concern expressed by some commenters that compensation consultants, even if they are only retained by the board for executive compensation related services and do not provide any additional services to the company, may become overly reliant on a single client for revenues, which could affect the advice the consultant provides to the board.[159] However, we are not currently persuaded that such reliance would cause a consultant to provide advice to the board that inappropriately reflects *management's* influence as a result of fees for additional services, which is the primary concern addressed by the final rule.

We also considered the suggestion provided by these commenters that companies be required to disclose various matters about the consideration of potential conflicts of interest.[160] We are not persuaded that we need to address this issue at this time and believe our final rule addresses our concerns without adding significant length to the disclosure or burdens on companies.

Our amendments as adopted are intended to facilitate investors' consideration of whether, in providing advice, a compensation consultant may have been influenced by a desire to retain other engagements from the company. This does not reflect a conclusion that we believe that a conflict of interest is present when disclosure is required under our new rule, or that a compensation committee or a company could not reasonably conclude that it is appropriate to engage a consultant that provides other services to the company requiring disclosure under our new rule. It also does not mean that we have concluded that there are no other circumstances that might present a conflict of interest for a compensation consultant retained by a compensation committee or company. Rather, the amendments are designed to provide context to investors in considering the compensation disclosures required to be provided under our rules, and, as explained above, are based on our understanding of the situations that are more likely to raise potential conflicts of interest concerns.

E. Reporting of Voting Results on Form 8–K

We proposed to transfer the requirement to disclose shareholder vote results from Forms 10–Q and 10–K to Form 8–K, and to have that information filed within four business days after the end of the meeting at which the vote was held. We are adopting the proposal with some modifications in response to comments.

1. Proposed Amendments

Currently, Item 4 in Part II of Form 10–Q and Item 4 in Form 10–K require the disclosure of the results of any matter that was submitted to a vote of shareholders during the fiscal quarter covered by either the Form 10–Q or Form 10–K with respect to the fourth fiscal quarter. The proposed amendments would delete this requirement from Forms 10–Q and 10–K and move it to Form 8–K. As a result, voting results would be required to be filed on Form 8–K within four business days after the end of the meeting at which the vote was held. To accommodate timing difficulties in contested elections, we proposed a new instruction to the form that stated that if the matter voted upon at the shareholders' meeting related to a contested election of directors and the voting results were not definitively determined at the end of the meeting, companies would be required to file the preliminary voting results within four business days after the preliminary voting results were determined, and then file an amended report on Form 8–K within four business days after the final voting results were certified.

2. Comments on the Proposed Amendments

The majority of comments we received on the proposed amendments supported requiring the filing of voting results on Form 8–K. Many commenters believed that more timely disclosure of the voting result would benefit shareholders and investors.[161] Some noted that matters submitted for shareholder vote involve issues that directly impact shareholder interests—for example investment or divestments, changes in shareholder rights and capital changes—and that timely disclosure of voting results can be crucial.[162] One commenter believed that majority vote requirements for director elections have introduced greater accountability and uncertainty into uncontested director elections, making it increasingly important that these election outcomes be reported in a timely manner to shareholders.[163]

Several commenters recommended modifications to the proposed amendments. Specifically, some commenters expressed concern that preliminary voting results should not be required to be disclosed because disclosure of preliminary results could mislead investors if the definitive results reflect a different outcome than what was disclosed initially.[164] Concerns were also expressed that the reporting of preliminary voting results could inadvertently influence voting if the disclosure is made at a time when the opportunity remains open for additional votes to be cast.[165] Commenters also believed that the four business day reporting requirement should not be tied to the end of the shareholders' meeting, but rather to the issuance of a certified report of an inspector of election.[166] In addition, commenters suggested that the proposed instruction excepting the filing of voting results in contested elections of directors within four business days after the end of the shareholders' meeting should be expanded to cover any matter for which final voting results are not available or ''too close to call'' within four business days following the end of the shareholders' meeting.[167]

A few commenters opposed the proposed amendments.[168] Commenters opposed to amendments expressed concern that it would be very difficult to meet the four business day filing requirement. One of these commenters noted that problems that stem from share lending and other practices can

[159] *See* letters from Hewitt, Mercer, Pearl Meyer, and Towers Perrin.

[160] In their comment letters, several multi-service compensation consulting firms proposed an alternative disclosure requirement. Under their proposal, if the total fees paid to the consultant for all services provided to the company and its affiliates during the preceding fiscal year exceeded one-half of one percent of the total revenues of the consultant for that fiscal year, the company would be required to disclose, among other things, the protocols established by the compensation committee to ensure that the consultant is able to provide unbiased advice and is not inappropriately influenced by the company's management. *See* letters from Hewitt, Mercer, Watson Wyatt, and Towers Perrin.

[161] *See, e.g.,* letters from CalSTRS, CII, Hermes, IIA, Norges Bank, United Brotherhood of Carpenters and Walden.

[162] *See, e.g.,* letters from CalSTRS and Norges Bank.

[163] *See* letter from United Brotherhood of Carpenters.

[164] *See e.g.,* letter from Chadbourne.

[165] *See* letter from ABA.

[166] *See* letter from Allen Goolsby, *et al.*

[167] *See, e.g.,* letters from BorgWarner, Business Roundtable, SCSG, S&C and Southern.

[168] *See, e.g.,* letters from Keith Bishop, NACD, RILA and SCC.

significantly delay the time that votes can be tabulated.[169]

Several commenters believed that the disclosure of the results of shareholder votes should be added to the list of items on Form 8–K that are currently excluded from liability under Section 10(b) of the Exchange Act and Exchange Act Rule 10b–5, and that do not result in a loss of Form S–3 eligibility under General Instruction I.A.3(b).[170] One commenter, however, believed that an amendment to General Instruction I.A.3(b) of Form S–3 to add an exception to the Form S–3 eligibility requirements for the reporting of voting results would not be necessary if we allowed preliminary voting results for contested elections and on proposals that are ''too close to call'' to be reported within four business days of the meeting and final voting results within four business days after the voting results become final.[171]

3. Final Rule

After evaluating the comments received, we are adopting the proposed amendments to Form 8–K, and are eliminating the requirement to disclose shareholder voting results on Forms 10–Q and 10–K. Accordingly, new Item 5.07 to Form 8–K requires companies to disclose on the form the results of a shareholder vote and to have that information filed within four business days after the end of the meeting at which the vote was held. Tying the filing requirement to the end of the meeting will provide shareholders, investors and other users of this information with a readily identifiable and certain date upon which a company would be required to disclose information on the results of the vote. We believe more timely disclosure of the voting results from an annual or special meeting would benefit investors and the markets. Under our prior disclosure requirements, it could be a few months before voting results are disclosed in a Form 10–Q or 10–K. Often, matters submitted for a shareholder vote at an annual or special meeting involve issues that directly impact shareholder interests, such as the election of directors, changes in shareholder rights, investments or divestments, and capital changes. The delay between the end of an annual or special meeting of shareholders and when the voting results of the meeting are disclosed in a Form 10–Q or 10–K can make the information less useful to investors and the markets. We also understand that technological advances in shareholder communications and the growing use of third-party proxy services have increased the ability of companies to tabulate vote results and disseminate this information on a more expedited basis.

We agree with the suggestions of commenters that there may be situations other than contested elections where it may take a longer period of time to determine definitive voting results.[172] As a result, we are expanding the instruction to Form 8–K as adopted to state that companies are required to file the preliminary voting results within four business days after the end of the shareholders' meeting, and then file an amended report on Form 8–K within four business days after the final voting results are known.[173] However, if a company obtains the definitive voting results before the preliminary voting results must be reported and decides to report its definitive results on Form 8–K, it will not be required to file the preliminary voting results. For example, if a company obtains the definitive voting results two days after the end of the shareholders' meeting, it could report its definitive voting results on Form 8–K within four business days after the meeting and would not be required to file its preliminary voting results. To the extent that companies are concerned that the disclosure of preliminary voting results could be confusing to investors, they may include additional disclosure that helps to put the preliminary voting disclosure in a proper context.

In the Proposing Release, we requested comment on whether we should consider additional revisions to the requirement to report voting results, such as eliminating a portion of prior Instruction 4 to the disclosure item. One commenter responded by suggesting that we could consolidate and simplify some of the disclosure requirements and instructions to the item.[174] We agree with the suggestions that were submitted, and believe that certain requirements and instructions to the Item can be simplified, without changing the substance of what is required to be reported. Accordingly, we are adopting the following revisions to new Item 5.07:

- Adding to paragraph (a) of the item a statement that the information required by the item need be provided only when a meeting of shareholders is involved;[175]
- Combining paragraphs (b) and (c) to the item into a single paragraph that requires disclosure of the quantitative results of each matter voted on at the meeting, and a brief description of each matter; and
- Eliminating Instruction 3, Instruction 5 and Instruction 7 to the item, as well as deleting the first sentence of Instruction 4.

III. Paperwork Reduction Act

A. Background

Certain provisions of the final amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[176] We published a notice requesting comment on the collection of information requirements in the proposing release for the rule amendments, and we submitted these requirements to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[177] The titles for the collection of information are:

(1) ''Regulation 14A and Schedule 14A'' (OMB Control No. 3235–0059);
(2) ''Regulation 14C and Schedule 14C'' (OMB Control No. 3235–0057);
(3) ''Form 10–K'' (OMB Control No. 3235–0063);
(4) ''Form 10–Q'' (OMB Control No. 3235–0070);
(5) ''Form 10'' (OMB Control No. 3235–0064);
(6) ''Form S–1'' (OMB Control No. 3235–0065);
(7) ''Form S–4'' (OMB Control No. 3235–0324);
(8) ''Form S–11'' (OMB Control No. 3235–0067);
(9) ''Form 8–K'' (OMB Control No. 3235–0060);
(10) ''Rule 20a–1 under the Investment Company Act of 1940, Solicitations of Proxies, Consents, and Authorizations'' (OMB Control No. 3235–0158);
(11) ''Form N–1A'' (OMB Control No. 3235–0307);
(12) ''Form N–2'' (OMB Control No. 3235–0026);

[169] *See* letter from NACD.

[170] *See* letters from ABA, Business Roundtable, Honeywell and S&C.

[171] *See* letter from SCSGP.

[172] *See, e.g.,* letters from Business Roundtable, S&C and Southern.

[173] *See* Instruction 1 to Item 5.07 of Form 8–K. We note that our amendments to Form 8–K are not intended to preclude a company from announcing preliminary voting results during the meeting of shareholders at which the vote was taken and before filing the Form 8–K, without regard to whether the company webcast the meeting.

[174] *See* letter of ABA.

[175] *But see* current Instruction 1 to Item 4 of Form 10–Q with respect to matters that have been submitted to a vote otherwise than at a meeting of shareholders, which we are not amending and which will be retained as Instruction 2 to new Item 5.07 of Form 8–K.

[176] 44 U.S.C. 3501 *et seq.*

[177] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

(13) ''Form N–3'' (OMB Control No. 3235–0316); and

(14) ''Regulation S–K'' (OMB Control No. 3235–0071).

The regulations, schedules and forms were adopted under the Securities Act and the Exchange Act, except for Forms N–1A, N–2, and N–3, which we adopted pursuant to the Securities Act and the Investment Company Act, and Rule 20a–1, which we adopted pursuant to the Investment Company Act. The regulations, forms and schedules set forth the disclosure requirements for periodic reports, registration statements, and proxy and information statements filed by companies to help investors make informed investment and voting decisions. The hours and costs associated with preparing, filing and sending the form or schedule constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Compliance with the amendments is mandatory. Responses to the information collections will not be kept confidential and there is no mandatory retention period for the information disclosed.

B. Summary of the Final Rules

As discussed in more detail above, the amendments that we are adopting will require:

- To the extent that risks arising from a company's compensation policies and practices for employees are reasonably likely to have a material adverse effect on the company, discussion of the company's compensation policies or practices as they relate to risk management and risk-taking incentives that can affect the company's risk and management of that risk;
- Reporting of the aggregate grant date fair value of stock awards and option awards granted in the fiscal year in the Summary Compensation Table and Director Compensation Table, computed in accordance with FASB ASC Topic 718, rather than the dollar amount recognized for financial statement purposes for the fiscal year, with a special instruction for awards subject to performance conditions;
- New disclosure of the qualifications of directors and nominees for director, and the reasons why that person should serve as a director of the company at the time at which the relevant filing is made with the Commission;
- Additional disclosure of any directorships held by each director and nominee at any time during the past five years at any public company or registered management investment company;
- Additional disclosure of other legal actions involving a company's executive officers, directors, and nominees for director, and lengthening the time during which such disclosure is required from five to ten years;
- New disclosure regarding the consideration of diversity in the process by which candidates for director are considered for nomination by a company's nominating committee;
- New disclosure about a company's board leadership structure and the board's role in the oversight of risk;
- New disclosure about the fees paid to compensation consultants and their affiliates under certain circumstances; and
- Disclosure of the vote results from a meeting of shareholders on Form 8–K generally within four business days of the meeting.

The disclosure enhancements we are adopting will significantly improve the information companies provide to investors with regard to risk, governance and director qualifications and compensation. We believe that providing a more transparent view of these matters will help investors make more informed voting and investment decisions.

C. Summary of Comment Letters and Revisions to Proposals

In the Proposing Release, we requested comment on the PRA analysis. We received a response from one commenter that addressed our overall burden estimates for the proposed amendments. This commenter asserted that our PRA estimates underestimated the time and costs that companies would need to expend in complying with the proposed amendments.[178] This commenter asserted that companies would need to expend many additional hours to update their director and officer questionnaires to obtain more detailed information; director nominees would need to spend additional time responding to these questionnaires and providing companies with information about their backgrounds and qualifications; and companies would need to spend time analyzing the responses, deciding what information to disclose, and preparing the disclosures. This commenter, however, did not provide alternative cost estimates or cost estimates that could be applied generally to all companies. In response to comments and modifications to the amendments as proposed, we have revised our estimates as discussed more fully in Section D.

We have made several substantive modifications to the proposed amendments. First, new Item 402(s) of Regulation S–K requires a company to discuss its compensation policies and practices for employees if such policies and practices are reasonably likely to have a material adverse effect on the company. This change from the ''may have a material effect'' disclosure standard that was proposed should substantially mitigate some of the costs and burdens associated with the proposed amendments. By focusing on risks that are ''reasonably likely to have a material adverse effect'' on the company, the amendments are designed to elicit disclosure on the company's compensation policies and practices that would be most relevant to investors. Second, we have adopted amendments to expand the list of legal proceedings involving directors, executive officers, and nominees covered under Item 401(f) of Regulation S–K. Third, disclosure will be required of whether (and if so, how) the nominating committee considers diversity in identifying nominees for director. Fourth, we have adopted a disclosure threshold under the compensation consultant disclosure amendments that excludes fee and related disclosure where the fees for non-executive compensation consulting services do not exceed $120,000 for a company's fiscal year. In addition, disclosure of fees for consultants engaged by management would not be required if the compensation committee or board has its own compensation consultant.

D. Revisions to PRA Reporting and Cost Burden Estimates

For purposes of the PRA, in the Proposing Release we estimated that the total annual increase in the paperwork burden for all companies (other than registered management investment companies) to prepare the disclosure that would be required under the proposed amendments would be approximately 247,773 hours of company personnel time and a cost of approximately $47,413,161 for the services of outside professionals. We further estimated the total annual increase in paperwork burden for registered management investment companies under the proposed amendments to be approximately 14,041 hours of company personnel time and a cost of approximately $7,048,900 for the services of outside professionals. As discussed above, we are revising the PRA burden and cost estimates that we

[178] *See* letter from Business Roundtable.

originally submitted to the OMB in connection with the proposed amendments.

We derived our new burden hour and cost estimates by estimating the total amount of time it would take a company to prepare and review the disclosure requirements contained in the final rules. This estimate represents the average burden for all companies, both large and small. Our estimates have been adjusted to reflect the fact that some of the amendments would be required in some but not all of the documents listed above in Section A, and would not apply to all companies. In deriving our estimates, we recognize that the burdens will likely vary among individual companies based on a number of factors, including the size and complexity of their organizations, and the nature of their operations. We believe that some companies will experience costs in excess of this average in the first year of compliance with the amendments and some companies may experience less than the average costs. We estimate the annual incremental paperwork burden for all companies (other than registered management investment companies) to be approximately 223,426 hours of company personnel time and a cost of approximately $49,964,730 for the services of outside professionals. For registered management investment companies, we estimate the annual paperwork burden to be approximately 19,334 hours of company personnel time and a cost of approximately $9,480,200 for the services of outside professionals. These estimates include the time and the cost of preparing and reviewing disclosure, filing documents and retaining records.

With respect to reporting companies (other than registered management investment companies), the new rules and amendments will increase the existing disclosure burdens associated with proxy and information statements, Forms 10, 10–K, 8–K, S–1, S–4 and S–11. However, the disclosure requirements under new Item 402(s) of Regulation S–K are not applicable to smaller reporting companies.[179] With respect to registered management investment companies, the revisions will be reflected in certain Regulation S–K items, Schedule 14A, and Forms N–1A, N–2 and N–3.

In the Proposing Release, we assumed that the burden hours of the amendments would be comparable to the burden hours related to similar disclosure requirements under existing reporting requirements, such as the disclosure of audit fees and non-audit services,[180] CD&A and executive compensation reporting,[181] and the disclosure of the activities of nominating committees.[182] We have made several adjustments to these estimates to reflect the revisions we made to the amendments and the responses of commenters. We increased the burden estimate for the enhanced director and nominee disclosure by four hours to reflect the additional disclosures that will be required, such as the new legal proceedings and diversity policy, and to address concerns that our initial estimate may have been understated. At the same time, we have decreased the burden estimate related to new Item 402(s) of Regulation S–K from sixteen to eight hours, as well as the burden estimate related to the new compensation consultant disclosure from four to three hours to reflect the revisions to the proposed amendments. However, we made no change in our assumption that substantially all of the burdens associated with the amendments to Items 401 and 402 of Regulation S–K would be associated with Schedules 14A and 14C, as these would be the primary disclosure documents where the new disclosures would be prepared and presented.[183]

We made no change in our estimate that there would be no annual incremental increase in the paperwork burden for companies to comply with the amendments to the Summary Compensation Table, Director Compensation Table, and Grants of Plan-Based Awards Table. We believe that the amendments to the Summary Compensation Table, Grants of Plan-Based Awards Table and Director Compensation Table will simplify executive compensation disclosure because companies no longer will need to report two separate measures of equity compensation in their compensation disclosure. For purposes of Item 402 disclosure, companies no longer will need to explain or analyze a second, separate measure of equity compensation that is based on financial statement recognition rather than compensation decisions. In addition, we believe it is likely that these amendments will make companies' identification of named executive officers more consistent from year-to-year, providing investors more meaningful disclosure and reducing executive compensation tracking burdens in determining which executive officers are the most highly compensated.

We have added a special instruction for equity awards subject to performance conditions calling for tabular disclosure of the value computed based upon the probable outcome of the performance conditions as of the grant date. Because this value is already required to be computed under the accounting literature,[184] it will not impose an incremental increase in paperwork burden. This instruction also requires footnote disclosure of the maximum value assuming the highest level of performance conditions is probable. We believe that any incremental burden associated with providing this footnote disclosure would be minimal.

For each reporting company (other than registered management investment companies), we estimate that the amendments would impose on average the following incremental burden hours:

- Eight hours related to the amendments to discuss compensation policies and practices as they relate to risk management;
- Eight hours for the enhanced director and nominee disclosure;
- Six hours for the disclosures about board leadership structure and the board's role in risk oversight;
- Three hours for the disclosures regarding compensation consultants; and
- One hour for the reporting of voting results on Form 8–K rather than on Forms 10–Q and 10–K.

With respect to registered management investment companies, the amendments to Forms N–1A, N–2, and N–3 will increase existing disclosure burdens for such forms by requiring:

- New disclosure of the qualifications of directors and nominees for director, and the reasons why that person should serve as a director of the company at the time at which the relevant filing is made with the Commission;

[179] Based on the number of proxy filings we received in the 2008 fiscal year, we estimate that approximately 3,922 domestic companies are smaller reporting companies that have a public float of less than $75 million.

[180] Release No. 33–8183 (Jan. 28, 2003) [68 FR 6006] (which we estimated to be two hours).

[181] Release No. 33–8732A (Aug. 29, 2006) [71 FR 53518] (which we estimated to be 95 hours).

[182] Release No. 33–8340 (Nov. 24, 2003) [68 FR 69204] (which we estimated to be three hours).

[183] The burden estimates for Form 10–K assume that the amendments to Items 401 and 402 of Regulation S–K would be satisfied by either including the information directly in an annual report or incorporating the information by reference from the proxy statement or information statement on Schedule 14A or Schedule 14C. Our PRA estimates include an estimated 1 hour burden in the Form 10–K and schedules to account for the incorporation of the information that would be required under proposed amendments to Items 401 and 402 of Regulation S–K.

[184] FASB ASC Topic 718.

• Additional disclosure of any directorships held by each director and nominee at any time during the past five years at public companies or registered management investment companies; and

• New disclosure about a fund's board leadership structure and the board's role in the oversight of risk.

We estimate that the amendments would impose on average the following incremental burden hours with respect to registered management investment companies:

• Eight hours for the enhanced director and nominee disclosure in proxy statements and six hours for such disclosure in registration statements; [185] and

• Six hours for the disclosures about company leadership structure and the board's role in risk management.

1. Proxy and Information Statements

For purposes of the PRA, in the case of reporting companies (other than registered management investment companies) we estimate the annual incremental paperwork burden for proxy and information statements under the amendments would be approximately seventeen hours per form for companies that are smaller reporting companies, and twenty-five hours per form for companies that are either accelerated or large accelerated filers. In the case of registered management investment companies, we estimate the annual incremental paperwork burden for proxy and information statements under the amendments would be approximately fourteen hours per form. These estimates include the time and the cost of preparing disclosure that has been appropriately reviewed by management, in-house counsel, outside counsel, and members of the board of directors.

2. Exchange Act Periodic Reports

For purposes of the PRA, we estimate the annual incremental paperwork burden for Form 10–K under the amendments would be approximately one hour per form. This estimate includes the time and the cost of preparing disclosure that has been appropriately reviewed by management, in-house counsel, outside counsel, and members of the board of directors.

3. Securities Act Registration Statements and Exchange Act Registration Statements

For purposes of the PRA, in the case of reporting companies (other than registered management investment companies) we estimate the annual incremental paperwork burden for Securities Act registration statements under the amendments would be approximately sixteen hours per form.[186] For registered management investment companies, we estimate that the annual incremental paperwork burden under the amendments to Forms N–1A, N–2, and N–3 would be approximately twelve hours per form. These estimates include the time and the cost of preparing disclosure that has been appropriately reviewed by management, in-house counsel, outside counsel, and members of the board of directors.

The tables below illustrate the total annual compliance burden of the collection of information in hours and in cost under the amendments for annual reports; quarterly reports; current reports; proxy and information statements; Form 10; Forms S–1, S–4, S–11, N–1A, N–2, and N–3; and Regulation S–K.[187] The burden estimates were calculated by multiplying the estimated number of responses by the estimated average amount of time it would take a company to prepare and review the disclosure requirements. For the Exchange Act reports on Forms 10–K, 10–Q, and 8–K, and the proxy and information statements we estimate that 75% of the burden of preparation is carried by the company internally and that 25% of the burden of preparation is carried by outside professionals retained by the company at an average cost of $400 per hour. For the registration statements on Forms 10, S–1, S–4, S–11, N–1A, N–2, and N–3, we estimate that 25% of the burden of preparation is carried by the company internally and that 75% of the burden of preparation is carried by outside professionals retained by the company at an average cost of $400 per hour. The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the company internally is reflected in hours. There is no change to the estimated burden of the collections of information under Regulation S–K because the burdens that this regulation imposes are reflected in our revised estimates for the forms.

TABLE 1—INCREMENTAL PAPERWORK BURDEN UNDER THE AMENDMENTS FOR ANNUAL REPORTS; QUARTERLY REPORTS; PROXY AND INFORMATION STATEMENTS

	Number of responses [188] (A)	Incremental burden hours/ form (B)	Total Incremental burden hours (C)=(A)*(B)	75% Company (D)=(C)*0.75	25% professional (E)=(C)*0.25	Professional costs (F)=(E)*$400
10–K	13,545	1	13,545	10,159	3,386	$1,354,500
10–Q [189]	32,462	(1)	(7,300)	(5,475)	(1,825)	(730,000)
8–K [190]	117,255	1	117,255	87,941	29,314	11,725,500
Sch. 14A [191]	7,300					
Accel. Filers	3,378	25	84,450	63,338	21,113	8,445,000
SRC Filers	3,922	17	66,674	50,006	16,669	6,667,400
Sch. 14C	680					
Accel. Filers	315	25	7,867	5,900	1,967	786,658
SRC Filers	365	17	6,211	4,658	1,553	621,073
Rule 20a–1	1,225	14	17,150	12,863	4,288	1,715,000
Reg. S–K	N/A	N/A	N/A	N/A	N/A	N/A
Total			305,851			30,585,130

[185] We estimate that the disclosure burden for registration statements on Forms N–1A, N–2, and N–3 is less than for proxy statements because the disclosures relating to involvement in legal proceedings for the past ten years applies only to proxy statements and not to registration statements.

[186] We calculated the sixteen hours by adding eight hours for the requirements under Item 402(s) of Regulation S–K to eight hours for the enhanced director and nominee disclosure.

[187] Figures in both tables have been rounded to the nearest whole number.

TABLE 2—INCREMENTAL PAPERWORK BURDEN UNDER THE AMENDMENTS FOR REGISTRATION STATEMENTS

	Number of responses [192] (A)	Incremental burden hours/ form (B)	Total incremental burden hours (C)=(A)*(B)	25% company (D)=(C)*0.25	75% professional (E)=(C)*0.75	Professional costs (F)=(E)*$400
Form 10	238	16	3,809	952	2,856	$1,142,500
Form S–1	768	16	12,288	3,072	9,216	11,579,500
Form S–4	619	16	9,904	2,476	7,428	3,686,400
Form S–11	100	16	1,600	400	1,200	2,971,200
Form N–1A	1,935	12	23,220	5,805	17,415	6,966,000
Form N–2	205	12	2,460	615	1,845	738,000
Form N–3	17	12	204	51	153	61,200
Reg. S–K	N/A	N/A	N/A	N/A	N/A	N/A
Total			53,485			27,144,800

IV. Cost-Benefit Analysis

A. Introduction

We are adopting amendments to enhance the disclosures with respect to a company's overall compensation policy and its impact on risk taking, director and nominee qualifications and legal proceedings, board leadership structure and the board's role in risk oversight, and the interests of compensation consultants. In addition, we are adopting amendments to transfer the requirement to disclose voting results from Forms 10–Q and 10–K to Form 8–K.

We also are adopting amendments to the disclosure requirements for executive and director compensation to require stock awards andoption awards reporting based on a measure that will represent the aggregate grant date fair value of the compensation decision in the grant year, rather than the current rule, which allocates the grant date fair value over time commensurate with financial statement recognition of compensation costs.

B. Benefits

The amendments are intended to enhance transparency of a company's compensation policies and its impact on risk taking; director and nominee qualifications; board leadership structure and the role of the board in risk oversight; potential conflicts of interest of compensation consultants; and voting results at annual and special meetings.

1. Benefits Related to the New Narrative Disclosure of the Company's Compensation Policies and Practices as They Relate to the Company's Risk Management

Incentive arrangements and other compensation for employees may affect risk-taking behavior in the company's operations. To the extent that the risks arising from a company's compensation policies and practices for employees are reasonably likely to have a material adverse effect on the company, investors will benefit through an enhanced ability to monitor it. They would also potentially benefit from the ability to use this additional information in allocating capital across companies, toward companies where employee incentives appear better aligned with operational success and investors' appetite for risk. The new disclosure may also encourage the board and senior management to examine and improve incentive structures for management and employees of the company. These benefits may also lead to increased value to investors.

2. Benefits Related to Revisions to Summary Compensation Table Disclosure

As a result of the Summary Compensation Table and Director Compensation Table amendments, companies will no longer need to prepare and report the allocation of equity awards' grant date fair value over time commensurate with financial statement recognition of compensation costs for executive and director compensation tabular reporting. Further, in preparing stock awards and option awards disclosure in the Summary Compensation Table and Director Compensation Table, companies no longer will need to incur additional costs to exclude the estimate for forfeitures related to service-based vesting used for financial statement reporting purposes. The elimination of costs of preparing and reporting this information is a benefit of the amendments.

The effects of the amendments in making information more readily available to investors may be useful to their voting and investment decisions. Reporting stock awards and option awards in the Summary Compensation Table based on aggregate grant date fair value is designed to make it easier for investors to assess compensation decisions and evaluate the decisions of the compensation committee. For example, under the amendments the Summary Compensation Table values will correspond to awards granted in the fiscal year, potentially allowing companies to better explain in CD&A

[188] The number of responses reflected in the table equals the actual number of forms and schedules filed with the Commission during the 2008 fiscal year, except for Form 8–K. The number of responses for Form 8–K reflects the number of Form 8–Ks filed during the 2008 fiscal year plus an additional 8,831 filings. *See* footnote 190 below.

[189] We calculated the reduction in the burden hours for Form 10–Q based on the number of proxy statements filed with the Commission during the 2008 fiscal year. We assumed that there would be, at a minimum, an equal number of Form 10–Qs filed to report the voting results from a meeting of shareholders. The reduction reflects the deletion of the disclosure of voting results from the form.

[190] We have included an additional 7,300 responses to Form 8–K to reflect the additional Form 8–Ks that would be filed to report final voting results. As explained in footnote 188 above, this number is based on the actual number of proxy statements filed in 2008. We adjusted this number upward by 20% to reflect our estimate of the additional Form 8–Ks that may be filed to report preliminary votes, and we have also included an additional 71 Form 8–Ks to reflect the number of Form 8–Ks that would be filed to report preliminary voting results because of a contested election, which we based on the actual number of proxy statements involving contested elections that were filed with the Commission during the 2008 fiscal year.

[191] The estimates for Schedule 14A and Schedule 14C are separated to reflect our estimate of the burden hours and costs related to new Item 402(s) of Regulation S–K which is applicable to companies that are either accelerated or large accelerated filers, but not applicable to companies that are non-accelerated filers, including smaller reporting companies. We estimate that 3,378 Schedule 14A responses were filed by accelerated or large accelerated filers, and 315 Schedule 14C responses were filed by accelerated or large accelerated filers.

[192] The number of responses reflected in the table equals the actual number of forms filed with the Commission during the 2008 fiscal year, except for Forms N–1A and N–3. The number of responses for Forms N–1A and N–3 reflect the number of open-ended management investment companies registered with the Commission as of the end of the 2008 fiscal year.

how decisions with respect to awards granted for the year relate to other compensation decisions in the context of total compensation for the year. For awards subject to performance conditions, tabular disclosure will be based upon the probable outcome of the performance conditions as of the grant date. A special instruction for awards subject to performance conditions that requires footnote disclosure of the grant date fair value, assuming that the highest level of performance conditions will be achieved, will provide investors with further information as to the maximum potential payout of a particular grant. Further, the effect on total compensation of decisions to reprice options will be more evident because aggregate grant date fair value will be a component of total compensation reported in the Summary Compensation Table.

Under the amendments, the identification of named executive officers based on total compensation for the last completed fiscal year will reflect the aggregate grant date fair value of equity awards granted in that year. As a result, the named executive officers other than the principal executive officer and principal financial officer may change. Investors may benefit from receiving compensation disclosure with respect to executives who would not have been named executive officers under the former rules. To the extent that this change better aligns the identification of named executive officers with compensation decisions for the year, it should make it easier for companies to track executive compensation for reporting purposes.

Although the amendments are not intended to steer behavior, changes in the way that executive compensation is represented in the Summary Compensation Table and other new, compensation-related disclosures may indirectly lead boards to reconsider pay structure, potentially changing the amount of pay in some cases.

Smaller reporting companies are not required to provide a Grants of Plan-Based Awards Table or a CD&A, but are required to provide a Summary Compensation Table and Director Compensation Table. Investors in these companies should benefit from reporting stock awards and option awards based on aggregate grant date fair value in the grant year, as opposed to the current reporting approach based on financial statement recognition of the awards.

3. Benefits Related to Enhanced Director and Nominee Disclosure

The amendments to Item 401 of Regulation S–K, Schedule 14A and Forms N–1A, N–2 and N–3 will potentially benefit investors by increasing the amount and quality of information that they receive concerning the background and skills of directors and nominees for director, enabling investors to make better-informed voting and investment decisions. Disclosure of board's or other proponents' rationale for their nominees' membership on the board may benefit investors by enabling them to better assess whether and why a particular nominee is an appropriate choice for a particular company. Investors would be able to make more informed voting decisions in electing directors. Investors would also be able to adjust their holdings, allocating more capital to companies in which they believe board members are most likely to be able to effectively fulfill their duties to shareholders. In particular, in cases that do not meet investors' expectations, investors may respond by attempting to exert more influence on management or the board than would occur otherwise, thereby enhancing shareholder value.

Required disclosure of whether, and if so, how, a nominating committee (or the board) considers diversity in connection with identifying and evaluating persons for consideration as nominees for a position on the board of directors may also benefit investors. Board diversity policy is an important factor in the voting decisions of some investors.[193] Such investors will directly benefit from diversity policy disclosure to the extent the policy and the manner in which it is implemented is not otherwise clear from observing past and current board selections. Although the amendments are not intended to steer behavior, diversity policy disclosure may also induce beneficial changes in board composition. A board may determine, in connection with preparing its disclosure, that it is beneficial to disclose and follow a policy of seeking diversity. Such a policy may encourage boards to conduct broader director searches, evaluating a wider range of candidates and potentially improving board quality. To the extent that boards branch out from the set of candidates they would ordinarily consider, they may nominate directors who have fewer existing ties to the board or management and are, consequently, more independent. To the extent that a more independent board is desirable at a particular company, the resulting increase in board independence could potentially improve governance. In addition, in some companies a policy of increasing board diversity may also improve the board's decision-making process by encouraging consideration of a broader range of views.

Expanded disclosure of membership on previous corporate boards may also benefit investors by making it easier for them to evaluate whether nominees' past board memberships present potential conflicts of interest (such as membership on boards of major suppliers, customers, or competitors). Investors may also be able to more easily evaluate the performance, in both operations and governance, of the other companies on whose boards the nominees serve or have served. The public may also benefit from better understanding any potential positive or negative effects on corporate performance resulting from directors serving on other boards.

The expanded list of legal proceedings involving directors, nominees and executive officers that must be disclosed, as well as the expanded disclosure of these legal proceedings from the current five-year requirement to ten years, would benefit investors by providing more information by which they could determine the suitability of a director or nominee.

4. Benefits Related to New Disclosure About Board Leadership Structure and the Board's Role in Risk Oversight

Investors may benefit from new disclosure about board leadership structure. In particular, they may benefit from understanding management's explanation regarding whether or not the principal executive officer serves as chairman of the board and, in the case of a registered management investment company, whether the chairman is an ''interested person'' of the fund. In deciding whether to separate principal executive officer and chairman positions, companies may consider several factors, including the effectiveness of communication with the board and the degree to which the board can exercise independent judgment about management performance, and shareholders may, in different cases, be best served by different decisions. Although the amendments are not intended to drive behavior, there may be possible benefits if a company re-evaluates its leadership structure or the

[193] *See, e.g.,* letters from Calvert, Trillium, Boston Common Asset Management, CII, Florida State Board of Administration, and Sisters of Charity BVM. *See* also letter from Lissa Lamkin Broome and Thomas Lee Hazen.

board's role in risk oversight and decides to make changes as a result.

Disclosures of the board's role in risk oversight may also benefit investors. Expanded disclosure of the board's role in risk oversight may enable investors to better evaluate whether the board is exercising appropriate oversight of risk. Investors would be able to adjust their holdings, allocating more capital to companies in which they believe the board is adequately focused on risks. Improved capital allocation will also benefit the financial markets by increasing market efficiency.

5. Benefits Related to New Disclosure Regarding Compensation Consultants

New disclosure regarding compensation consultants may benefit investors by illuminating potential conflicts of interest. Providing better, more complete information in cases where the value of non-executive compensation services is over $120,000 for the last fiscal year will allow investors to determine for themselves whether there are concerns related to the compensation consultants' financial interests and objectivity. Compensation consultants may earn fees from other services to the company, including benefits administration, human resources consulting, and actuarial services. With an incentive to retain these significant additional revenue streams, they may face incentives to cater, to some degree, to management preferences in recommending executive compensation packages.[194] The House Committee on Oversight and Government Reform's Study on Executive Pay documented that 113 of 250 of the largest publicly traded companies hired compensation consultants that earned fees from other services, and that this practice was positively correlated with higher CEO pay.[195] However, Cadman, Carter and Hilligeist (2009) studied a larger set of companies, but did not find statistically significant relations between certain factors thought to indicate conflicts of interest and the level of CEO pay.[196] To the degree that these potential conflicts may be more transparent under the amendments, investors benefit through their ability to better monitor the process of setting executive pay. This potential conflict is substantially reduced when the compensation committee hires a compensation consultant that does not provide other services to the company. Benefits of the amendment may be limited to the degree that compensation consultants have other potential conflicts of interest not specifically enumerated in the amendments.

Disclosures about compensation consultants may have effects on competition in the compensation consulting industry, introducing potential relative costs and benefits to both multi-service consulting firms and consulting firms exclusively specializing in executive compensation. Specific potential effects on competition are discussed in Section V below. Broadly, the disclosures may affect the level of competition in the compensation consulting industry. Any increase in competition could reduce prices of consulting services, benefiting client companies. Changes in competition may also affect the content of advice provided to companies. As discussed more fully in Section C below, it is possible that, if the level of competition in the industry decreases, compensation consultants may be less inclined to make recommendations favorable to management. This could potentially benefit shareholders.

6. Benefits Related to Reporting of Voting Results on Form 8–K

The amendments to Form 8–K will facilitate security holder access to faster disclosure of the vote results of a company's annual or special meeting. To find this information, investors no longer would need to wait for this information to be disclosed in a Form 10–Q or 10–K, which could be filed months after the end of the meeting.

C. Costs

The amendments will impose new disclosure requirements on companies. Some of the disclosures are designed to build upon existing requirements to elicit a more detailed discussion of director and nominee qualifications, legal proceedings, and the interests of compensation consultants. To the degree that the amendments require collecting information currently available, costs related to information collection will be limited.

1. Costs Related to the New Narrative Disclosure of the Company's Compensation Policies and Practices as They Relate to the Company's Risk Management

We believe that there may be information gathering costs associated with the new disclosure of the company's compensation policies and practices as they relate to the company's risk management, even though the information required may be readily available, because this information may need to be reported up from business units and analyzed. Some commenters noted that the amendments would require companies to incur additional costs, such as costs related to conducting a risk analysis of compensation policies for all employees.[197] This could also include the cost of hiring additional advisors to assist in the analysis, as well as additional costs in drafting the new disclosure. Using our PRA burden estimates, we estimate the aggregate annual cost of the amendments to be approximately $12,215,326.[198] As previously discussed, the proposed amendments would have required discussion and analysis of compensation policies if risks arising from those compensation policies ''may have a material effect on the company.'' We have revised the amendment to require a company to discuss its compensation policies and practices for employees if such policies and practices are ''reasonably likely to have a material adverse effect'' on the company. By focusing on risks that are ''reasonably likely to have a material adverse effect'' on the company, we believe the amendments will result in a smaller number of companies making this risk disclosure. This change from the ''may have a material effect'' disclosure should mitigate some of the costs and burdens associated with the amendments.

Companies may also face costs related to the disclosure of the company's compensation policies to the extent that

[194] *See* letter from Mary Ellen Carter.

[195] In December 2007, the U.S. House of Representatives Committee on Oversight and Government Reform issued a report on the role played by compensation consultants at large, publicly traded companies (the ''Waxman Report''). The Waxman Report found that the fees earned by compensation consultants for providing other services often far exceed those earned for advising on executive compensation, and that on average companies paid compensation consultants over $2.3 million for other services and less than $220,000 for executive compensation advice. *See* Staff of House Comm. on Oversight and Government Reform, 110th Cong., Report on Executive Pay: Conflicts of Interest Among Compensation Consultants (Comm. Print 2007).

[196] Cadman, Carter and Hilligeist, 2009, The Incentives of Compensation Consultants and CEO Pay, Journal of Accounting and Economics (forthcoming) and provided with the letter submitted by Mary Ellen Carter.

[197] *See, e.g.,* letters from Business Roundtable and Robert Ahrenholz.

[198] This estimate is based on the estimated total burden hours of the amendments associated with the schedules and forms that would include the new disclosure, an assumed 75%/25% split of the burden hours between internal staff and external professionals with respect to proxy and information statements, an assumed 25%/75% split of the burden hours between internal staff and external professionals with respect to registration statements, and an hourly rate of $200 for internal staff time and $400 for external professionals.

it provides management with incentives to adopt risk-averse strategies that result in the abandonment of risky projects whose returns otherwise would compensate for the amount of additional risk. This could discourage beneficial risk-taking behavior.

2. Costs Related to Revisions to Summary Compensation Table Disclosure

Investors may face some costs related to revisions in executive compensation reporting. Under the amendments to the Summary Compensation Table and as noted in the Benefits section, the identification of named executive officers based on total compensation for the last completed fiscal year will reflect the aggregate grant date fair value of equity awards granted in that year, so that some executives subject to executive compensation disclosure may be different.

Smaller reporting companies, which are not required to provide the Grants of Plan-Based Awards Table, may incur some costs on a transitional basis in switching from the previously required measure of stock awards and option awards to aggregate grant date fair value reporting. We expect that any such additional costs will be limited by the fact that grant date fair value information required under the amendments is also collected to comply with financial reporting purposes. Because companies other than smaller reporting companies previously were required to report the grant date fair value of individual equity awards in the Grants of Plan-Based Awards Table, we expect that they will incur only negligible costs in switching to the amended Summary Compensation Table and Director Compensation Table disclosure requirements.

Moreover, grant date fair value guidelines under FASB ASC Topic 718 call for management to exercise judgment in valuing stock options. For financial statement recognition purposes, the grant date fair value measure of compensation cost is expensed over the expected term of the option. Compensation cost for awards containing a performance-based vesting condition is recognized only if it is probable that the performance condition will be achieved. To the extent that an investor believes that Summary Compensation Table and Director Compensation Table disclosure of stock awards and option awards should be measured based on financial statement recognition principles to take into account potential adjustments, the amendments may entail a cost. The special instruction for awards subject to performance conditions mitigates this potential cost to some extent by providing that such awards are reported in the Summary Compensation Table and Director Compensation Table based upon the probable outcome of the performance condition(s) as of the grant date. This instruction also requires footnote disclosure of the maximum value assuming the highest level of performance conditions is probable. We believe that any incremental cost associated with providing this footnote disclosure would be minimal.

3. Costs Related to Enhanced Director and Nominee Disclosure

Companies may face some information gathering and reporting costs related to enhanced director and nominee disclosure. One commenter noted that companies may face costs related to the amendments to the extent that companies will need to update their director and officer questionnaires to obtain more detailed information, and will need to spend additional time analyzing the information as well as preparing the disclosures.[199] Companies may also experience increased costs as it may be more difficult to find candidates willing to serve on boards if they do not want this information disclosed in a Commission filing. To the extent that information is available and verifiable through other sources, however, we expect the potential costs of the additional disclosure will be limited. Using our PRA burden estimates, we estimate the aggregate annual cost to operating companies to be approximately $20,790,000.[200] With respect to our PRA burden estimates for registered management investment companies, we estimate the aggregate annual cost to be approximately $6,979,700.[201]

In addition, although the amendments are not intended to steer behavior, a company may adopt a diversity policy in connection with preparing its disclosure regarding whether and, if so, how diversity is considered in connection with identifying and evaluating persons for consideration as nominees for a position on the board of directors. If this policy turns out to be difficult to implement, companies could incur economic costs as a result in the form of recruiting costs or otherwise.

4. Costs Related to New Disclosure About Board Leadership Structure and the Board's Role in Risk Oversight

Companies may face some costs related to new disclosure about board leadership structure. Disclosure of the board's role in risk oversight may have some similar costs. The information gathering costs are likely to be less significant than the costs to prepare the disclosure. Using our PRA burden estimates, we estimate the aggregate annual cost to operating companies to be approximately $11,970,000.[202] With respect to our PRA burden estimates for registered management investment companies, we estimate the aggregate annual cost to be approximately $6,367,200.[203] Although the amendments are not intended to drive behavior, there may be possible costs if a company re-evaluates its leadership structure or the board's role in risk oversight and decides to make changes as a result.

5. Costs Related to New Disclosure Regarding Compensation Consultants

Companies may face some costs related to new disclosure about fees for compensation consulting and for other services provided by compensation consultants. Using our PRA burden estimates, we estimate the aggregate annual cost to be approximately $5,985,000.[204] In addition, the costs to a company in contracting with compensation consultants could be increased under these amendments, and compensation consultants also may alter

[199] *See* letter from Business Roundtable.

[200] This estimate is based on the estimated total burden hours of the amendments associated with the schedules and forms that would include the new disclosures, an assumed 75%/25% split of the burden hours between internal staff and external professionals with respect to proxy and information statements, an assumed 25%/75% split of the burden hours between internal staff and external professionals with respect to registration statements, and an hourly rate of $200 for internal staff time and $400 for external professionals.

[201] This estimate is based on the estimated total burden hours of 22,742, an assumed 75%/25% split of the burden hours between internal staff and external professionals with respect to proxy statements, an assumed 25%/75% split of the burden hours between internal staff and external professionals with respect to registration statements, and an hourly rate of $200 for internal staff time and $400 for external professionals.

[202] This estimate is based on the estimated total burden hours of the amendments associated with the schedules and forms that would include the new disclosures, an assumed 75%/25% split of the burden hours, and an hourly rate of $200 for internal staff time and $400 for external professionals.

[203] This estimate is based on the estimated total burden hours of 20,292, an assumed 75%/25% split of the burden hours between internal staff and external professionals with respect to proxy statements, an assumed 25%/75% split of the burden hours between internal staff and external professionals with respect to registration statements, and an hourly rate of $200 for internal staff time and $400 for external professionals.

[204] This estimate is based on the estimated total burden hours related to the amendments in connection to Schedules 14A and 14C, an assumed 75%/25% split of the burden hours, and an hourly rate of $200 for internal staff time and $400 for external professionals.

their mix of services. For instance, costs may increase if companies decide to contract with multiple compensation consultants for services that had previously been provided by only one compensation consultant. Several commenters asserted that the amendments could discourage companies from using a single compensation consulting firm to provide executive compensation services and services other than executive compensation consulting.[205] Possible increased costs might include the costs associated with the time each new compensation consultant will need to learn about the company and the decline in any economies of scale the compensation consultant may have factored into fees charged to the company. To the extent that compensation consulting firms exit compensation consulting to eliminate potential conflicts and mandatory fee disclosure, fewer experienced consultants may be available for hire. To the extent that the remaining consultants cannot scale operations sufficiently quickly to meet demand, then this could result in less qualified opinions from remaining consultants, with potential costs to shareholders. In the long run, however, industry capacity may increase, which would mitigate this effect.

Disclosures on compensation consultants may have effects on competition in the compensation consulting industry, introducing potential relative costs and benefits to multi-service consulting firms and consulting firms specializing in executive compensation. Specific potential effects on competition are discussed in the Section V below. As discussed in more detail in Section V, competition could conceivably decrease if some multi-service firms exit the executive compensation consulting industry. Any decrease in competition could increase prices of consulting services, potentially creating higher costs for client companies, while benefiting the compensation consulting industry as a whole. However, competition could increase, for example, to the extent that the amendments make smaller boutique firms more attractive to companies. If the amendments increase competitiveness of the industry, compensation consultants may charge lower fees. They may also, however, feel pressure to generate recommendations favorable to management in order to increase the likelihood of being retained in the future. Any decline in the objectivity of advice from compensation consultants would potentially be costly to shareholders.

6. Costs Related to Reporting of Voting Results on Form 8–K

Shareholders who are used to receiving this information in a Form 10–Q filing may incur costs of adapting their research practices to find this information in Form 8–K filings, which may involve searching through a number of filings. This adjustment may involve costs, in particular, to those investors who process this information using automated systems. A separate filing to report the information and potentially report both preliminary and final voting results may also increase direct costs to companies for filing fees, filing creation, and report dissemination because it may require two Form 8–K filings. However, the cost for preparing a quarterly report on Form 10–Q would be less because this disclosure would not appear in that Form. Companies that report preliminary voting results may face some additional information gathering and reporting costs because they would need to file a Form 8–K to disclose preliminary voting results and to file an amended Form 8–K to disclose final vote results. Using our PRA burden estimates, we estimate the aggregate annual cost to be approximately $2,207,750.[206]

V. Consideration of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act requires us,[207] when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Section 2(b) of the Securities Act,[208] Section 3(f) of the Exchange Act,[209] and Section 2(c) of the Investment Company Act require us,[210] when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

The amendments that we are adopting are designed to enhance the information companies provide to investors with regard to the following:

- *Risk:* By requiring disclosure about the board's role in oversight of risk and, to the extent that risks arising from a company's compensation policies and practices are reasonably likely to have a material adverse effect on the company, disclosure about such policies and practices as they relate to risk management;
- *Governance and Director Qualifications:* By requiring expanded disclosure of the background and qualifications of directors and director nominees and new disclosure about a company's board leadership structure, and accelerating the reporting of information regarding shareholder voting results; and
- *Compensation:* By revising the reporting of stock and option awards received by named executive officers, and requiring disclosure of potential conflicts of interest of compensation consultants in certain circumstances.

The amendments are designed to enable investors to make better informed voting and investment decisions. For example, several commenters noted that investors will be able to use the new risk disclosures to make more informed investment decisions.[211] Improved investment decisions could lead to increased efficiency and competitiveness of the U.S. capital markets. Investors could allocate capital across companies, toward companies where the risk incentives are more aligned with an investor's risk preference. In this regard, the amendments may affect the relative ability of some companies to raise capital depending on how investors react to the disclosures they provide in response to the amendments. In addition, the amendments may improve the efficiency of information gathering by investors to the extent that disclosure provided in response to the amendments is easier to access through filings made with the Commission.

The amendments may affect competition, such as encouraging competition among companies to demonstrate superior risk oversight and improved incentive structures for management and the employees of the company. Several commenters indicated

[205] *See, e.g.,* letters from Mercer, Towers Perrin and Watson Wyatt.

[206] This estimate is based on the estimated 8,831 additional Form 8–K filings, an assumed 75%/25% split of one burden hour between internal staff and external professionals, and an hourly rate of $200 for internal staff time and $400 for external professionals.

[207] 15 U.S.C. 78w(a)(2).

[208] 15 U.S.C. 77b(b).

[209] 15 U.S.C. 78c(f).

[210] 15 U.S.C. 80a–2(c).

[211] *See, e.g.,* letters from CalSTRS, CII, the General Board of Pension and Health Benefits of the United Methodist Church, and Hermes.

that the amendments requiring fee and other disclosures related to compensation consultants might have some effects on competition among firms in this industry. Some of these commenters believed the amendments could negatively impact competition among large multi-service compensation consulting firms.[212] Companies will face new disclosure requirements with respect to their use of compensation consulting firms in certain circumstances, but not with respect to compensation consulting firms who provide only executive compensation consulting services. To the extent that companies receiving compensation for consulting services are reluctant to disclose the fees paid for advice on executive compensation, this may put some larger multi-service compensation consulting firms at a competitive disadvantage relative to smaller firms who focus on executive compensation consulting. In such cases, multi-service firms may be excluded from competing for compensation consulting services at companies where they already provide other non-executive compensation consulting services. However, this potential anti-competitive impact may be diminished to the extent that the potential opportunities lost to some multi-service firms would otherwise be available to other multi-service firms who do not provide non-executive compensation consulting services to the company. To the extent that this occurs, competition between multi-service firms could increase. In addition, the amendments provide a limited exception to the disclosure requirements for fees paid to other compensation consultants retained by the company if the board has retained its own consultant that reports to the board. This exception limits disclosure to circumstances that are more likely to present conflicts of interest, which should also address concerns about the competitive disadvantage faced by multi-service firms.

In some instances, the amendments may result in disclosure of pricing information that certain compensation consulting firms would prefer to remain private, which could affect some consulting firms' marginal cost of providing executive compensation and non-executive compensation services. Competition in the compensation consulting industry also may be affected if, for example, some compensation consulting firms choose not to provide executive compensation consulting services to avoid having to disclose fees on other, more critical aspects of their businesses. If multi-service compensation consulting firms currently use cross-selling synergies to subsidize their compensation consulting services for the purpose of soliciting other business, then their departure may result in an increase in fees, which may better approximate the stand-alone value of the services and promote competition from new market participants who could not otherwise subsidize compensation consulting services.

Conversely, the amendments may increase competition in the executive compensation consulting industry. If certain larger compensation consulting firms currently enjoy an advantage related to their ability to cross sell services, for example, where management is more likely to recommend to the board a compensation consultant with whom management has prior experience, the marginal cost of providing services may be lower, currently, than it is for smaller compensation consulting firms. In this circumstance, any additional marginal costs related to disclosure by multi-service firms may have the effect of making marginal costs faced by multi-service firms and boutique firms more equal, allowing boutique firms to compete more effectively. This may encourage entry into compensation consulting services by more firms, or at least make the threat of their entry more credible. If the number of multi-service compensation consulting firms is limited, relative to potential entrants, the level of effective competition in the industry may increase. The industry may also become more competitive for other reasons. For example, more public availability of aggregate fee disclosure, in general, may provide an informational advantage to companies as they negotiate with potential compensation consulting firms, effectively lowering the price of consulting services. Additionally, pricing disclosed, either publicly or in private negotiation, may more accurately reflect each particular service provided. If multi-service compensation consulting firms currently use cross-selling synergies to subsidize their compensation consulting services for the purpose of soliciting other business, then an increase in fees resulting from their departure may better approximate the stand-alone value of the services and promote competition from new market participants who could not otherwise subsidize compensation consulting services.

The size of the market for compensation consulting services is large; depending on the assumptions, we estimate that the total fee revenues of the compensation consulting market could be in the range of $480 million to $3.7 billion. The lower approximate bound is calculated using the $200,000 average per firm fee for executive compensation advice paid by the 250 large companies studied in the Waxman Report, and an estimated 2,190 companies from the Russell 3000 index that report using an executive compensation consultant.[213] The lower estimate could be higher to the extent that non-Russell 3000 companies also hire compensation consultants, or lower to the extent that smaller companies pay less than $200,000 for compensation consulting advice. The upper approximate bound is calculated from the periodic reports of the four largest multi-service compensation consulting firms: Towers Perrin, Mercer, Hewitt, and Watson Wyatt. These four firms reported 2008 fiscal year-end total revenues of $9.9 billion, of which $2.16 billion was disclosed as generated from compensation consulting activities, but which could include non-executive compensation consulting services.[214] Considering that these four firms represent approximately 58% of the compensation consulting market,[215] this indicates the total compensation consulting market could be $3.7 billion.

VI. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis (''FRFA'') has been prepared in accordance with the Regulatory Flexibility Act.[216] This FRFA relates to amendments to Regulation S–K, Schedule 14A and Forms 8–K, 10–Q, and 10–K under the Exchange Act, and Forms N–1A, N–2, and N–3, under the Investment Company Act. The amendments will require the following:

- To the extent that risks arising from a company's compensation policies and practices for employees are reasonably likely to have a material adverse effect on the company, discussion of the company's compensation policies or practices as they relate to risk

[212] *See, e.g.,* letters from Hewitt, Mercer and Towers Perrin.

[213] *See* letter from Mary Ellen Carter.

[214] Hewitt reported 33% of total revenues ($990 million) from Talent and Organizational Consulting; Mercer reported $550 million in consulting revenue from management and rewarding of employees, the design of remuneration programs, and improvement of human resource effectiveness; Watson Wyatt reported 10% of total revenues ($167 million) from its Human Capital Group, which included providing advice on compensation plans and other long-term incentive programs; Towers Perrin reported 26.6% of total revenues ($450 million) from Talent and Rewards Consulting.

[215] *See* letter from Mary Ellen Carter.

[216] 5 U.S.C. 601.

management and risk-taking incentives that can affect the company's risk and management of that risk;

- Reporting of the aggregate grant date fair value of stock awards and option awards granted in the fiscal year in the Summary Compensation Table and Director Compensation Table to be computed in accordance with FASB ASC Topic 718, with a special instruction for awards subject to performance conditions;
- New disclosure of the qualifications of directors and nominees for director, and the reasons why that person should serve as a director of the company at the time at which the relevant filing is made with the Commission; the same information would be required with respect to directors nominated by others;
- Additional disclosure of any directorships held by each director and nominee at any time during the past five years at any public company or registered investment company;
- Additional disclosure of other legal actions involving a company's executive officers, directors, and nominees for director, and lengthening the time during which such disclosure is required from five to ten years;
- New disclosure about a company's board leadership structure and the board's role in the oversight of risk;
- New disclosure regarding the consideration of diversity in the process by which candidates for director are considered for nomination by a company's nominating committee;
- New disclosure about the fees paid to compensation consultants and their affiliates under certain circumstances; and
- Reporting of the vote results from a meeting of shareholders on Form 8–K generally within four business days of the meeting.

An Initial Regulatory Flexibility Analysis (''IRFA'') was prepared in accordance with the Regulatory Flexibility Act and included in the Proposing Release.

A. Need for the Amendments

As described both in this release and the Proposing Release, during the past few years, investors have increasingly focused on corporate accountability, and have expressed the desire for additional information that would enhance their ability to make informed voting and investment decisions. The amendments are intended to improve the disclosure shareholders of public companies receive regarding compensation and corporate governance, and facilitate communications relating to voting decisions. We believe the amendments will enhance the transparency of a company's compensation policies and practices, and the impact of such policies and practices on risk taking; director and nominee qualifications; board leadership structure; the potential conflicts of compensation consultants; and will provide investors with clearer and more meaningful executive compensation disclosure.

B. Significant Issues Raised by Public Comments

In the Proposing Release, we requested comment on any aspect of the IRFA, including the number of small entities that would be affected by the proposed amendments, the nature of the impact, how to quantify the number of small entities that would be affected, and how to quantify the impact of the proposed amendments. We did not receive comments specifically addressing the IFRA. However, several commenters addressed aspects of the proposed rule amendments that could potentially affect small entities. In particular, some commenters believed that compliance with the proposed amendments would impose a significant burden on smaller companies.[217] Other commenters believed that smaller companies should be exempted from all or parts of the amendments.[218] Although we believe that a complete exemption from the amendments would not be appropriate because this would interfere with achieving the goal of enhancing the information provided to all investors, we have made revisions to the amendments that we believe will significantly reduce the impact of the amendments on reporting companies, including smaller companies. In addition, we did not propose, and we are not at this time adopting, a requirement that smaller companies discuss their compensation policies and practices for employees if such policies and practices are reasonably likely to have a material adverse effect.

C. Small Entities Subject to the Final Amendments

The amendments will affect some companies that are small entities. The Regulatory Flexibility Act defines ''small entity'' to mean ''small business,'' ''small organization,'' or ''small governmental jurisdiction.''[219] The Commission's rules define ''small business'' and ''small organization'' for purposes of the Regulatory Flexibility Act for each of the types of entities regulated by the Commission. Securities Act Rule 157[220] and Exchange Act Rule 0–10(a)[221] defines a company, other than an investment company, to be a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year. We estimate that there are approximately 1,229 companies, other than registered investment companies, that may be considered small entities. The amendments to Regulation S–K, Schedule 14A and Forms 8–K, 10–Q, and 10–K will affect any small entity that is subject to Exchange Act periodic and proxy reporting requirements. In addition, the amendments also will affect small entities that file a registration statement under the Securities Act.

An investment company is considered to be a ''small business'' if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[222] We believe that the amendments will affect small entities that are investment companies. We estimate that there are approximately 162 investment companies that may be considered small entities.

D. Reporting, Recordkeeping, and Other Compliance Requirements

The amendments are designed to enhance the transparency of boards of directors, provide investors with a better understanding of the functions and activities of boards, and to provide investors with clearer and more meaningful compensation disclosure. These amendments will require small entities that are operating companies to provide:

- Reporting stock awards and option awards in the Summary Compensation Table and Director Compensation Table based on aggregate grant date fair value;
- Disclosure of the qualifications of directors and nominees for director, and a brief discussion of the specific experience, qualifications, attributes or skills that led to the conclusion that the person should serve as a director for the company at the time the disclosure is made, in light of the company's business and structure;
- Additional disclosure concerning certain legal proceedings involving a company's directors, nominees for director and executive officers;
- Disclosure regarding the consideration of diversity in the process

[217] *See* letters from Keith Bishop and Theragenics.

[218] *See, e.g.,* letters from the Committee on Securities Law of the Business Law Section of the Maryland State Bar Association and Theragenics.

[219] 5 U.S.C. 601(6).

[220] 17 CFR 230.157.

[221] 17 CFR 240.0–10(a).

[222] 17 CFR 270.0–10(a).

by which candidates for director are considered for nomination by a company's nominating committee;

• Additional disclosure, in certain instances, about compensation consultants retained by the board of directors; and

• Disclosure of the results of shareholder votes on Form 8–K generally within four business days after the end of the meeting.

In addition, these amendments would require small entities that are registered management investment companies to provide:

• Disclosure of the qualifications of directors and nominees for director, and the reasons why that person should serve as a director of the company at the time at which the relevant filing is made with the Commission;

• Disclosure of any directorships held by each director and nominee at any time during the past five years at public companies or registered management investment companies; and

• Disclosure about a fund's board leadership structure and the board's role in the oversight of risk.

E. Agency Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with the disclosure amendments, we considered the following alternatives:

• Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities;

• Clarifying, consolidating or simplifying compliance and reporting requirements under the rules for small entities;

• Using performance rather than design standards; and

• Exempting small entities from all or part of the requirements.

In connection with the amendments, we considered alternatives, including establishing different compliance or reporting requirements that take into account the resources available to small entities, clarifying or simplifying compliance and reporting requirements under the amendments for small entities, using design rather than performance standards, and exempting small entities from all or part of the amendments.

Under our current rules, small entities are subject to some different compliance or reporting requirements under Regulation S–K, and the amendments do not alter these requirements. Under Regulation S–K, small entities are required to provide abbreviated compensation disclosure with respect to the principal executive officer and two most highly compensated executive officers for the last two completed fiscal years. Specifically, small entities may provide the executive compensation disclosure specified in Items 402(l) through (r) of Regulation S–K, rather than the corresponding disclosure specified in Items 402(a) through (k) of Regulation S–K. Items 402(l) through (r) also do not require small entities to provide CD&A or the Grants of Plan-Based Awards Table. The amendments to the Summary Compensation Table and Director Compensation Table are unlikely to have a significant impact on small entities because their principal effect is to disclose stock and option awards based on grant date fair value, which small entities need to compute for financial reporting purposes. We did not propose, and we are not adopting, a requirement that smaller companies discuss their compensation policies and practices for employees if such policies and practices are reasonably likely to have a material adverse effect. In addition, the amendments to the Grants of Plan-Based Awards Table do not apply to small entities.

We considered, but did not establish additional different compliance requirements for small entities. We believe that investors in companies that are small entities may want and would benefit from the disclosures elicited by the amendments regarding director and nominee qualifications, as well as board leadership and risk oversight. For example, many commenters noted that our amendments to enhance director and nominee disclosure would provide investors with additional information that would allow them to make better informed investment and voting decisions.[223] Different compliance requirements or an exemption for small entities would interfere with achieving the goal of enhancing the information provided to all investors. We believe that uniform and comparable disclosures across all companies will help investors and the markets.

We also considered, but did not establish, different disclosure thresholds for small entities under our amendments regarding compensation consultant disclosure. Although the disclosure exclusion provided in the amendment where the fees for non-executive compensation consulting services do not exceed $120,000 for a company's fiscal year will reduce the compliance burdens for all companies, we believe this change will likely be more meaningful to companies that are small entities because these companies likely expend a lesser amount of their revenues on compensation consulting services.

The amendments clarify, consolidate and simplify the reporting requirements for all public companies including small entities. The amendments require clear and straightforward disclosure of director and nominee qualifications, board leadership structure and the potential conflicts of interest of compensation consultants. We have used a mix of design and performance standards in connection with the amendments. Based on our past experience, we believe the amendments will be more useful to investors if there are specific disclosure requirements, however, some of the new requirements provide companies flexibility in determining what information to disclose. The disclosures are intended to result in more comprehensive and clearer disclosure.

[223] *See, e.g.,* letters from Board of Directors Network, Forum of Executive Women, Integrated Governance Solutions, and Norges Bank.

VII. Statutory Authority and Text of the Amendments

The amendments contained in this release are being adopted under the authority set forth in Sections 3(b), 6, 7, 10, and 19(a) of the Securities Act; Sections 12, 13, 14, 15(d) and 23(a) of the Exchange Act; and Sections 8, 20(a), 24(a), 30 and 38 of the Investment Company Act.

List of Subjects

17 CFR Parts 229, 239, 240, 249 and 274 Reporting and recordkeeping requirements, Securities.

Text of the Amendments

■ For the reasons set out in the preamble, the Commission amends title 17, chapter II, of the Code of Federal Regulations as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

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

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 777iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l,* 78m, 78n, 78o, 78u–5, 78w, 78*ll,* 78mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11, and 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 2. Amend § 229.401 by:
■ a. Revising paragraph (e)(1);
■ b. In paragraph (e)(2) revising the phrase ''Indicate any other directorships'' to read ''Indicate any other directorships held, including any other directorships held during the past five years,'';
■ c. In paragraph (f), introductory text, revising the phrase ''during the past five years'' to read ''during the past ten years'';
■ d. Removing the word ''or'' following the semi-colon at the end of paragraph (f)(4);
■ e. Removing the period at the end of paragraphs (f)(5) and (f)(6) and adding in their place a semi-colon;
■ f. Adding paragraphs (f)(7) and (f)(8) before the Instructions to paragraph (f);
■ g. In the Instruction 1 to paragraph (f) revise the phrase ''For purposes of computing the five year period'' to read ''For purposes of computing the ten-year period''; and
■ h. Adding Instruction 5 to the Instructions to paragraph (f).

The revisions and additions read as follows:

§ 229.401 (Item 401) Directors, executive officers, promoters and control persons.

* * * * *

(e) *Business experience.* (1) *Background.* Briefly describe the business experience during the past five years of each director, executive officer, person nominated or chosen to become a director or executive officer, and each person named in answer to paragraph (c) of Item 401, including: each person's principal occupations and employment during the past five years; the name and principal business of any corporation or other organization in which such occupations and employment were carried on; and whether such corporation or organization is a parent, subsidiary or other affiliate of the registrant. In addition, for each director or person nominated or chosen to become a director, briefly discuss the specific experience, qualifications, attributes or skills that led to the conclusion that the person should serve as a director for the registrant at the time that the disclosure is made, in light of the registrant's business and structure. If material, this disclosure should cover more than the past five years, including information about the person's particular areas of expertise or other relevant qualifications. When an executive officer or person named in response to paragraph (c) of Item 401 has been employed by the registrant or a subsidiary of the registrant for less than five years, a brief explanation shall be included as to the nature of the responsibility undertaken by the individual in prior positions to provide adequate disclosure of his or her prior business experience. What is required is information relating to the level of his or her professional competence, which may include, depending upon the circumstances, such specific information as the size of the operation supervised.

* * * * *

(f) * * *

(7) Such person was the subject of, or a party to, any Federal or State judicial or administrative order, judgment, decree, or finding, not subsequently reversed, suspended or vacated, relating to an alleged violation of:

(i) Any Federal or State securities or commodities law or regulation; or

(ii) Any law or regulation respecting financial institutions or insurance companies including, but not limited to, a temporary or permanent injunction, order of disgorgement or restitution, civil money penalty or temporary or permanent cease-and-desist order, or removal or prohibition order; or

(iii) Any law or regulation prohibiting mail or wire fraud or fraud in connection with any business entity; or

(8) Such person was the subject of, or a party to, any sanction or order, not subsequently reversed, suspended or vacated, of any self-regulatory organization (as defined in Section 3(a)(26) of the Exchange Act (15 U.S.C. 78c(a)(26))), any registered entity (as defined in Section 1(a)(29) of the Commodity Exchange Act (7 U.S.C. 1(a)(29))), or any equivalent exchange, association, entity or organization that has disciplinary authority over its members or persons associated with a member.

Instructions to Paragraph (f) of Item 401:

* * * * *

5. This paragraph (f)(7) shall not apply to any settlement of a civil proceeding among private litigants.

* * * * *

■ 3. Amend § 229.402 by:
■ a. Revising paragraphs (c)(2)(v) and (c)(2)(vi);
■ b. Removing the Instruction to Item (c)(2)(v) and (vi), and adding in its place Instructions 1, 2, and 3 to Item (c)(2)(v) and (vi) before paragraph (c)(2)(vii);
■ c. Revising paragraph (c)(2)(ix)(G);
■ d. Removing the period at the end of paragraphs (d)(2)(iii) and (d)(2)(iv) and adding a semi-colon in their place;
■ e. Adding Instruction 8 to Item 402(d);
■ f. Revising paragraphs (k)(2)(iii) and (k)(2)(iv);
■ g. Revising paragraph (k)(2)(vii)(I) and Instruction to Item 402(k);
■ h. In paragraph (*l*) revising the phrase ''paragraphs (a) through (k)'' to read ''paragraphs (a) through (k) and (s)'';
■ i. Revising paragraphs (n)(2)(v) and (n)(2)(vi);
■ j. Removing the Instruction to Item 402(n)(2)(v) and (vi), and adding in its place Instructions 1, 2, and 3 to Item 402(n)(2)(v) and (vi) before paragraph (n)(2)(vii);
■ k. Revising paragraph (n)(2)(ix)(G);
■ l. Revising paragraphs (r)(2)(iii), (r)(2)(iv) and (r)(2)(vii)(I), and Instruction to Item 402(r); and
■ m. Adding paragraph (s) before the Instruction to Item 402.

The revisions and additions read as follows:

§ 229.402 (Item 402) Executive compensation.

* * * * *

(c) * * *

(2) * * *

(v) For awards of stock, the aggregate grant date fair value computed in accordance with FASB ASC Topic 718 (column (e));

(vi) For awards of options, with or without tandem SARs (including awards that subsequently have been transferred), the aggregate grant date fair value computed in accordance with FASB ASC Topic 718 (column (f));

Instruction 1 to Item 402(c)(2)(v) and (vi). For awards reported in columns (e) and (f), include a footnote disclosing all assumptions made in the valuation by reference to a discussion of those assumptions in the registrant's financial statements, footnotes to the financial statements, or discussion in the Management's Discussion and Analysis. The sections so referenced are deemed part of the disclosure provided pursuant to this Item.

Instruction 2 to Item 402(c)(2)(v) and (vi). If at any time during the last completed fiscal year, the registrant has adjusted or amended the exercise price of options or SARs previously awarded to a named executive officer, whether through amendment, cancellation or replacement grants, or any other means (''repriced''), or otherwise has materially modified such awards, the registrant shall include, as awards required to be reported in column (f), the incremental fair value, computed as of the repricing or modification date in accordance with FASB ASC Topic 718, with respect to that repriced or modified award.

Instruction 3 to Item 402(c)(2)(v) and (vi). For any awards that are subject to performance conditions, report the value at the grant date based upon the probable outcome of such conditions. This amount should be consistent with the estimate of aggregate compensation

cost to be recognized over the service period determined as of the grant date under FASB ASC Topic 718, excluding the effect of estimated forfeitures. In a footnote to the table, disclose the value of the award at the grant date assuming that the highest level of performance conditions will be achieved if an amount less than the maximum was included in the table.

* * * * *

(ix) * * *

(G) The dollar value of any dividends or other earnings paid on stock or option awards, when those amounts were not factored into the grant date fair value required to be reported for the stock or option award in column (e) or (f); and

* * * * *

(d) * * *

Instructions to Item 402(d).

* * * * *

8. For any equity awards that are subject to performance conditions, report in column (l) the value at the grant date based upon the probable outcome of such conditions. This amount should be consistent with the estimate of aggregate compensation cost to be recognized over the service period determined as of the grant date under FASB ASC Topic 718, excluding the effect of estimated forfeitures.

* * * * *

(k) * * *

(2) * * *

(iii) For awards of stock, the aggregate grant date fair value computed in accordance with FASB ASC Topic 718 (column (c));

(iv) For awards of options, with or without tandem SARs (including awards that subsequently have been transferred), the aggregate grant date fair value computed in accordance with FASB ASC Topic 718 (column (d));

* * * * *

(vii) * * *

(I) The dollar value of any dividends or other earnings paid on stock or option awards, when those amounts were not factored into the grant date fair value required to be reported for the stock or option award in column (c) or (d); and

* * * * *

Instruction to Item 402(k). In addition to the Instruction to paragraphs (k)(2)(iii) and (iv) and the Instructions to paragraph (k)(2)(vii) of this Item, the following apply equally to paragraph (k) of this Item: Instructions 2 and 4 to paragraph (c) of this Item; Instructions to paragraphs (c)(2)(iii) and (iv) of this Item; Instructions to paragraphs (c)(2)(v) and (vi) of this Item; Instructions to paragraph (c)(2)(vii) of this Item; Instructions to paragraph (c)(2)(viii) of this Item; and Instructions 1 and 5 to paragraph (c)(2)(ix) of this Item. These Instructions apply to the columns in the Director Compensation Table that are analogous to the columns in the Summary Compensation Table to which they refer and to disclosures under paragraph (k) of this Item that correspond to analogous disclosures provided for in paragraph (c) of this Item to which they refer.

* * * * *

(n) * * *

(2) * * *

(v) For awards of stock, the aggregate grant date fair value computed in accordance with FASB ASC Topic 718 (column (e));

(vi) For awards of options, with or without tandem SARs (including awards that subsequently have been transferred), the aggregate grant date fair value computed in accordance with FASB ASC Topic 718 (column (f));

Instruction 1 to Item 402(n)(2)(v) and (n)(2)(vi). For awards reported in columns (e) and (f), include a footnote disclosing all assumptions made in the valuation by reference to a discussion of those assumptions in the smaller reporting company's financial statements, footnotes to the financial statements, or discussion in the Management's Discussion and Analysis. The sections so referenced are deemed part of the disclosure provided pursuant to this Item.

Instruction 2 to Item 402(n)(2)(v) and (n)(2)(vi). If at any time during the last completed fiscal year, the smaller reporting company has adjusted or amended the exercise price of options or SARs previously awarded to a named executive officer, whether through amendment, cancellation or replacement grants, or any other means (''repriced''), or otherwise has materially modified such awards, the smaller reporting company shall include, as awards required to be reported in column (f), the incremental fair value, computed as of the repricing or modification date in accordance with FASB ASC Topic 718, with respect to that repriced or modified award.

Instruction 3 to Item 402(n)(2)(v) and (vi). For any awards that are subject to performance conditions, report the value at the grant date based upon the probable outcome of such conditions. This amount should be consistent with the estimate of aggregate compensation cost to be recognized over the service period determined as of the grant date under FASB ASC Topic 718, excluding the effect of estimated forfeitures. In a footnote to the table, disclose the value of the award at the grant date assuming that the highest level of performance conditions will be achieved if an amount less than the maximum was included in the table.

* * * * *

(ix) * * *

(G) The dollar value of any dividends or other earnings paid on stock or option awards, when those amounts were not factored into the grant date fair value required to be reported for the stock or option award in column (e) or (f); and

* * * * *

(r) * * *

(2) * * *

(iii) For awards of stock, the aggregate grant date fair value computed in accordance with FASB ASC Topic 718 (column (c));

(iv) For awards of options, with or without tandem SARs (including awards that subsequently have been transferred), the aggregate grant date fair value computed in accordance with FASB ASC Topic 718 (column (d));

* * * * *

(vii) * * *

(I) The dollar value of any dividends or other earnings paid on stock or option awards, when those amounts were not factored into the grant date fair value required to be reported for the stock or option award in column (c) or (d); and

* * * * *

Instruction to Item 402(r). In addition to the Instruction to paragraph (r)(2)(vii) of this Item, the following apply equally to paragraph (r) of this Item: Instructions 2 and 4 to paragraph (n) of this Item; the Instructions to paragraphs (n)(2)(iii) and (iv) of this Item; the Instructions to paragraphs (n)(2)(v) and (vi) of this Item; the Instructions to paragraph (n)(2)(vii) of this Item; the Instruction to paragraph (n)(2)(viii) of this Item; the Instructions to paragraph (n)(2)(ix) of this Item; and paragraph (o)(7) of this Item. These Instructions apply to the columns in the Director Compensation Table that are analogous to the columns in the Summary Compensation Table to which they refer and to disclosures under paragraph (r) of this Item that correspond to analogous disclosures provided for in paragraph (n) of this Item to which they refer.

* * * * *

(s) *Narrative disclosure of the registrant's compensation policies and practices as they relate to the registrant's risk management.* To the extent that risks arising from the registrant's compensation policies and practices for its employees are

reasonably likely to have a material adverse effect on the registrant, discuss the registrant's policies and practices of compensating its employees, including non-executive officers, as they relate to risk management practices and risk-taking incentives. While the situations requiring disclosure will vary depending on the particular registrant and compensation policies and practices, situations that may trigger disclosure include, among others, compensation policies and practices: at a business unit of the company that carries a significant portion of the registrant's risk profile; at a business unit with compensation structured significantly differently than other units within the registrant; at a business unit that is significantly more profitable than others within the registrant; at a business unit where compensation expense is a significant percentage of the unit's revenues; and that vary significantly from the overall risk and reward structure of the registrant, such as when bonuses are awarded upon accomplishment of a task, while the income and risk to the registrant from the task extend over a significantly longer period of time. The purpose of this paragraph(s) is to provide investors material information concerning how the registrant compensates and incentivizes its employees that may create risks that are reasonably likely to have a material adverse effect on the registrant. While the information to be disclosed pursuant to this paragraph(s) will vary depending upon the nature of the registrant's business and the compensation approach, the following are examples of the issues that the registrant may need to address for the business units or employees discussed:

(1) The general design philosophy of the registrant's compensation policies and practices for employees whose behavior would be most affected by the incentives established by the policies and practices, as such policies and practices relate to or affect risk taking by employees on behalf of the registrant, and the manner of their implementation;

(2) The registrant's risk assessment or incentive considerations, if any, in structuring its compensation policies and practices or in awarding and paying compensation;

(3) How the registrant's compensation policies and practices relate to the realization of risks resulting from the actions of employees in both the short term and the long term, such as through policies requiring claw backs or imposing holding periods;

(4) The registrant's policies regarding adjustments to its compensation policies and practices to address changes in its risk profile;

(5) Material adjustments the registrant has made to its compensation policies and practices as a result of changes in its risk profile; and

(6) The extent to which the registrant monitors its compensation policies and practices to determine whether its risk management objectives are being met with respect to incentivizing its employees.

* * * * *

■ 4. Amend § 229.407 by:

■ a. Revising paragraph (c)(2)(vi);

■ b. Revising paragraph (e)(3)(iii); and

■ c. Adding paragraph (h) before the Instructions to Item 407.

The revisions and additions read as follows:

§ 229.407 (Item 407) Corporate governance.

* * * * *

(c) * * *

(2) * * *

(vi) Describe the nominating committee's process for identifying and evaluating nominees for director, including nominees recommended by security holders, and any differences in the manner in which the nominating committee evaluates nominees for director based on whether the nominee is recommended by a security holder, and whether, and if so how, the nominating committee (or the board) considers diversity in identifying nominees for director. If the nominating committee (or the board) has a policy with regard to the consideration of diversity in identifying director nominees, describe how this policy is implemented, as well as how the nominating committee (or the board) assesses the effectiveness of its policy;

* * * * *

(e) * * *

(3) * * *

(iii) Any role of compensation consultants in determining or recommending the amount or form of executive and director compensation (other than any role *limited* to consulting on any broad-based plan that does not discriminate in scope, terms, or operation, in favor of executive officers or directors of the registrant, and that is available generally to all salaried employees; or providing information that either is not customized for a particular registrant or that is customized based on parameters that are not developed by the compensation consultant, and about which the compensation consultant does not provide advice) during the registrant's last completed fiscal year, identifying such consultants, stating whether such consultants were engaged directly by the compensation committee (or persons performing the equivalent functions) or any other person, describing the nature and scope of their assignment, and the material elements of the instructions or directions given to the consultants with respect to the performance of their duties under the engagement:

(A) If such compensation consultant was engaged by the compensation committee (or persons performing the equivalent functions) to provide advice or recommendations on the amount or form of executive and director compensation (other than any role *limited* to consulting on any broad-based plan that does not discriminate in scope, terms, or operation, in favor of executive officers or directors of the registrant, and that is available generally to all salaried employees; or providing information that either is not customized for a particular registrant or that is customized based on parameters that are not developed by the compensation consultant, and about which the compensation consultant does not provide advice) and the compensation consultant or its affiliates also provided additional services to the registrant or its affiliates in an amount in excess of $120,000 during the registrant's last completed fiscal year, then disclose the aggregate fees for determining or recommending the amount or form of executive and director compensation and the aggregate fees for such additional services. Disclose whether the decision to engage the compensation consultant or its affiliates for these other services was made, or recommended, by management, and whether the compensation committee or the board approved such other services of the compensation consultant or its affiliates.

(B) If the compensation committee (or persons performing the equivalent functions) has not engaged a compensation consultant, but management has engaged a compensation consultant to provide advice or recommendations on the amount or form of executive and director compensation (other than any role *limited* to consulting on any broad-based plan that does not discriminate in scope, terms, or operation, in favor of executive officers or directors of the registrant, and that is available generally to all salaried employees; or providing information that either is not customized for a particular registrant or that is customized based on parameters that are not developed by the compensation consultant, and about which the compensation consultant

does not provide advice) and such compensation consultant or its affiliates has provided additional services to the registrant in an amount in excess of $120,000 during the registrant's last completed fiscal year, then disclose the aggregate fees for determining or recommending the amount or form of executive and director compensation and the aggregate fees for any additional services provided by the compensation consultant or its affiliates.

* * * * *

(h) *Board leadership structure and role in risk oversight.* Briefly describe the leadership structure of the registrant's board, such as whether the same person serves as both principal executive officer and chairman of the board, or whether two individuals serve in those positions, and, in the case of a registrant that is an investment company, whether the chairman of the board is an ''interested person'' of the registrant as defined in section 2(a)(19) of the Investment Company Act (15 U.S.C. 80a–2(a)(19)). If one person serves as both principal executive officer and chairman of the board, or if the chairman of the board of a registrant that is an investment company is an ''interested person'' of the registrant, disclose whether the registrant has a lead independent director and what specific role the lead independent director plays in the leadership of the board. This disclosure should indicate why the registrant has determined that its leadership structure is appropriate given the specific characteristics or circumstances of the registrant. In addition, disclose the extent of the board's role in the risk oversight of the registrant, such as how the board administers its oversight function, and the effect that this has on the board's leadership structure.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 5. The authority citation for Part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l,* 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll,* 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 6. The authority citation for Part 240 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.;* and 18 U.S.C. 1350 and 12 U.S.C. 5221(e)(3) unless otherwise noted.

* * * * *

■ 7. Amend § 240.14a–101 by:
■ a. Revising paragraph (b) of Item 7;
■ b. In Item 22:
■ i. Redesignating paragraph (b)(3) as paragraph (b)(3)(ii);
■ ii. Adding new paragraph (b)(3)(i); and
■ iii. Redesignating *Instruction to paragraph (b)(3)* as *Instruction to paragraph (b)(3)(ii);*
■ iv. Redesignating paragraph (b)(4), introductory text, and paragraph (b)(4)(i) through paragraph (b)(4)(iv) as new paragraph (b)(4)(i), introductory text, and paragraph (b)(4)(i)(A) through paragraph (b)(4)(i)(D);
■ v. Adding new paragraph (b)(4)(ii);
■ vi. Revising paragraph (b)(11) before the Instruction; and
■ vii. Revising *Instruction to paragraph (b)(11).*

The revisions and additions read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 7. Directors and executive officers.

* * * * *

(b) The information required by Items 401, 404(a) and (b), 405 and 407(d)(4), (d)(5) and (h) of Regulation S–K (§ 229.401, § 229.404(a) and (b), § 229.405 and § 229.407(d)(4), (d)(5) and (h) of this chapter).

* * * * *

Item 22. Information required in investment company proxy statement.

* * * * *

(b) *Election of Directors.* * * *

(3)(i) For each director or nominee for election as director, briefly discuss the specific experience, qualifications, attributes, or skills that led to the conclusion that the person should serve as a director for the Fund at the time that the disclosure is made in light of the Fund's business and structure. If material, this disclosure should cover more than the past five years, including information about the person's particular areas of expertise or other relevant qualifications.

* * * * *

(4) * * *

(ii) Unless disclosed in the table required by paragraph (b)(1) of this Item or in response to paragraph (b)(4)(i) of this Item, indicate any directorships held during the past five years by each director or nominee for election as director in any company with a class of securities registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78*l*) or subject to the requirements of section 15(d) of the Exchange Act (15 U.S.C. 78o(d)) or any company registered as an investment company under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), as amended, and name the companies in which the directorships were held.

* * * * *

(11) Provide in tabular form, to the extent practicable, the information required by Items 401(f) and (g), 404(a), 405, and 407(h) of Regulation S–K (§§ 229.401(f) and (g), 229.404(a), 229.405, and 229.407(h) of this chapter).

Instruction to paragraph (b)(11). Information provided under paragraph (b)(8) of this Item 22 is deemed to satisfy the requirements of Item 404(a) of Regulation S–K for information about directors, nominees for election as directors, and Immediate Family Members of directors and nominees, and need not be provided under this paragraph (b)(11).

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 8. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 9. Amend Form 8–K (referenced in § 249.308) by adding Item 5.07 under the caption ''Information To Be Included in the Report'' after the General Instructions read as follows:

Note: The text of Form 8–K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 8–K

* * * * *

General Instructions

* * * * *

Information To Be Included in the Report

* * * * *

Item 5.07 Submission of Matters to a Vote of Security Holders

If any matter was submitted to a vote of security holders, through the solicitation of proxies or otherwise, provide the following information:

(a) The date of the meeting and whether it was an annual or special meeting.

(b) If the meeting involved the election of directors, the name of each director elected at the meeting, as well as a brief description of each other matter voted upon at the meeting; and state the number of votes cast for, against or withheld, as well as the number of abstentions and broker non-votes as to each such matter, including a separate tabulation with respect to each nominee for office.

(c) A description of the terms of any settlement between the registrant and any other participant (as defined in Instruction 3 to Item 4 of Schedule 14A (17 CFR 240.14a–101)) terminating any solicitation subject to Rule 14a–12(c), including the cost or anticipated cost to the registrant.

Instruction 1 to Item 5.07. The four business day period for reporting the event under this Item 5.07 shall begin to run on the day on which the meeting ended. The registrant shall disclose on Form 8–K under this Item 5.07 the preliminary voting results. The registrant shall file an amended report on Form 8–K under this Item 5.07 to disclose the final voting results within four business days after the final voting results are known. *However,* no preliminary voting results need be disclosed under this Item 5.07 if the registrant has disclosed final voting results on Form 8–K under this Item.

Instruction 2 to Item 5.07. If any matter has been submitted to a vote of security holders otherwise than at a meeting of such security holders, corresponding information with respect to such submission shall be provided. The solicitation of any authorization or consent (other than a proxy to vote at a stockholders' meeting) with respect to any matter shall be deemed a submission of such matter to a vote of security holders within the meaning of this item.

Instruction 3 to Item 5.07. If the registrant did not solicit proxies and the board of directors as previously reported to the Commission was re-elected in its entirety, a statement to that effect in answer to paragraph (b) will suffice as an answer thereto.

Instruction 4 to Item 5.07. If the registrant has furnished to its security holders proxy soliciting material containing the information called for by paragraph (c), the paragraph may be answered by reference to the information contained in such material.

Instruction 5 to Item 5.07. If the registrant has published a report containing all the information called for by this item, the item may be answered by a reference to the information contained in such report.

* * * * *

■ 10. Amend Form 10–Q (referenced in § 249.308a) by removing Item 4 in Part II—Other Information, and redesignating Items 5 and 6 as Items 4 and 5.

■ 11. Amend Form 10–K (referenced in § 249.310) by removing Item 4 in Part I, and redesignating Items 5 through 15 as Items 4 through 14.

Note: The text of Forms 10–Q and 10–K do not, and these amendments will not, appear in the Code of Federal Regulations.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 12. The authority citation for Part 274 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l,* 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

* * * * *

■ 13. Form N–1A (referenced in §§ 239.15A and 274.11A), Item 17 is amended by:

■ a. Revising the heading to paragraph (b);

■ b. Revising paragraph (b)(1);

■ c. Redesignating paragraph (b)(3), introductory text, and paragraph (b)(3)(i) through paragraph (b)(3)(iv) as paragraph (b)(3)(i), introductory text, and paragraph (b)(3)(i)(A) through paragraph (b)(3)(i)(D);

■ d. Adding new paragraph (b)(3)(ii); and

■ e. Adding paragraph (b)(10).

The revisions and additions read as follows:

Note: The text of Form N–1A does not, and these amendments will not, appear in the Code of Federal Regulations.

Form N–1A

* * * * *

Item 17. Management of the Fund

* * * * *

(b) *Leadership Structure and Board of Directors.*

(1) Briefly describe the leadership structure of the Fund's board, including the responsibilities of the board of directors with respect to the Fund's management and whether the chairman of the board is an interested person of the Fund. If the chairman of the board is an interested person of the Fund, disclose whether the Fund has a lead independent director and what specific role the lead independent director plays in the leadership of the Fund. This disclosure should indicate why the Fund has determined that its leadership structure is appropriate given the specific characteristics or circumstances of the Fund. In addition, disclose the extent of the board's role in the risk oversight of the Fund, such as how the board administers its oversight function and the effect that this has on the board's leadership structure.

* * * * *

(3) * * *

(ii) Unless disclosed in the table required by paragraph (a)(1) of this Item 17 or in response to paragraph (b)(3)(i) of this Item 17, indicate any directorships held during the past five years by each director in any company with a class of securities registered pursuant to section 12 of the Securities Exchange Act (15 U.S.C. 78*l*) or subject to the requirements of section 15(d) of the Securities Exchange Act (15 U.S.C. 78o(d)) or any company registered as an investment company under the Investment Company Act, and name the companies in which the directorships were held.

* * * * *

(10) For each director, briefly discuss the specific experience, qualifications, attributes, or skills that led to the conclusion that the person should serve as a director for the Fund at the time that the disclosure is made, in light of the Fund's business and structure. If material, this disclosure should cover more than the past five years, including information about the person's particular areas of expertise or other relevant qualifications.

* * * * *

■ 14. Form N–2 (referenced in §§ 239.14 and 274.11a–1), Item 18 is amended by:

■ a. Redesignating paragraph 5, introductory text, and paragraph 5(a) through paragraph 5(d) as paragraph 5(b), introductory text, and paragraph 5(b)(1) through paragraph 5(b)(4);

■ b. Adding new paragraph 5(a);

■ c. Redesignating paragraph 6, introductory text, and paragraph 6(a) through paragraph 6(d) as paragraph 6(a), introductory text, and paragraph 6(a)(1) through paragraph 6(a)(4);

■ d. Adding new paragraph 6(b); and

■ e. Adding paragraph 17 after the instructions.

The additions read as follows:

Note: The text of Form N–2 does not, and these amendments will not, appear in the Code of Federal Regulations.

Form N–2

* * * * *

Item 18. Management

* * * * *

5.(a) Briefly describe the leadership structure of the Registrant's board, including whether the chairman of the board is an interested person of the Registrant, as defined in section 2(a)(19) of the 1940 Act (15 U.S.C. 80a–2(a)(19)). If the chairman of the board is an interested person of the Registrant, disclose whether the Registrant has a lead independent director and what specific role the lead independent director plays in the leadership of the Registrant. This disclosure should indicate why the Registrant has determined that its leadership structure is appropriate given the specific characteristics or circumstances of the Registrant. In addition, disclose the extent of the board's role in the risk oversight of the Registrant, such as how the board administers its oversight function, and the effect that this has on the board's leadership structure.

* * * * *

6. * * *

(b) Unless disclosed in the table required by paragraph 1 of this Item 18 or in response to paragraph 6(a) of this Item 18, indicate any directorships held during the past five years by each director in any company with a class of securities registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78*l*) or subject to the requirements of section 15(d) of the Exchange Act (15 U.S.C. 78o(d)) or any company registered as an investment company under the 1940 Act, and name the companies in which the directorships were held.

* * * * *

17. For each director, briefly discuss the specific experience, qualifications, attributes, or skills that led to the conclusion that the person should serve as a director for the Registrant at the time that the disclosure is made, in light of the Registrant's business and structure. If material, this disclosure should cover more than the past five years, including information about the person's particular areas of expertise or other relevant qualifications.

* * * * *

■ 15. Form N–3 (referenced in §§ 239.17a and 274.11b), Item 20 is amended by:

■ a. Redesignating paragraph (d), introductory text, and paragraph (d)(i) through paragraph (d)(iv) as paragraph (d)(ii), introductory text, and paragraph (d)(ii)(A) through paragraph (d)(ii)(D);

■ b. Adding new paragraph (d)(i);

■ c. Redesignating paragraph (e), introductory text, and paragraph (e)(i) through paragraph (e)(iv) as paragraph (e)(i), introductory text, and paragraph (e)(i)(A) through paragraph (e)(i)(D);

■ d. Adding new paragraph (e)(ii); and

■ e. Adding paragraph (o) after the instructions.

The additions read as follows:

Note: The text of Form N–3 does not, and these amendments will not, appear in the Code of Federal Regulations.

Form N–3

* * * * *

Item 20. Management

* * * * *

(d)(i) Briefly describe the leadership structure of the Registrant's board, including whether the chairman of the board is an interested person of the Registrant, as defined in Section 2(a)(19) of the 1940 Act (15 U.S.C. 80a–2(a)(19)) and the rules thereunder. If the chairman of the board is an interested person of the Registrant, disclose whether the Registrant has a lead independent director and what specific role the lead independent director plays in the leadership of the Registrant. This disclosure should indicate why the Registrant has determined that its leadership structure is appropriate given the specific characteristics or circumstances of the Registrant. In addition, disclose the extent of the board's role in the risk oversight of the Registrant, such as how the board administers its risk oversight function, and the effect that this has on the board's leadership structure.

(e) * * *

(ii) Unless disclosed in the table required by paragraph (a) of this Item 20 or in response to paragraph (e)(i) of this Item 20, indicate any directorships held during the past five years by each director in any company with a class of securities registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78*l*) or subject to the requirements of Section 15(d) of the Exchange Act (15 U.S.C. 78o(d)) or any company registered as an investment company under the 1940 Act, and name the companies in which the directorships were held.

* * * * *

(o) For each director, briefly discuss the specific experience, qualifications, attributes, or skills that led to the conclusion that the person should serve as a director for the Registrant at the time that the disclosure is made, in light of the Registrant's business and structure. If material, this disclosure should cover more than the past five years, including information about the person's particular areas of expertise or other relevant qualifications.

* * * * *

Dated: December 16, 2009.

By the Commission.

Florence E. Harmon,

Deputy Secretary.

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CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

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FEDERAL REGISTER PAGES AND DATE, DECEMBER

62675–63058 1
63059–63270 2
63271–63530 3
63531–63950 4
63951–64584 7
64585–64994 8
64995–65382 9
65383–65678 10
65679–66028 11
66029–66212 14
66213–66562 15
66563–66906 16
66907–67048 17
67049–67800 18
67801–67966 21
67967–68130 22
68131–68368 23

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
8459 63269
8460 64585
8461 64587
8462 64589
8463 64995
8464 66211
8465 67801
8466 67967

Executive Orders
13522 66203
13523 ..... 66563, 67049
13524 67803

Administrative Orders:
Presidential Determinations:
No. 2010-03 of December 3, 2009 65381
Memorandums:
Memo. of November 30, 2009 63059
Memo. of December 9, 2009 66207
Memo. of December 15, 2009 67045

5 CFR
410 65383
412 65383
752 63531
831 66565
842 66565
870 66565
890 66565
1604 63061
1651 63061
1653 63061
1690 63061

6 CFR
5 ..... 63944, 63946, 63948, 63949

7 CFR
210 66213
220 66213
246 67969
273 67969
274 67969
301 67051
400 66029
610 66907
662 63537
760 67805
948 65390
953 65390
980 65390
1207 63541
1220 62675
1435 66567
1465 64591

Proposed Rules:
1206 64012

8 CFR
1 67969
103 64997
208 67969
209 67969
212 67969
214 ..... 64997, 67969
217 67969
235 67969
245 67969
274a 64997, 67969
286 67969
299 ..... 64997, 67969
1001 67969
1208 67969
1209 67969
1212 67969
1235 67969
1245 67969
1274a 67969

9 CFR
77 67051
94 66217
95 66222
149 64998
151 66567
160 64998
161 64998
162 64998
166 65014
201 63271

Proposed Rules:
317 67736
381 67736

10 CFR
Ch. 1 62676
72 65679
207 66029
218 66029
430 66029
490 66029
501 66029
601 66029
609 63544
820 66029
824 66029
851 66029
1013 66029
1017 66029
1045 67969
1050 66029

Proposed Rules:
72 66589
73 ..... 64012, 66589
430 65852

11 CFR
100 63951

113 63951
9004 63951
9034 63951
Proposed Rules:
300 64016

12 CFR

40 62890
201 65014
216 62890
233 62687
332 62890
567 67811
573 62890
617 67970
716 62890
741 63277
925 67811
Proposed Rules:
702 65210
703 65210
704 65210
709 65210
747 65210
1261 62708

13 CFR

121 67972
Proposed Rules:
121 ....62710, 64026, 65040
124 ....62710, 64026, 65040

14 CFR

23 ....63560, 63968, 66567, 68131
25 65394
39 ....62689, 63063, 63284, 63563, 63565, 63569, 63572, 63574, 63576, 63578, 63581, 63583, 63585, 63587, 63590, 63592, 63595, 65396, 65398, 65401, 65403, 65406, 65679, 65682, 65684, 66034, 66039, 66040, 66042, 66045, 66227, 68132, 68135
60 67972
71 ....63970, 63971, 63973, 63974, 63976, 65686, 65687, 65688, 66230, 66231, 66570, 66571, 66572, 67811
91 62691
97 ....63977, 63979
125 62691
135 62691
Proposed Rules:
39 ....62711, 62713, 63331, 63333, 65492, 65493, 65496, 65697, 65699, 66924, 66927, 66930, 67829, 67831, 67834, 68192, 68194, 68196, 68198
71 ....63684, 65040, 66258, 66592, 66593, 66594, 66595, 66597, 67140, 67141, 67142, 67143, 67836, 67837

15 CFR

701 68136
736 68142
738 68142
740 ....66000, 68142
742 ....66000, 68142
743 ....66000, 68142
744 68146
748 68147
772 ....65662, 66000, 68142
774 ....65662, 66000
806 ....65017, 66232
Proposed Rules:
740 63685
748 63685
750 63685
762 63685

16 CFR

313 62890
Proposed Rules:
1422 67987

17 CFR

160 62890
229 68334
232 67812
239 68334
240 ....63832, 68334
243 63832
248 62890
249 68334
274 68334
Proposed Rules:
190 66598
200 67144
232 67144
240 ....63866, 67144
249 67144
249b 63866
274 67144

18 CFR

38 63288
40 64884

19 CFR

101 ....63980, 64601
Proposed Rules:
101 62715
123 66932
142 66932

20 CFR

220 63598
Proposed Rules:
404 ....63688, 66069
405 63688
416 ....63688, 66075
422 63688
901 66259

21 CFR

210 65409
211 65409
212 65409
510 ....65689, 66047, 66573
522 ....65689, 66047, 66573, 67815
558 66914
1300 63603
Proposed Rules:
4 65702

22 CFR

Proposed Rules:
22 66076
62 68200

23 CFR

655 66730

24 CFR

Proposed Rules:
30 66548
93 63938
3400 66548

26 CFR

1 ....66048, 67053, 67973, 67974, 68149
54 68149
301 66915
Proposed Rules:
1 ....67010, 68208
31 ....67010, 68208
301 67010

27 CFR

9 64602

29 CFR

1601 63981
1602 63981
1603 63981
1607 63981
1610 63981
1611 63981
1614 63981
1625 63981
1690 63981
2200 63985
2203 63985
2204 63985
4022 ....62697, 66234
4044 ....62697, 66234
Proposed Rules:
403 63335
408 63335
1202 63695
1206 63695
1614 67839
1910 64027

30 CFR

260 66574
944 63988

31 CFR

30 ....63990, 63991
50 ....66051, 66061
132 62687
285 68149

32 CFR

199 65436
323 62699

33 CFR

27 68150
100 ....62699, 68155
117 ....62700, 63610, 63612, 64613, 66236, 66238, 66916, 67974, 68155
147 68155
151 66238
165 ....62700, 62703, 64613, 65019, 65438, 65439, 65690, 68155, 68159
Proposed Rules:
104 68208
105 68208
117 ....63695, 64641, 65497
160 68208

34 CFR

Ch. 2 65618

36 CFR

219 67059

37 CFR

381 62705
Proposed Rules:
41 67987
380 68214
382 66601

38 CFR

9 62706
14 67075
17 63307
Proposed Rules:
3 ....65702, 67145
19 67149
20 67149

39 CFR

111 66241
3020 ....65442, 66242, 67816
Proposed Rules:
111 66079
3050 66082

40 CFR

Ch. I 66496
51 65692
52 ....63066, 63309, 63993, 63995, 65446, 65692, 66921, 67077, 67819, 67821
60 66921
61 66921
62 66921
63 ....63236, 63504, 63613
81 63995
82 ....66412, 66450
141 63069
180 ....63070, 63074, 65021, 65029, 66574, 67082, 67088, 67090, 67098, 67104, 67108, 67114, 67119, 67124,67129, 67132, 67823, 68162, 68168
300 ....63616, 64615
450 62996
Proposed Rules:
9 66470
50 64810
52 ....62717, 63080, 63697, 65042, 66934, 67154, 67844
53 64810
55 67845
58 64810
63 ....63701, 66470
82 65719
156 68215
261 ....64643, 66259
300 64658
449 66082

41 CFR

105–64 66245

42 CFR

405 65296
410 65449
411 65449
414 65449
415 65449
423 65340
485 65449
498 65449
Proposed Rules:
84 66935

44 CFR

64 66580

Proposed Rules:
67 66602

46 CFR

2 63617
24 63617
30 63617
70 63617
90 63617
114 63617
175 63617
188 63617
535 65034

47 CFR

15 63079
73 ....62706, 67827

Proposed Rules:
0 63702
1 63702
61 63702
69 63702
73 ....62733, 63336

48 CFR

Ch. 1 ....65598, 65615
2 65599
4 65600
6 65614
7 65605
8 ....65600, 65614
11 65605
12 65605
13 65600
15 65614
16 65600
22 65599
26 65607
31 ....65607, 65608, 65612
32 65600
39 65605
52 ....65599, 65600, 65607, 65614
501 66251
511 66251
552 66251
802 ....64619, 66257
804 ....64619, 66257
808 ....64619, 66257
809 ....64619, 66257
810 ....64619, 66257
813 ....64619, 66257
815 ....64619, 66257
817 ....64619, 66257
819 ....64619, 66257
828 ....64619, 66257
852 ....64619, 66257
3009 66584
3052 66584
6101 66584

Proposed Rules:
552 63704
570 63704

49 CFR

172 65696
192 ....63310, 63906
195 63310
225 65458
240 68173
565 67977
571 ....63182, 68185
585 63182

Proposed Rules:
105 68004
107 68004
171 68004
173 68004
174 68004
176 68004
177 68004
179 68004
565 66936
595 67156

50 CFR

21 64638
300 ....63999, 65036, 65460, 66585, 68190
622 ....63673, 65038
635 66585
648 ....62706, 64011, 65039, 67978
660 ....65480, 67137, 67986
665 65460
679 67138

Proposed Rules:
17 ....63037, 63343, 63366, 64930, 65045, 65056, 66260, 66866, 66937
226 63080
600 ....64042, 65724
622 65500
635 63095
648 68015
679 ....63100, 65503

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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H.R. 3288/P.L. 111–117
Consolidated Appropriations Act, 2010 (Dec. 16, 2009; 123 Stat. 3034)

H.R. 3326/P.L. 111–118
Department of Defense Appropriations Act, 2010 (Dec. 19, 2009; 123 Stat. 3409)

Last List December 21, 2009

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